Vietnam

The Legal Framework for Extradition, MLA and Recovery of Proceeds of Corruption

Extradition and MLA (including in relation to proceeds of crime) in Vietnam are principally governed by Chapters 37 and 38 of the Criminal Procedure Code (No. 19/2003/QH11) (CPC), except for confiscation, which is covered by Articles 40 and 41 of the Penal Code. If the legislation conflicts with a treaty, the latter prevails. Vietnam is party to the Southeast Asian MLAT (which has also been ratified by two other members of the ADB/OECD Initiative, Malaysia and Singapore). Vietnam has signed but has not ratified the UNCAC and the UNTOC. It has bilateral extradition and MLA treaties in force with Korea, a member of the Initiative and a party to the OECD Convention. A bilateral MLA treaty is also in force with Mongolia, a member of the Initiative. Extradition and MLA are also available without a treaty on the basis of reciprocity. MLA and extradition requests in corruption cases should be sent to the Ministry of Justice, though an applicable treaty may require requests to be sent to other bodies.

Legal Preconditions for Extradition and MLA (Including in Relation to Proceeds of Corruption)

Dual criminality is required for extradition but not MLA. The requirement is conduct-based. As bribery of foreign public officials and illicit enrichment are not criminal offenses in Vietnam, it is not clear whether dual criminality would prevent cooperation in cases involving these offenses. Vietnam also does not impose liability against legal persons for corruption offenses. However, this should not prevent cooperation in cases in which a legal person is the target of an investigation or prosecution, since dual criminality is not required for MLA.

The CPC does not prescribe evidentiary tests for extradition or MLA, nor does it expressly require specialty or use limitation. An applicable treaty may contain such provisions (e.g., Article 7 of the Southeast Asian MLAT).

The CPC does not allow the extradition of Vietnamese nationals unless the applicable treaty or agreement provides. Where extradition is declined on this ground, the CPC does not require the case to be submitted to the competent Vietnamese authorities for prosecution. Extradition is also refused if the person sought has been convicted or is being prosecuted in Vietnam for the same crime. Under the CPC, Vietnam may also refuse to refuse a request for assistance from a foreign country if the application threatens its sovereignty, security or other important interests.

Procedures and Measures to Improve the Efficiency of Extradition and MLA

There are several central authorities in Vietnam for extradition and MLA. The central authorities under the MLA Treaty with Korea and the Southeast Asian MLAT are the Prosecutor-General of the People’s Supreme Procuracy and the Ministry of Public Security respectively. For all other MLA requests involving corruption offenses, the central authority is the Ministry of Justice (although this is not specified in the CPC). Extradition requests are transmitted via the diplomatic channel. The CPC does not describe the procedure for executing incoming extradition and MLA requests. There are also no provisions for processing urgent requests. The provisions in the CPC concerning domestic investigations may apply.
Recovery of Proceeds of Corruption in Criminal Proceedings

Vietnamese law does not contain provisions that deal specifically with foreign requests relating to proceeds of crime. The provisions of the CPC relating to proceeds of crime in domestic cases presumably apply with such modifications as necessary. These provisions do not include special measures for tracing property or proceeds of crime; the general investigative tools (e.g., search and seizure) are used for this purpose. Property may be restrained under Article 146 of the CPC if a person has been charged with an offense that may result in confiscation of the property under the Penal Code.

Confiscation is covered under Articles 40 and 41 of the Penal Code. Instrumentalities of a crime and objects or money acquired through the commission of a crime may be confiscated upon the conviction of a person. The conviction, however, must relate to a crime that causes great harm to society and which is punishable by at least seven years’ imprisonment. The CPC requires confiscated property to be deposited into the State fund. There are no provisions for sharing confiscated property with a foreign state.

Conclusion

In the course of the past few years, Vietnam has enacted reform legislation in order to create an environment more conducive to international cooperation in criminal matters. Thus, the Criminal Procedure Code enacted in 2003 contains Chapters 37 and 38 which regulate some matters of extradition and MLA. Confiscation is dealt with in the Penal Code which was enacted in 1999. In fall 2007, Vietnam was about to introduce improvements to this legal framework as part of an ongoing reform process.

Recommendations for a Way Forward

The Legal Framework for Extradition and MLA

Introducing, as part of the ongoing reform process, more elaborate rules on cooperation in criminal cases into Vietnamese law would very likely enhance Vietnam’s ability to seek and provide international cooperation in corruption cases. For instance, Vietnam could add features such as extradition by consent or via endorsement of warrants, and MLA for service of documents, taking evidence through video conference, and transfer of prisoners to assist in an investigation or proceeding. Expanding Vietnam’s network of extradition and MLA treaties could further strengthen Vietnam’s ability. Ratifying the multilateral treaties that have already been signed, such as the UNCAC and the UNTOC, would help accomplish this goal, as would concluding more bilateral extradition and MLA treaties.

Legal Preconditions for Extradition and MLA

Since dual criminality is required for extradition, it could be important to ensure that this requirement does not impede extradition in cases involving bribery of foreign public officials and illicit enrichment. Vietnam does not extradite its nationals. Vietnam could amend the CPC to ensure that cases are submitted to its competent authorities for prosecution whenever extradition is denied solely because of nationality (e.g., see Article 44(11) of the UNCAC and Article 10(3) of the OECD Convention). Ensuring that there is jurisdiction to prosecute all such cases could also be beneficial. Finally, expressly prohibiting the use of bank secrecy as a ground for denying MLA would bring the law in line with recent international instruments (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT).

Procedures and Measures to Improve the Efficiency of Extradition and MLA

Designating a single body as the central authority for all extradition and MLA requests could result in economies of scale, concentration of expertise, better coordination among law enforcement agencies, and less duplication. Allowing the central authority to directly send and receive extradition and MLA requests could eliminate delays caused by transmission through the diplomatic channel. The authorities in requesting
states could benefit from a Web page in English that is dedicated to international cooperation and which contains a description of the Vietnamese extradition and MLA process, copies of relevant legislation and treaties, contact information for the central authority, and sample documents.

Procedures for urgent requests, such as allowing Vietnamese nationals to be provisionally arrested, could be useful. Potential delays could also be reduced by accepting urgent requests for MLA or provisional arrest that are made outside the diplomatic channel, such as by facsimile or Interpol. Vietnam could also consider accepting urgent MLA requests made orally with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).

Recovery of Proceeds of Corruption in Criminal Proceedings

As with MLA generally, treaties and legislation on MLA relating to proceeds of crime could greatly improve Vietnam’s ability to seek and provide cooperation. Cooperation could also be strengthened by reducing some threshold requirements. Allowing property to be restrained before a charge has been laid could enhance the preservation of assets for later confiscation. Under the current law, confiscation is available only if a person has been convicted of an offense that is punishable by at least seven years’ imprisonment. In line with other jurisdictions, consideration could be given to eliminating this requirement or reducing it to one year’s imprisonment. Permitting foreign confiscation orders to be enforced without a conviction (e.g., when an offender cannot be prosecuted because of death, flight, absence etc.) would bring the regime in line with Article 54(1)(c) of the UNCAC.

Procedural changes could also enhance cooperation, such as allowing the enforcement of foreign restraining, confiscation and pecuniary penalty orders by direct registration in a Vietnamese court. Registration of faxed orders in urgent cases could also be useful. Finally, express provisions on the repatriation of proceeds of corruption could provide greater certainty and accountability. Particular consideration could be given to the factors referred to in Article 57 of the UNCAC.

Information for Seeking Assistance

Central Authority

For Extradition under the Treaty with Korea: the diplomatic channel

For All Other Extradition Requests: Information not available.

For MLA under the Treaty with Korea:
Prosecutor-General of the People’s Supreme Procuracy

For MLA under the Southeast Asian MLAT:
Ministry of Public Security
International Cooperation Department
No. 60 Nguyen Du
Hanoi, Vietnam
Tel: +84 4 0694 0197
Fax: +84 4 4942 4381

For All Other MLA Requests:
Ministry of Justice
56-58-60 Tran Phu
Hanoi, Vietnam
Tel: +84 4 7336 213
Fax: +84 4 8431 431

Relevant Laws and Documentation

Criminal Procedure Code (No. 19/2003/QH11) and the Penal Code (No. 15/1999/QH10): vbqpl.moj.gov.vn