

THE LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

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I. INTRODUCTION

Laos is one of the members of the United Nations Convention Against Corruption (UNCAC) and one of the members of the South East Asian Parties Against Corruption (SEA-PAC). Corruption is an insidious plague that has a wide range of corrosive effects on socio-economic development, distorts markets and erodes the quality of life. It undermines democracy and the rule of law. This evil phenomenon is found in every country. The Government of Lao PDR actively has been trying to prevent and combat corruption, promote good governance and to ensure transparency in state governance in order to provide basic services for equality and justice, such as creating and improving of principles, regulations, laws and various legislation related to the United Nations Convention Against Corruption. In order to prevent the loss of state property, to prevent fraud committed against the state, and to prevent harm to society and legitimate rights and interests of the citizens, Lao PDR is fighting corruption by prosecuting offenders and protecting the innocent. The aim is to make state agencies transparent, strong and able to be inspected at all times, contributing to political stability, economic growth and stability, maintain social peace, order and justice to reduce the likelihood of corruption. Thus, the Government of Lao PDR has been undertaking efforts to promote bilateral and multilateral international cooperation to exchange knowledge and technical information by training programmes, seminars and workshops on anti-corruption development.

Therefore, to share information and exchange knowledge on the topic of the seminar, this paper will address two of the latest trends in corruption and effective measures to prosecute criminals: fraudulent cases involving financial transactions and abuse by employees.

II. PRINCIPLES OF CONDUCTING CORRUPTION CASES

For the implementation of corruption proceedings, the State Inspectorate and Anti-Corruption Authority (SIAA) has undertaken a holistic approach to investigate corruption through its roles and duties as defined by the law. Corruption cases in Lao PDR are based on two laws: the Penal Law and the Anti-Corruption Law. First of all, we would like to introduce the process of corruption proceedings in the Lao PDR.

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A. Corruption Inspections

1. The Reason for the Inspection

- When reliable evidence of corruption is found;
- Notification, report, proposal, complaint of corruption;
- When an official or his or her family members possess unexplained wealth.

2. Inspection Procedure

- Investigate notices, reports, proposals, complaints and data collection if deemed necessary;
- Prepare and formulate a realistic inspection plan by coordinating with other sectors and relevant localities;
- Examine documents and entitlements of individuals or organizations involved, such as financial supervision, accounting, receipts, expenses, or loans;
- Invitations to organizational representatives or related parties to explain or clarify;
- Conclusion, evaluate and report the results of the inspection.

3. Inspection Schedules

- The Central Anti-Corruption Authority, in principle, may not conduct its inspection for more than 90 days, but if the inspection is not completed, it may continue for a 30-day period, in case there are difficulties related to other sectors that can be extended, but not longer than 180 days;
- For the Anti-Corruption Agency of Ministries-Agencies, the province / municipality may not exceed 60 days from the date of inspection; in case of difficulty, they can continue for 30 days;
- For the anti-corruption agency of districts, municipalities may not exceed 30 days from the date of inspection, in the case of difficulties in remote areas can be extended for 15 days;

4. Resolution of the Inspection

- For a violation of less than five million kip, the agency is required to warn or discipline them as required by law in Articles 56 and 57;
- Investigation is conducted and concluded, and then the case is submitted to the head of the Prosecutor's Office for consideration of a court order if it is a criminal offence pursuant to articles 58 to 61.

5. Compliance with the Anti-Corruption Body

Organizations that have received the Anti-Corruption Proposals under Article 31 must comply within the prescribed timeframe; if they fail to comply with the proposal, the Anti-Corruption Unit has the right to propose the relevant matters, as the case may be. Non-compliance with the proposal is considered a violation of the law.

III. INVESTIGATION OF CORRUPTION CASES

Investigations of corruption cases must be used to investigate methods and prevention measures as defined in the Penal Code.

1. Four Phases

The institutional system of the criminal justice system is the same as the State Inspection and Anti-Corruption Authority, which is divided into four phases:

- Central level: The State Inspectorate and Anti-Corruption Authority is responsible, with the Department of Investigation of Corruption as the Secretariat;
- Ministry-Agency Level: The Department of Inspection is responsible, with the Corruption Division as the Secretariat;
- The provincial, municipal level: the state inspection and anti-corruption agencies of provinces are responsible, with the anti-corruption and corruption investigation sector as the Secretariat;
- District, Municipal and City Level: The State Audit and Anti-Corruption Agency of the District is responsible, with the anti-corruption and corruption investigation unit as the Secretariat.

2. Duties and Rights of Investigation Agencies Handling Corruption Cases

- Receive and keep a record of any offence;
- Report promptly to the Chief Prosecutor on the offence;
- Issue an order to open an investigation, submit a statement of the order and report it to the prosecutor immediately;
- Conduct investigations into employees with corrupt behaviour that are based on his / her management rights;
- Use restricted legal measures, including the release of detained suspects and written reports to the Chief Prosecutor;
- Appeal the orders of the Chief Justice Officer to the Chief Prosecutor;
- Coordinate with other relevant agencies;
- Conclude the investigation and formulate the case with the Chief Prosecutor.

3. Duties and Scope of Investigation Officials

The corrupt officials are staff of the State Inspectorate and Anti-Corruption Authority with the following duties and scope:

- Receiving and recording notices, proposals, reports, or complaints about corruption;
- Proposing a state inspection and anti-corruption agency to issue a request, order, order release of suspicious suspects, suspicious orders or criminal allegations (for ministries and agencies are requested by government agencies, municipalities, and provinces for provincial inspection);
- Inform the accused of rights and the obligation to conduct the investigation;
- Obtain statements from suspects, plaintiffs, offenders, victims, witnesses and other persons involved;
- Check and verify and collect evidence on corruption of authority;
- Maintain the centre of corruption;
- Finding, capturing, detaining, releasing a detainee and detecting a person, making accusations of suspects and detainees;

- Coordinate with relevant agencies, inspect vehicles, arrests by the Chief of the Public Prosecutor's Office or the People's Court;
- Summarize and report on the results of the investigation; Investigate the State Audit and Anti-Corruption Unit.

4. Standards of the Investigating Officials in Corruption Cases

To be honest, legal, ethical, knowledgeable, capable, professional, experienced in investigation, and to be able to maintain confidentiality.

5. Investigation Procedure

Causes of Investigation: As a result of the inspection, there is a complete set of criminal offences as defined in the criminal law.

6. Investigation Procedures in Corruption Cases

- Ordering the opening of investigations;
- Ordering not to open investigations;
- Investigation proceedings.

IV. THE CONSIDERATIONS OF THE PUBLIC PROSECUTOR WHEN DETERMINING WHETHER TO PROSECUTE THE OFFENDER IN COURT

The rights and duties of public prosecutors are to conduct monitoring, inspection of law enforcement activities of the Investigation Agency and to prosecute the offenders in court. The head of the prosecution agency must study the received case from the investigating body or the prosecutor for not more than 15 days from the date of the litigation and must issue one of the following orders:

- If the investigation case is not yet complete, the head of the public prosecution agency must return the case documents to the investigation body along with the additional investigative issues;
- If there is a reason to suspend the investigation as determined by the law, Article 146;
- If there is a clear cause of the case, as provided in the law, Article 148;
- If there is any indication that the measures used by the investigating officer have not been consistent with the circumstances of the case.

V. CASE PROCEEDINGS IN COURT

If there is sufficient evidence, the prosecution body shall make a summary of the investigation results, complete the case file and then prosecute the case in court within three working days from the date of the order. When accepting a criminal case for consideration, the court will only accept the criminal record for further consideration with the order of the head of prosecutor.

- The court will accept a copy of a criminal case for consideration only when there has been an order from the head public prosecutor to prosecute the offenders in court;

- The timetable for the consideration of the verdict of the first instance court is not more than thirty days;
- Court measures: The Court has the right to use investigative methods and prevention measures as required by law.

VI. CONDUCTING CORRUPTION CASES

A. General Conditions

After receiving firm information and evidence that an act constituting corruption has been committed, the State must examine the case, including data collection on the situation of corruption in a deposit institution. The head of the agency has appointed a committee to encourage and monitor the business operations of deposit institutions. Through the tracking of financial transactions, transactions that were not disclosed can be identified, such as in the case of a closed customer's loan account, which resulted in a total loss of 26,879,786,000 kip. To resolve the issue, the head of the agency reports to the President of the State Inspectorate and Anti-Corruption Authority (SIAA) for guidelines and asks the head of the decision-making body to appoint an investigating team to open an investigation into corrupt officials and other relevant persons.

B. Investigation Proceedings

From the information and evidence of the commission to encourage and monitor the business operations of the deposit institution, the Investigation Team has made its plans to carry out the duties, with the preparation of the information and the names of the offenders to investigate the case. Subsequently, there were 12 investigations of staff and related persons, of which 10 staff were alleged to have engaged in corruption in accordance with the Anti-Corruption Law, Article 11: Acts that Constitute Corruption and, Article 58: Penal Measures and Criminal Law, Article 174: Corruption and Two Crimes there are alleged that Corruption in Criminal Law, Article 17: Joint Offence and Article 174: Corruption. The accused said that they had paid the institution's money of 1,018,318,000 kip, 475,820,340 kip, interest 199,908,607 kip, totalling 675,728,947 kip, with a loan of 17 institutions with 500,000,000 kip in the form of a new loan opened with a new loan account.

C. Content

During the investigation of two corruption cases, the accused said that they had deposited money with the deposit institution by used customers loan closed lender account to open a new loan account.

- Accused 1: He withdrew the institution's money in the amount of 1,018,318,000 kip;
- Accused 2: She withdrew the institution's money in the amount of 1,173,985,000 kip;
- Accused 3: He borrowed a total of 18,200,000 kip, 36 times additional withdrawals totalling 498,600,000 kip;
- Accused 4: She borrowed money from Institute 2 accounts with her names 1 account 5,000,000 kip. The withdrawal itself was 49 times in cash 146,191,000 kip and issued the

name of her husband 01 balance 30,000,000 Kip has withdrawn without approval 29 times in 252,110,127 kip total 433,301,127 kip. Additionally, she withdrew her customers' loan and closed the loan account to open a new loan account of her 4 accounts were 90,000,000 kip;

- Accused 5: She borrowed money from Institutions of 6 accounts with 142,964,500 kip, which 1 of the borrowing accounts of the borrowed customers that finished paid, but she used account that to be condition for lent themselves to loan;
- Accused 6: She has loaned with the institute of 7 accounts is 170,352,000 Kip, but only one account has correct by law in the amount of 5,000,000 Kip but she has withdrawn several times in cash 90,200,000 Kip. Additionally, she has written a cash withdrawal and Sign instead of customers closed lender account for relatives or clan that about 70 to 80 accounts. The amount of cash written with the minimum cash withdrawal is 20,000,000 Kip, up to 35,000,000 kip.
- Accused 7: He has borrowed with the Institute 3 accounts amount of 10,000,000 Kip and withdrew the cash at the bank where he was responsible and requested lender account by his name was closed account amount 80,000,000 kip;
- Accused 8: She has consulted the institution's loans to their friends who have been working in the institution, and they have taken up 22,500,000 kip without making a loan agreement;
- Accused 9: She has borrowed money from Institution 04 accounts. The account has a valid loan agreement of 2 accounts, Account 1, Amount of Approved 15,000,000 Kip, withdrawn 22 times in cash of 104,300,000 Kip, Account 2 Approved Amount 20,000,000 Kip, withdrawn 5 times in 90,200,000 Kip in total 229,500,000 Kip And the other 2 accounts are closed accounts, they have opened a new loan account of 25,000,000 kip, withdrawn 01 times cash 22,500,000 Kip and the second accounts amount approved 25,000,000 Kip, 01 times more money was withdrawn 22,500,000, total case 95,000,000 Kip;
- Accused 10: Concerned with 2 projects: Institutional Programme Management and Office construction. To improve the excellent service system so that it has a relationship with a software company valued at US \$ 200,000 and the company would pay for commission fee 330,000,000 kip. Then the company added value from US \$ 200,000 to US \$ 300,000 to get over US \$ 100,000 in commission share. The office construction project valued at 4,190,000,000 kip, the construction company has raised 10% of the construction cost of 419,000,000 kip for commission fee;
- Accused 11: He has told the officer that he had borrowed money from the Savings Institute 52 The checking account amounted to 1.629.000.000 kip. Each loan was borrowed without a loan agreement, but the withdrawal was written on every cash withdrawal. About Auctions construction office building institutional money value of 4,190,000,000 Kip to accept the agreement preliminary not bid if the company its

winning bid to offer money to the committee responsible for the 10% of the total value of the project is 419,000,000 kip and pay 3 For the period 1 had written cash to extract financial institutions 2 leaves of 100,000,000 kip period 2 Paid after inspection tasks to complete construction contracts 50% is paid 1,674,000,000 Kip given 93,300,000 Kip 3rd instalment after inspection tasks to complete construction contracts 100% money 1,256,700,000 kip donates 125,700,000 Kip;

- Accused 12: Provided the Agent: Before signing the Installment Agreement and the Deposit Institution Programme, the Representative of the Institute contacted and presented to them that if the programme was installed, how much the bank's banking system would be installed, they replied that US \$ 200,000 would pay 330,000,000 kip. One week later, a representative of the Institute came to offer them a raise from US \$ 200,000 to US \$ 300,000 to get more than US \$ 100,000, they agreed upon the institution's proposal and signed a contract. In addition to the previous investigations, the Investigative Investigations Unit conducted a search of the site, its offices and its identities, and issued a warranty order and order under the Orders and Orders and have verified the documents of his / her property.

D. Observation-Evaluation

Through investigations, evidence, statements made by the accused and related persons, their actions are criminal offences under the Criminal Code of Penal Code Article 174 and the Anti-Corruption Act Article 11 and Article 58 of which the offences of the alleged offenders are:

1. Abuse of Power

Abuse of position, power and duty to take State property, collective property or individual property and jointly violating an agreement between State officials and the contracting company and other concerned persons to create conditions to win the bid or concession for a certain State activity for personal benefit and causing damage to the interests of the State and society or rights and interests of citizens. According to the Anti-Corruption article 16 and the Penal Code, Article 174 expresses the actual behaviour of:

- Abuse of position, power and duty to withdraw money according to the list of liability accounts under his/her responsibility.
- Take the deposited a closed-end customer account, re-open a cash account, write cash withdrawal, sign up to receive cash from an account holder, and withdraw cash.
- Get cash from customers who pay the cost and interest on the loan.

2. Swindling of State Property

The companies engaging in trickery, deceit or fraud by any means to cause a person in charge of any State property to hand over to himself, such as creating contracts for installment and a deposit management service programme with a firm that agreed to offer a \$ 200,000 installation fee of US \$ 300,000 by an unknown depository institution to get more than \$ 100,000 in cash.

Together, the parties have been engaging in trickery, deceit or fraud by any means to clear bank deposits with a lucrative or non-collateralized loan scheme, with the approval of the loan holder and the closing of a lender's loan account for a cash rebate.

3. Giving Bribes

Proposed bribes to 10% of the value of construction of a depository office of 419 million kip; has provided deliberate assistance in joint fraud, violating the Anti-Corruption Act, Article 13 and the revised Criminal Code, Article 17, and Article 174 of the Code of Conduct. The cost of installing a deposit at a deposit institution from US \$ 200,000 is US \$ 300,000, which they provide for deliberate assistance and should be accorded legal responsibility.

E. Proposal

Through research of data, evidence, documents of the case thoroughly, comprehensive, objectively, with transparency, and correctly according to its scope of rights and duties and the procedures as stipulated in the laws, including being highly accountable for the conduct of its responsibilities under the laws and subject to inspection by the National Assembly. So, when we state that the evidence is strong enough and confirms that the accused are to be charged with criminal allegations of corruption as defined in the law against corruption Article 11 and 58 and the Criminal Law Article 174, the head of the investigation of corruption sends the case to the chief prosecutor for legal proceedings.

F. Summary of Investigation Result

After the inspection and investigation, if there appears to be solid information and evidence, the investigating agency makes a summary of the inspection and investigation result, completes the file of the corruption case and then sends it to the public prosecutor to consider bringing a prosecution of the case in court.