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The Transfer of Business Anti-Corruption Norms into Vietnam

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Abstract

In the 1990s, an alliance of international inter-governmental and non-governmental organisations developed a set of regulatory norms designed to reduce corruption. Many governments in developing economies, such as Vietnam, enacted these global anti-corruption norms in their domestic laws. However, research shows that the effectiveness of these norms is limited, and also that these norms can work in unexpected ways in developing economies, like Vietnam. This PhD thesis draws on empirical research to understand why the transfer of global anti-corruption norms has not produced the expected reduction in corruption in Vietnam.

The approach taken in this thesis eschews the usual focus on the state and its handling of global anti-corruption initiatives. Instead, this thesis contributes to the emerging literature exploring the ways in which businesses interpret and respond to anti-corruption norms in developing economies.

Specifically, it argues that the transfer of global anti-corruption norms has had a limited influence among businesses in Vietnam because there is fragmentation in the way companies in Vietnam interpret and respond to these norms. This fragmentation results from differences in the epistemic communities that companies participate in as they interpret global anti-corruption norms. The thesis uses discourse analysis to understand how such communities interpret global anti-corruption norms. Based on data collected from semi-structured interviews with business managers in Vietnam as well as archival research, the present study investigates why different types of companies in Vietnam engage with and respond to these norms in different ways. This investigation aims to generate some predictive insights into how companies are likely to respond to anti-corruption regimes based on global anti-corruption norms.

Declaration

This thesis is an original work of my research and contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

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List of abbreviations

ACL	Vietnam's Anti-Corruption Legislation
ACL (2005)	Vietnam's Anti-Corruption Law 2005
ACL (2018)	Vietnam's Anti-Corruption Law 2018
CECODES	Center for Community Support Development Studies
CPV	Communist Party of Vietnam
DRV	Democratic Republic of Vietnam
ICP	Indochinese Communist Party
INGOs	International Non-Governmental Organisations
IOs	International Organisations
OECD	Organisation for Economic Co-operation and Development
PCI	Provincial Competitive Index
SMEs	Small and Medium Enterprises
SOEs	State-Owned Enterprises
TEC	Transnational Epistemic Community
TI	Transparency International
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crimes
USAID	United States Agency for International Aid
VCCI	Vietnam Chamber of Commerce and Industry
VLA	Vietnam Lawyers Association
WTO	World Trade Organisation

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1. Overview

In the 1990s, an international anti-corruption movement emerged¹. An alliance of international intergovernmental (IOs) and non-governmental organisations (INGOs) developed regulatory norms designed to reduce corruption in developing countries. Prompted by this movement, many governments in developing economies, such as Vietnam, initiated anti-corruption reforms and enacted anti-corruption rules in their domestic laws based on these global anti-corruption norms—i.e., the anti-corruption instruments and initiatives developed by IOs and INGOs.

Despite the introduction of these anti-corruption norms, research shows that the effectiveness of these norms in reducing corruption is limited or that these norms

¹ The term ‘anti-corruption movement’ describes the elaboration and spread of global anti-corruption norms initiated since the 1990s by international and regional organisations as well as international non-governmental organisations.

work in unexpected ways in developing economies (Amukowa 2013; Brata 2009; Caiden 2013a; 2013b; Carr 2007; Huther & Shah 2000; Quah 2011; 2017; Shah 2008), including Vietnam. Research by scholars, such as Carr (2007), Larmour (2006), and Walton (2015) supports a growing consensus that the limited effectiveness of global anti-corruption measures in developing countries can be attributed, at least in part, to differences in the way that corruption is conceptualised. This work suggests that the way anti-corruption rules are interpreted affects the development and implementation of such rules within recipient societies. More specifically, it shows how contrasting interpretations can result in the fragmented implementation of these rules within recipient countries².

This thesis has eschewed the usual focus on the state and its handling of global anti-corruption initiatives. Instead, the thesis contributes to the emerging literature that explores how businesses interpret and respond to anti-corruption rules in developing countries. The central aim of this thesis is to understand why the transfer of global anti-corruption norms into developing countries has not produced the expected reduction in corruption in these countries. Legal transfers, also called 'legal transplants', refer to the process by which recipient national governments incorporate international norms into their domestic laws and related institutional structures. Whereas most of the literature on legal transfers addresses the reception of global norms by government agencies (Gillespie 2015, p. 936), the present study focuses on how global anti-corruption norms are interpreted by private companies. Accordingly, this thesis investigates the utility or value of attempts to transfer global anti-corruption norms, exploring how these norms are interpreted and adopted by businesses in developing countries. The study aims to generate some predictive insights into how companies are likely to respond to anti-corruption regimes based on global anti-corruption norms.

This thesis focuses on Vietnam. As in many other developing economies, the Vietnamese Government has implemented various anti-corruption reforms since the 1990s. Despite these far-reaching reforms, however, several studies suggest that corruption is still prevalent in Vietnam, especially in the business sector (Malesky et

² The terms 'recipient countries' and 'host countries' refer to the countries to which foreign laws or legal systems have been transferred. The term 'recipients' refers to the individuals and social actors in host countries.

al. 2019, p. 116; Transparency International 2017; UNDP 2017; World Economic Forum 2016). With regard to business corruption, the 2019 Provincial Competitiveness Index (PCI) Report³ suggests that, despite a recent slight reduction in business corruption, bribery continues to be a common problem in Vietnam (Malesky et al. 2019, p. 116). According to the most recent World Bank Vietnam Enterprise Survey, 90.7% of the firms surveyed reported that they are expected to give gifts to public officials ‘to get things done’ (World Bank 2016). This percentage is much higher than the average percentage in all other countries surveyed (22%), and also higher than the average in East Asia and the Pacific (52.9%) (World Bank 2016).

Corruption is problematic because it can undermine sustainable development and prevent the benefits of economic growth from being widely shared (Asian Development Bank 2014). There is a consensus that corruption in Vietnam—across all levels of business—is costly because of the associated efficiency losses in the allocation of resources; these losses are related to the distorting and uncertain nature of the corruption ‘tax’ (Rand & Tarp 2012, p. 571). Rand and Tarp (2017, p. 131) argue that the uncertain and random nature of bribes has detrimental effects on Vietnam’s firm-level growth and investment behaviour. Thuy Thu Nguyen and van Dijk (2012, p. 2935) add that corruption hinders Vietnam’s economic growth because it benefits the state sector to the detriment of the private sector. Therefore, understanding the reasons why current anti-corruption measures are not effective is essential to efforts to reduce corruption in Vietnam.

This thesis draws on primary and secondary empirical research to understand why the transfer of global anti-corruption norms has not produced the expected outcomes in Vietnam. Hypothesising that there is fragmentation in the way companies in Vietnam interpret and respond to these norms, the thesis investigates how various types of companies in Vietnam engage with and respond to these norms.

³ The Vietnam Chamber of Commerce and Industry (VCCI) and the U.S. Agency for International Development (USAID) have published an annual Provincial Competitiveness Index (PCI) and associated report annually since 2005. The overall PCI index score, which comprises ten categories, aims to reflect Vietnam’s private sector experiences with economic governance areas that affect its development (Malesky et al. 2019, p. 18). The PCI final report assesses ‘the ease of doing business, economic governance, and administrative reform efforts by Vietnam’s provincial and city governments’ (Malesky et al. 2019, p. 18).

So far, the existing literature is dominated by quantitative perception studies that assess what types of corruption firms believe are prevalent in Vietnam (CECODES, VFF-CRT & UNDP 2017; Malesky et al. 2019; Rand & Tarp 2012; 2017; Segon, Booth & Pearce 2010). These studies say little, however, about the underlying business practices and precepts that support, reject, or transmute anti-corruption rules. Some recent qualitative studies also explore corruption in Vietnam's business environment (Endres 2014; Hoang 2018; Hun Kim 2017) but none of these studies examines how businesses in Vietnam interpret anti-corruption norms.

Thus, the present study aims to generate new insights into the reasons why firms in developing economies may not respond (or may respond differently) to anti-corruption norms. The findings promise to shed light on business corruption in similar countries, notably China, given the close political, economic, and cultural links between Vietnam and China. Further, the study will go some way towards addressing an important research gap in the current literature.

This introductory chapter first explains what constitutes 'global anti-corruption norms', as they apply to developing economies. It then explores the shortcomings of these norms and of attempts to transfer them, showing how the norms have been implemented around the world as a universal goal with a one-size-fits-all approach, in a manner that ignores the local contexts surrounding corruption. The chapter highlights the benefits of using, instead, a social-constructionist approach to corruption, which emphasises the role of social embeddedness in corruption. The chapter also provides an overview of the key features and shortcomings of Vietnamese government's anti-corruption regime, as well as a review of the literature on corruption in Vietnam. In addition, the chapter outlines the theoretical framework used in the thesis, with Chapter Two further developing this framework. The discussion leads to the working hypothesis guiding the thesis' analysis—namely, that the companies most likely to comply with global anti-corruption norms are the ones that share the epistemic assumptions underlying these global norms—and also to a series of subsidiary research questions. Finally, the last two sections briefly describe the thesis's methodology, which, again, will be discussed in more detail in Chapter Two, and then map out the structure of the remaining chapters.

2. Global anti-corruption norms

This section discusses what the term ‘global anti-corruption norms’ means and explores the ‘ideal dimensions’ or assumptions underlying global anti-corruption norms. The section also suggests that the main shortcoming of global anti-corruption norms is that they ignore the social contexts surrounding corruption.

2.1. The definition of global anti-corruption norms

In this thesis, the term ‘norms’ is used to address the ‘materiality of the law’ (i.e., its institutional facts and practices) as well as its ‘ideal dimensions’ (i.e., its values, autonomy, legitimacy, and authority) (Banakar 2015, p. 215). Therefore, the term ‘global anti-corruption norms’ refers to the anti-corruption instruments (anti-corruption conventions, guidelines, and research, as well as international standards and best business practices) and initiatives (anti-corruption programs and reforms) developed by IOs, such as the Organisation for Economic Co-operation and Development (OECD), the World Bank, and the World Economic Forum (WEF), and also by INGOs, such as Transparency International (TI).

Global anti-corruption norms are based on the definition of corruption advocated by IOs and INGOs; thus, TI (2021) defines corruption as: ‘the abuse of entrusted power for private gain’. Many other agencies (including the World Bank), and scholars base their work on similar definitions of corruption (Gong & Scott 2017, p. 2; Holmes 2015, p. 2; Klitgaard 1988, p. xi; Nye 1967, p. 419; Wedel 2012, p. 467). For example, many scholars (Elliott 1998, p. 525; Huther & Shah 2020, p. 180; Mahmood 2004, p. 350; O’Higgins 2006) and agencies (OECD 2015) also use the widely cited analytical framework formulated by Klitgaard (1988, p. 75), namely ‘corruption = monopoly + discretion – accountability’.

‘Global anti-corruption norms’ also encompasses the precepts stated in the United Nations Convention Against Corruption (UNCAC). This is the most widely ratified international anti-corruption convention,⁴ and it is used as a legal template in many countries (UNODC 2017). In outlining anti-corruption norms, UNCAC refers to principles such as ‘the rule of law, proper management of public affairs and public property, integrity, transparency and accountability’ (UNODC 2004, p. 9). The Convention does not provide a definition of corruption; rather, it takes corruption to

⁴ UNCAC has been ratified by 187 states (UNODC 2021).

occur where there is a correlation between unethical behaviour and the 'commission of an offence' (UNODC 2004, p. 8).

This thesis will focus on corrupt practices, which are addressed by the core provisions in UNCAC that target corruption in the business sector. These provisions include, for example, Article 12 (UNODC 2004, p. 14) and 13 (UNODC 2004, p. 19), which encompass several initiatives intended to prevent corrupt practices by business, including:

- strengthening 'accounting and auditing standards' to improve transparency and reporting;
- developing 'standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the state';
- 'preventing the misuse of procedures regulating private entities', such as the grants of licences;
- 'preventing conflicts of interest' (UNODC 2004, p. 14);
- criminalising bribery (UNODC 2004, p. 19).

These core provisions reflect key elements of corruption as understood in the context of global anti-corruption norms. In this context, it is assumed that corruption involves the violation of formal rules and that anti-corruption programs should promote transparency, development of ethical business standards and criminalisation of corrupt practices.

2.2. The assumptions underlying global anti-corruption norms

Underlying these global anti-corruption norms is an orthodox regulatory approach based on rational-choice theories (Dick 2002; Granovetter 2007; Wedel 2012; Zaloznaya 2013; 2014). Rational-choice theories attribute corruption to individual choices based on incentives. In other words, a rational-choice theory approach presupposes that 'all action is fundamentally "rational" in character and that people calculate the likely costs and benefits of any action before deciding what to do' (Scott 2000, p. 126).

UNCAC likewise takes an orthodox regulatory approach, as evidenced by its promotion of the criminalisation of corrupt practices (UNODC 2004, p. 8). Underlying UNCAC is a belief that corruption is the consequence of individuals' lack of integrity and poor moral values. It recommends that companies develop 'standards and procedures designed to safeguard the[ir] integrity', including codes of conduct for 'the correct, honourable and proper performance of the activities of business'. Relying on rational-choice theory, UNCAC suggests that companies must prevent the 'misuse' of business procedures, such as the grants of licences, it also calls for the prevention of bribery (or informal payments), which, according to UNCAC, should be criminalised by national laws.

On the orthodox regulatory approach, corruption is equated to a breach of universal standards for personal benefit, and viewed as the consequence of 'instrumental' cost-benefit calculation by 'strategic individuals' (Johnston 1996, p. 322; Zaliznaya 2013, p. 711; 2014, p. 191). The orthodox definition of corruption also focuses on individual practices rather than networks or group practices (Hindess 2005, p. 1393; Wedel 2012, pp. 467, 471, 485–486). This definition assumes that people break legal and ethical codes for the sake of material benefits and also that they respond to legal and other penalties and incentives (Breit 2010, p. 620; Brown & Cloke 2004, p. 284). This definition also equates corruption with bribery, rent-seeking and extortion by public officials (Breit 2010, p. 620; Brown & Cloke 2004, p. 284; Granovetter 2007, pp. 152–153; Hindess 2005, p. 1390; Wedel 2012, p. 454). Thus, global anti-corruption norms regard corruption essentially as 'a means of optimizing the allocation of goods and services' (Brown & Cloke 2004, p. 283; Reinsberg et al. 2019, p. 2; Tänzler et al. 2012, p. 17).

The orthodox anti-corruption approach also relies on the 'Weberian rational-legal bureaucracy' model (Zaliznaya 2013, p. 710), in which organisations are assumed to be 'rule-bound, specialized, hierarchical, meritocratic, and above all, salaried' (Ang 2016, p. 284). Influenced by this model, which presupposes a clear distinction between the public and the private spheres, UNCAC recommends that companies prevent conflicts of interest. However, UNCAC does not define 'conflicts of interest', presuming that this concept is universal.

To summarise, the core epistemic assumptions underlying global anti-corruption norms are:

- corruption is based on individual choices;
- it is morally wrong to take advantage of positions of power for personal gain;
- universal legal standards define corrupt behaviour;
- formal rules are the most effective way to regulate public officials and businesses' behaviour;
- business competition, transparency, and legal accountability reduce corruption;
- anti-corruption compliance is required for a successful business environment.

2.3. Global anti-corruption norms ignore the social context surrounding corruption

According to their creators, the rules elaborated by the anti-corruption movement represent 'a universal goal'; they have thus been disseminated around the world with a 'one-size-fits-all approach' (Brown & Cloke 2004, p. 273; Shah 2007, p. 234; Zaloznaya 2013, p. 713). However, a growing body of work argues that the impact of transferring global anti-corruption norms into non-Western and less-developed societies has been disappointing (Amukowa 2013; Brata 2009; Brown & Cloke 2004, p. 273; Caiden 2013a; 2013b; Carr 2007; Hindess 2005, p. 1392; Huther & Shah 2000; Quah 2011; 2017; Shah 2008; Zaloznaya 2014, p. 197). Scholars suggest that the anti-corruption movement has been influenced by inaccurate assumptions and approaches that, in part because they are not well-grounded in sociological research, have produced erroneous understandings about the causes and consequences of corruption (Brown & Cloke 2004, p. 272; Hindess 2005, p. 1392; Shah 2007, p. 244; Wedel 2012, p. 463; Zaloznaya 2013, pp. 705, 735). A key shortcoming of global anti-corruption norms is that they ignore the influence of the social contexts surrounding corruption. These norms draw heavily from economics, and in recent decades, economic studies and the orthodox anti-corruption scholarship has been dominated by 'metrics and ranking schemes'. This approach excludes the social factors that influence individuals' incentives and values, and also the social meanings that surround corrupt behaviour (Granovetter 2007, p. 152; Haller & Shore 2005, p. 2; Johnston 1996, pp. 326–327; Tänzler et al. 2012, p. 17; Wedel 2012, pp. 457, 468–469). A consequence of this general approach is that the

transfer of global anti-corruption norms has been influenced by a neo-liberal ideology, a Western conception of corruption and a Western model of bureaucracy, which are ill-suited to many of the countries where these norms were transferred.

2.3.1. The influence of a neo-liberal ideology

Global anti-corruption norms are based on a neo-liberal ideology, which does not fit with the economic realities of many developing countries into which these norms were transferred (Granovetter 2007, p. 164). This argument is advanced by a range of scholars who consider the global anti-corruption movement to be 'a product of economic globalisation' marked by a neoliberal ideology (Brown & Cloke 2004, p. 272; Haller & Shore 2005, p. 3; Hindess 2005, p. 1390; Zaloznaya 2013, p. 707; 2014, pp. 187–188). For example, the adoption of anti-corruption policies by IOs and NGOs was largely based on economists' arguments that corruption hindered economic efficiency and was the cause and the consequence of weak economic liberalisation (Brown & Cloke 2004, p. 273; Granovetter 2007, p. 152; Hindess 2005, p. 1396; Reinsberg et al. 2019 p. 2; Wedel 2012, pp. 463–464). Following this neo-liberal approach, the anti-corruption movement has promoted privatisation of the public sector as a remedy for corruption (Brown & Cloke 2004, p. 272; Celarier 1997, p. 531; Reinsberg et al. 2019, p. 2; Wedel 2012, p. 465). Indeed, many in the movement have considered the public sphere to be the source of corruption, such that it requires downsizing (Wedel 2012, p. 465). However, privatisation has been counterproductive in many countries, actually increasing corruption by concentrating some key areas of the economy 'in a few hands' and creating opportunities for criminal activities (Brown & Cloke 2004, p. 282; Celarier 1997, p. 531; Reinsberg et al. 2019, p. 1; Wedel 2012, pp. 465–466). Privatisation in former socialist countries is believed to be one of the major causes of today's grand corruption schemes (Celarier 1997, p. 531; Wedel 2012, p. 477). Along the same line, as will be discussed further in Chapter Three, Vietnam's opening to a market economy at the end of the 1980s created opportunities for corruption.

2.3.2. A Western approach to corruption and a Western model of bureaucracy

Global anti-corruption norms were also elaborated according to Western ethical values and principles, which are not universally accepted in the developing economies into which these norms have been transferred. According to the anti-corruption movement, corruption is a deviation from Western principles of economic

and political organisation and mostly a problem in developing countries (Brown & Cloke 2004, p. 273; Haller & Shore 2005, p. 1). Consequently, Western and developed countries rank relatively low compared to non-Western and developing countries on the corruption indices elaborated by IOs (Brown & Cloke 2004, p. 280; Haller & Shore 2005, p. 3; Hindess 2005, p. 1389; Zaloznaya 2013, p. 706). These rankings amount to 'a morally tinged judgment' of developing countries, suggesting governmental failures on their part (Bardhan 1997, p. 1323; Brown & Cloke 2004, p. 280; Haller & Shore 2005, p. 3; Hindess 2005, p. 1389; Wedel 2012, pp. 470, 486; Wouters, Ryngaert & Cloots 2013, p. 31). The anti-corruption movement has considered corruption as necessarily negative, 'a norm-deviant and law-breaking behaviour that diminishes the social contract' (Caiden 2013a, p. 93; Tänzler et al. 2012, p. 18) or a 'failure of the system' (Wedel 2012, p. 456). The anti-corruption movement sees corruption as the cause of many social and economic problems, such as inequality and unemployment, and regards the absence of corruption as a sign of modernity and efficiency, a means to economic growth and development (Brown & Cloke 2004, pp. 273–274; Hindess 2005, pp. 1391, 1394; Reinsberg et al. 2019, p. 1; Zaloznaya 2013, p. 713). The movement has thus completely ignored the potential benefits of corruption (Hindess 2005, p. 1394; Wedel 2012, p. 464; Zaloznaya 2014, p. 187). As the later chapters of this thesis argue, however, corruption can be a solution to dysfunctional formal institutions and oppressive regimes.

A further aspect of the 'Western-centredness' of the orthodox anti-corruption approach is its emphasis on how the development of good governance and strong institutions as well as accountability systems can help reduce corruption (Brown & Cloke 2004, p. 272; Hindess 2005, p. 1392; Reinsberg et al. 2019, p. 2; Wedel 2012, pp. 466–467, 485–486). This approach ignores the complexity of, and differences among, political and bureaucratic institutions across societies (Tänzler et al. 2012, p. 17). Instead, as noted previously, it assumes a Weberian bureaucratic model, which is ill-suited to non-Western countries with different bureaucratic models, such as Vietnam (Ang 2016, pp. 12–13; Wedel 2012, p. 458; Zaloznaya 2013, p. 710). For example, the Weberian bureaucratic model relies on a strong differentiation between the public sphere, which 'operates according to codified, "rational", and socially beneficial rules' and the private sphere which is 'guided by kinship duties, emotions,

beliefs, and traditions' (Zaloznaya 2013, p. 710). However, in non-Western countries, the boundaries between the public and private spheres are more flexible (Zaloznaya 2013, p. 710; 2014, p. 188). In addition, the orthodox anti-corruption approach focuses on bribery and bureaucratic corruption, ignoring other forms of corruption—such as corruption in the private sector and in business networks (Brown & Cloke 2004, p. 282; Hindess 2005, pp. 1389–1390; Johnston 1996, p. 326; Wedel 2012, pp. 467, 470–471). The rules-based framework evident in orthodox anti-corruption approaches also points to those approaches' attempts to universalise a Western experience. According to the framework at issue, corruption is based on a violation of formal legal rules, a way of understanding corruption that presupposes a society governed by rule of law— an ideal rarely found in developing economies (Dick 2002, p. 72). According to Quah (2017, pp. 254, 257), this rules-based approach to corruption does not address the root causes of corrupt practices. For example, Wedel (2012, p. 458) suggests that in non-Western societies, individuals are also more influenced by indigenous traditions and customs than by a formal set of rules.

As noted previously, the orthodox definition of corruption also focuses on individual actions (Hindess 2005, p. 1393; Wedel 2012, pp. 467, 471) and assumes that corruption is the consequence of 'instrumental' cost-benefit calculus⁵ of 'strategic individuals' (Zaloznaya 2013, p. 711; 2014, p. 191). This assumption ignores corruption studies showing that officials often break laws because of their loyalty to alternative normative systems; thus, corrupt practices do not always arise from self-interested calculations. Accordingly, the present thesis explores the unsuitability of a Weberian model of bureaucracy to Vietnam and how corrupt practices are not always the result of a cost-benefit calculus performed by individuals.

Contradicting the orthodox rules-based approach to corruption, Wedel (2012, p. 474) likewise indicates that individual behaviour is shaped more by moral and pragmatic concerns than by questions of legality. Ethical standards in the public and private sectors as well as the gap between legal rules and compliance can vary across societies (Wedel 2012, p. 458). Thus, the universalist definition of corruption on which global anti-corruption norms are based fails to take into account actors' intentions and the meanings and moral implications that they and others may assign

⁵ In this thesis, the terms 'cost-benefit calculus' and 'cost-benefit calculation' refer to the process of quantifying the costs and benefits of a decision along with those of its alternatives.

to their activities (Brown & Cloke 2004, p. 284; Wedel 2012, p. 474). In other words, global anti-corruption norms have failed to gain widespread public legitimacy among some populations because those populations distinguish between practices that are officially illegal and practices that are immoral or illegitimate (Carr 2007; Larmour 2006; Walton 2015; Wedel 2012, p. 473). Hooker (2009, p. 252) adds that '[b]ecause cultures can operate in very different ways, very different kinds of behaviour can corrupt'; by the same token, different practices can be considered corrupt across cultures and for very different reasons. Thus, practices that Westerners consider unethical may be permissible and functional in other cultures. For example, during periods of transition and socio-institutional changes, corruption can 'establish ways of doing things'; it can also function as the permissible and even recommended form of compensation in the context of dysfunctional formal institutions and oppressive regimes (Bardhan 1997, p. 1322; Hindess 2005, p. 1393; Hun Kim 2017, p. 670; Tänzler et al. 2012, pp. 17–19; Wedel 2012, p. 473; Zaliznaya 2014, p. 190). Ultimately, the fact that global anti-corruption norms ignore the local contexts surrounding corruption helps explain why the transfer of these norms into developing economies, such as Vietnam, has not produced the expected outcomes.

3. The benefits of a social constructionist approach to corruption

A growing body of work, from a wide range of disciplines, argues that an approach that views corruption as socially embedded is most valuable to understanding the dynamics of global anti-corruption norms when they are transferred to developing countries such as Vietnam. In contrast to the orthodox approaches to corruption, this work suggests that corruption in non-Western societies is best seen as an outcome of group processes and interactions (Haller & Shore 2005, p. 2; Zaliznaya 2013, pp. 711–712). From this perspective, the distinction between Western and non-Western understandings of corruption should be explored via sociological approaches that evaluate the broader processes through which individuals engage in corrupt practices (Haller & Shore 2005, p. 2; Johnston 1996, pp. 329, 331). Scholars making this argument hold that corruption must be analysed in light of its social, economic, political, cultural, and historical contexts (Granovetter 2007, p. 152; Hodgkinson 1997, pp. 17–18; Tänzler et al. 2012, p. 22; Wedel 2012, p. 471). For Wedel (2012,

pp. 475–476, 489), analysing corruption entails exploring ‘the patterns and systems of influence that underlie it’; the traditional and ‘contemporary forms of corruption’; the role of institutions; and the relationships between the political and economic spheres. Zaloznaya (2014, pp. 191–192) argues that local cultures and ‘informal and formal socialization processes’ influence individuals’ relationship with rules. Individuals break legal rules because ‘they believe certain behaviors are expected of them in small-group contexts, such as peer groups, neighborhoods or organisations’ (Zaloznaya 2013, p. 711). Thus, in her opinion, corruption research should explore ‘the role of local cultures’ and of ‘small-group dynamics’ vis-à-vis individuals’ decisions to engage in deviant and unethical behaviour (Zaloznaya 2014, p. 192). However, there seems to be a gap in the literature when it comes to understanding how groups conceptualise corruption and why they engage in corrupt practices (Haller & Shore 2005, p. 2; Hodgkinson 1997, pp. 17–18; Johnston 2017, p. 176; Wedel 2012, p. 454; Zaloznaya 2013, p. 714).

To overcome the limitations of the orthodox approach to corruption, this thesis uses a social constructionist approach to corruption that allows for an exploration of the social embeddedness of corruption in Vietnam. Social constructionism acknowledges the role of social groups in constructing the meaning given to legal rules, social customs and disputes (Robertson 1999, pp. 461–465). This approach emphasises the crucial role of social embeddedness when it comes to explaining how individuals converge on a shared perception of the external world. According to this approach, individuals’ understanding of legal and customary rules systems is socially constructed. Therefore, for rules to be effective, the communities in which those rules are enacted must accept those rules and their legitimacy (Gregory 2017, p. 278; Johnston 1996, p. 329).⁶

Along similar lines, scholars have suggested that what individuals consider as moral and immoral or legitimate or illegitimate, is shaped by cultural, historical, and social contexts, as well as by individuals’ mentality⁷ and social status (Breit 2010, p. 620;

⁶ Suchman (1995, p. 574) defines ‘legitimacy’ as ‘a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions’.

⁷ Dubov (1995, p. 39) defines ‘mentality’ as ‘an integral characteristic of people living in a specific culture that makes it possible to describe the unique features of the way those people see the world around them and to explain the specifics of the way they respond to it’.

Granovetter 2007, p. 155; Tänzler et al. 2012, pp. 23–27). On this view, forms of deviance, such as corruption, are socially constructed (Zaloznaya 2014, p. 194). An identical behaviour might be interpreted in various ways depending on the circumstances, and, as a result, corruption does not necessarily constitute a ‘moral violation’ (Bardhan 1997, p. 1321; Granovetter 2007, p. 154). For example, on some occasions, providing favours to family and friends may seem more legitimate than respecting the law. Consequently, for Granovetter (2007, p. 164), corruption occurs when there is a conflict of ideologies—that is, a conflict between the ideology embodied by the legal rule and the ideology shared by its recipients.

Thus, a social constructionist approach to corruption explores the social embeddedness of corruption and the precepts that shape interpretations of corrupt practices and incentives to act corruptly (Granovetter 2007, p. 154). By focusing on social groups’ interpretations of corruption, and variable understandings of the incentives to act corruptly, a social constructionist approach provides new insights into corruption—insights that are unavailable from an orthodox anti-corruption view (Zaloznaya 2013, p. 735). Whereas the orthodox rules-based approach to corruption and rational-choice theories mainly focus on individuals’ pragmatic self-interest, social constructionist approaches explore the deeper normative and cognitive assumptions shared among social groups that influence those groups’ interpretation of anti-corruption norms. Thus, social constructionism offers a promising way to analyse how different social groups conceptualise corruption differently, because it suggests that, in perceiving corruption, these groups draw on their own background beliefs, practices, and goals (or epistemologies).

A social constructionist approach seems particularly well-suited to Vietnam, given that, in Asian culture, the group is considered more important than the individual (Gong & Scott 2017, p. 2). The importance of groups, especially of families, may encourage behaviour that is non-compliant with global anti-corruption norms but not considered corrupt from an internal group perspective (Gong & Scott 2017, p. 2). Yet, global anti-corruption norms have been elaborated according to faulty understandings of corruption, focusing on individuals’ actions while ignoring the role of group processes in corrupt behaviour. The present study aims to avoid this oversight by exploring the group processes operating among businesses in Vietnam;

such processes influence these businesses' perception of corruption and their responses to anti-corruption norms.

4. Vietnam's anti-corruption context: an overview

While Chapter Three discusses the historical development of anti-corruption norms in Vietnam in more detail, this section, briefly outlines the current Vietnamese Government's anti-corruption regime and its shortcomings. It then reviews the existing research on corruption in Vietnam.

4.1. The Vietnamese Government's anti-corruption regime

Influenced by the global anti-corruption movement, the Vietnamese Government has initiated various anti-corruption reforms since the 1990s. Initially, the reforms focussed on public corruption, and remained faithful to the orthodox anti-corruption approach. Later legal reforms targeted business practices, indicating a gentle shift in Vietnam's anti-corruption regime that reflected a broader understanding of corruption.

Corruption has been a problem in Vietnam for a long time, but it seems to have increased with the market reforms initiated in the 1980s (Gillespie 2002; Wescott 2003). In 1986, the Vietnamese government launched the *Đổi Mới* ('renovation') program aimed at progressively transitioning towards a 'socialist market economy' through market reform and integration with the world economy (Painter 2005, p. 267). In 1994, responding to pressure from IOs, the Vietnamese government initiated the Public Administration Reform (PAR) program, which promotes a 'dependable system of rule-bound public administration' (Painter 2003, p. 259). The program targets bureaucratic corruption using a legal rational-choice approach, which assumes that corruption arises from unregulated bureaucratic discretion. To tackle bureaucratic corruption, PAR aims to professionalise public officials and to prevent them from making corrupt decisions by streamlining bureaucratic processes and establishing bureaucratic behavioural standards (Gillespie 2002; Painter 2003). The PAR reforms also simplify various regulations, notably for the business sector, such as procedures for establishing a company, obtaining a permit, and applications for licences—again, with the aim of reducing opportunities for corrupt practices (Martini 2012, p. 2).

In order to be able to join the World Trade Organisation (WTO) and attract foreign direct investment, the Vietnamese Government initiated various anti-corruption reforms from the beginning of the 2000s, enacting the Anti-Corruption Law (2005) (ACL (2005)) as part of this process (Fruitman 2013, pp. 128–129). These reforms were funded by IOs, and they follow the orthodox anti-corruption regulatory approach, which presupposes that individuals' behaviour is primarily guided by rules, policy, and procedures (Gillespie 2001, pp. 1–3, 11; Hun Kim 2017, p. 685; Painter 2003, p. 274). Vietnam ratified UNCAC in 2009 (Tran Anh Tuan 2012, p. 139) and has participated in various regional and international forums against corruption (Martini 2012, p. 7). The Government Inspectorate and the World Bank also created the 'Vietnam Anti-Corruption Initiative Program' in 2011 (Martini 2012, p. 8).

Echoing the provisions of UNCAC and other global anti-corruption norms, the ACL (2005) specifically targets public officials. It promotes transparency and accountability in public decision-making processes, and it criminalises corrupt behaviour (OECD 2005). The ACL (2005) defines corruption as 'acts committed by persons with positions and/or powers of abusing such positions and/or powers for self-seeking interests' (OECD 2005). This definition draws from the orthodox view underpinning global anti-corruption norms—namely, the view that corruption is 'the abuse of public office for private gain'.

More recent reforms indicate that the Vietnamese Government is moving towards a broader understanding of corruption that goes beyond public officials' practices and that includes the private sector. Thus, in 2005, the government initiated the National Strategy for Anti-corruption Towards 2020 (Tran Anh Tuan 2012, p. 139). Whereas Vietnam's anti-corruption measures mainly focus on the public sector, the National Strategy for Anti-Corruption Towards 2020 includes the construction of a fair and competitive business environment among its goals (Martini 2012, pp. 6–7).

Reflecting this shift, the new Anti-Corruption Law (Law No. 36/2018/QH14 2018 and Decree No. 59/2019/ND-CP on Anti-Corruption 2019) (ACL (2018)) holds office-holders in enterprises and organisations other than state organisations accountable for engaging in corrupt practices.

4.2. Explaining the shortcomings of Vietnam's anti-corruption reforms

The results of Vietnam's far-reaching anti-corruption reforms have been disappointing: corruption in Vietnam remains prevalent in the business sector, even

as the government has intensified its anti-corruption reforms. Studies by Rand and Tarp (2017, p. 131) as well as Segon, Booth and Pearce (2010, p. 14) indicate that corrupt practices exist in most firms operating in Vietnam. These firms seem to regard informal payments as a 'normal feature of doing business'. Adding to opportunities for corruption, political leaders are still closely tied with business empires and powerful companies (Nawaz 2008, p. 5).

The reasons proffered for the failure of Vietnam's anti-corruption reforms are varied. Echoing the orthodox scholarship on corruption, organisations and analysts have cited failures in government enforcement and institutional factors. Studies have found that the implementation of anti-corruption measures is very weak (Global Integrity 2011) and has not improved since 1996 (World Bank 2016), and also that the government does not demonstrate a genuine willingness to control corruption (CECODES, VFF-CRT & UNDP 2017; Transparency International 2017). Likewise, multiple authors (Chene 2008, p. 6; Martini 2012, p. 1; Nawaz 2008, p. 5; Painter 2014, pp. 275, 283) have pointed to deficiencies in implementation, arguing that Vietnam's anti-corruption agencies lack sufficient political independence from the Communist Party, effective bureaucratic coordination, and adequate financial and human resources.

For Painter (2014, p. 282), the main shortcoming of Vietnam's anti-corruption reforms involves institutional design. Vietnam has a very complex institutional system with various state organs, which are frequently at odds with each other. Similarly, several institutions have anti-corruption powers that sometimes overlap, creating confusion about who should be acting and resulting in inertia (Chene 2008, p. 7; Martini 2012, p. 7; Painter 2014, p. 282). Compounding this institutional muddle, some anti-corruption agencies are also suspected of corrupt behaviour in their own right (Chene 2008, pp. 6–8).

However, these explanations for the failure of Vietnam's anti-corruption reforms are unable to account for the patterns of corruption observed following the introduction of the reforms. The widespread improvements in governmental research and the strengthening of monitoring and prevention processes should have at least resulted in a partial reduction of corruption. The fact that corruption seems to be increasing

despite anti-corruption reforms suggests that problems of lax enforcement and institutional design cannot entirely account for the failure of anti-corruption reforms.

For example, Hun Kim (2017, p. 670) argues that Vietnam's corruption reforms were politically and economically expedient. As discussed previously, they were a platform for the neoliberal values promoted by global anti-corruption norms, such as individual responsibility, respect for private property, and rule of law (Hun Kim 2017, p. 670), which are not well-suited to Vietnam's political economic system. Therefore, the shortcomings of the government's anti-corruption initiatives again suggest the need to look beyond structural reasons for failure—and to question the orthodox approach to corruption. Accordingly, this thesis looks at how businesses perceive corruption and interpret anti-corruption rules to explain the limited effectiveness of Vietnam's anti-corruption reforms.

4.3. Existing research on corruption

Echoing the orthodox understanding of corruption already discussed, most studies on corruption in Vietnam use neoliberal and rational-legal approaches to corruption; they adopt a rational-choice definition of corruption, and mostly focus on bribery (Gueorguiev & Malesky 2012; Maitland 2001; Rand & Tarp 2012; 2017; Sato 2009; Thuy Thu Nguyen & van Dijk 2012; Tran Thi Bich 2014). Accordingly, the anti-corruption remedies suggested by many authors are influenced by the Weberian model and by the anti-corruption movement's own recommendations (Binh Tran-Nam 2017; Chene 2008; Malesky & Pham Ngoc Thach 2019; McCornac 2012; Painter 2014; Sato 2009; Tsuboi 2005; Vian et al. 2012). Many authors explain the ineffectiveness of Vietnam's anti-corruption measures in terms of inadequate implementation and enforcement (Chene 2008, p. 6; Fritzen 2005; Martini 2012, p. 1; Painter 2014, p. 275) as well as institutional factors, such as the lack of coordination and independence among anti-corruption agencies (Nawaz 2008, p. 1; Painter 2014, p. 283). Furthermore, many of the studies that explore the nature, prevalence, and impact of corruption in Vietnam use quantitative analysis, econometrics, and surveys (CECODES, VFF-CRT & UNDP 2017; Jie Bai et al. 2013; 2019; Malesky et al. 2019; Ngoc Nguyen, Quang Doan & Binh Tran-Nam 2016; Nguyen Anh, Nguyen Minh & Binh Tran-Nam 2016; Quang Vinh Dang 2016; Rand & Tarp 2012; 2017; Segon, Booth & Pearce 2010; Spector 2016; Thang Van Nguyen et al. 2020; Thang Van Nguyen et al. 2017; Tran Thi Bich 2014).

A limited number of studies analyse corruption in Vietnam in light of its social context (Gillespie et al. 2020; Hoang 2018; Hun Kim 2017; Nicholson 2002; Segon & Booth 2010; Thang Van Nguyen et al. 2017; UNDP 2017; Vu Anh Dao 2017). This literature provides some useful information regarding the causes and consequences of corruption in Vietnam as well as the impact of Vietnam's recent anti-corruption initiatives. However, these studies usually focus on how government agencies interpret and respond to imported global anti-corruption norms, failing to examine how companies operating in Vietnam interpret and conceptualise these norms. Vu Anh Dao (2017) uses a constructivist approach and qualitative research methods to analyse Vietnamese citizens and officials' individual perceptions of corruption. Yet, her study mainly focuses on institutional reforms and does not explore how social groups influence various actors' interpretation of anti-corruption norms.

Regarding corruption in business, a number of previous studies provide useful information about the prevalence, cost, and nature of corrupt practices in businesses in Vietnam, and they also explore some of the reasons why businesses engage in corrupt practices (CECODES, VFF-CRT & UNDP 2017; Dang Giang, Phung Xuan & Ninh Hai 2016; Malesky et al. 2017; Ngoc Nguyen, Quang Doan & Binh Tran-Nam 2016; Rand & Tarp 2012; 2017; Segon, Booth & Pearce 2010). The Institute of Strategy and Scientific Inspectorate (2020) has published some government-funded law reform reports on corruption, notably in the private sector. Rand and Tarp (2017, p. 131) investigate the main reasons why Vietnamese companies pay bribes, through the quantitative analysis of a survey conducted with Vietnamese firms. Similarly, Segon, Booth and Pearce (2010) conducted a survey with Vietnamese managers and entrepreneurs related to their perceptions of corruption, the prevalence with which they engage in corrupt practices, and their attitudes towards corrupt practices. They acknowledge that although the results from their survey shed light on the perceptions of corrupt practices by companies operating in Vietnam, those results do not provide 'substantive insights into interpretations of key concepts and issues related to bribery and corruption' (Segon, Booth & Pearce 2010, p. 22). They believe that further qualitative research analysing the understandings of corrupt practices among Vietnamese businesses is necessary (Segon, Booth & Pearce 2010, p. 22). Some recent studies in this area use a mix of quantitative and qualitative research methods to explore corruption in Vietnam's business

environment (Dang Giang, Phung Xuan & Ninh Hai 2016; Endres 2014; Hoang 2018; Hun Kim 2017; Ngoc Nguyen, Quang Doan & Binh Tran-Nam 2016; Thang Van Nguyen et al. 2020), but none of these studies provides an in-depth investigation of how businesses in Vietnam conceptualise anti-corruption norms.

Other authors take a legal transfer⁸ approach to understand the shortcomings of Vietnam's anti-corruption reforms (Gillespie 2001; Painter 2014; Tsuboi 2005). They argue that the imported anti-corruption norms conflict with local cultural and organisational ideologies (Gillespie 2001, p. 12; Gregory 2016, p. 227; Painter 2014, p. 275). Thus, global anti-corruption norms seem to be incompatible with, or at least ill-suited to, regulating some key aspects of Vietnamese society. These preliminary studies indicate that the way recipients in developing countries perceive corruption and conceptualise imported anti-corruption norms shapes their responses to anti-corruption measures—and ultimately the effectiveness of those measures themselves. These studies also show fragmented responses, within Vietnam, to imported anti-corruption norms. Yet, they do not examine how businesses in Vietnam interpret and conceptualise global anti-corruption norms.

The present study aims to fill this gap in the literature by using a legal transfer approach, which is discussed in the next section, to explore whether there is fragmentation in the interpretation of global anti-corruption norms among Vietnam's business communities. For example, Vietnamese managers working in transnational companies in Vietnam seem to respond more positively to global anti-corruption norms than managers of Vietnamese small and medium enterprises (SMEs). Why this discrepancy exists is a key unanswered question that this thesis will seek to address.

5. Proposed theoretical framework

As will be discussed in more detail in Chapter Two, legal transfer theory is relevant for this thesis because many developing economies, such as Vietnam, have imported global anti-corruption norms into their domestic laws. This legal transfer has produced fragmented interpretations of the laws among citizens and businesses. Thus, rather than focusing on corruption as a violation of formal rules, legal transfer

⁸ In this thesis, the term 'legal transfer' refers to the process of transferring legal rules and their related institutions from one country to another.

theory and social constructionist approaches examine how global anti-corruption norms are interpreted by social groups in recipient countries. Ultimately, this research draws on legal transfer theory as well as social constructionism to explore why the interpretation of and response to global anti-corruption norms by companies in Vietnam is unpredictable and fragmented.

Social constructionism provides a general framework for understanding corruption, but it does not provide a concrete method of analysis. Systems theory provides a more fully realised framework with which to analyse how social actors interpret legal transfers. Systems theorists argue that modern society is divided into multiple separate sub-systems or 'social systems' of communication, including the economic system, the political system, mass media, the legal system, and so forth (Nobles & Schiff 2012, p. 270). Each sub-system interprets external information about matters such as legal transfers through internal epistemic assumptions—that is, their own self-referential modes of thought—and each sub-system creates and refers to their own norms (King 2006, p. 43).

This thesis adopts a broader version of systems theory, shifting the emphasis from the highly abstract concept of sub-systems to more concrete social organisations (epistemic communities), which interpret external knowledge according to internal norms and assumptions (Teubner 1998). The term 'epistemic community' refers to a group of actors 'who create and/or apply knowledge and who share a common set of standards, goals, and values' (Rogers, Castree & Kitchin 2013). A theoretical framework based on epistemic communities is used in Chapter Seven to investigate whether there is fragmentation in the way Vietnam's businesses interpret anti-corruption initiatives. In addition, this thesis uses 'epistemic communities' as a method of understanding how different groups interpret anti-corruption norms.

6. Hypotheses and research questions

This thesis investigates how companies in Vietnam interpret and respond to global anti-corruption norms. Building on previous research revealing a fragmented response to the anti-corruption reforms in Vietnam, this study first hypothesises that there is fragmentation in the way companies in Vietnam interpret and respond to global anti-corruption norms. This fragmentation occurs because these companies belong to different epistemic (or interpretive) communities that interpret global anti-

corruption norms in different ways. In addition, the working hypothesis is that the companies most likely to comply with global anti-corruption norms are the ones that share the epistemic assumptions underlying these global norms. Hypotheses are used in this thesis as heuristics to guide the analysis but are not tested as in a strict social sciences study. Heuristic refers to 'the process of discovery or problem-solving that is central to the research process. It involves informed judgement grounded in experience rather than systematic analysis of data. It is the creative, heuristic process that takes researchers beyond the data to deeper insights' (Somekh & Lewin 2004, p. 346).

Accordingly, this thesis poses four central research questions:

- Is it possible to categorise companies in Vietnam into different epistemic communities?
- What are the different epistemic assumptions shared by these communities regarding global anti-corruption norms?
- How do companies in Vietnam rationalise and legitimise business behaviour that is prohibited by global anti-corruption norms?
- Why do companies in Vietnam respond differently to global anti-corruption norms if (as conventional anti-corruption approaches claim) they are exposed to similar deterrents and motivated by similar cost-benefit calculations?

In order to answer the above questions, the following sub-questions will also be considered:

- What are the boundaries between the epistemic communities identified?
- Is there a hierarchy of these communities' norms and tacit assumptions?
- Are those norms compatible with global anti-corruption norms?

7. Methodology

As will be discussed in more details in Chapter Two, this thesis develops insights stemming from an interpretive approach according to which 'our knowledge of reality, including the domain of human action, is a social construction by human actors' (Walsham 1993, p. 10). A social constructionist approach to corruption suggests that

corruption must be analysed in light of individuals' morality⁹, which is shaped by their cultural, historical, and social contexts; the analysis must also take into account actors' 'social milieu' and social networks. Thus, this thesis will explore the moral and pragmatic concerns that companies operating in Vietnam elaborate and share through their social processes and interactions. In other words, the study will analyse the communicative processes by means of which companies in Vietnam build their epistemic assumptions related to global anti-corruption norms. Because epistemic assumptions can be identified through narratives, to answer the research questions, this thesis will use discourse analysis as method of content analysis and interviews as a data-collection method.

The thesis distinguishes three main types of companies inside Vietnam's business environment: State-Owned Enterprises (SOEs); transnational companies; and Vietnamese Small and Medium Enterprises (SMEs). Considering the difficulty of obtaining data from SOEs and the literature which suggests that corruption in SOEs is qualitatively different from corruption in the private sector (Baum et al. 2019; Hakkala & Kokko 2007, p. 1; Thuy Thu Nguyen & van Dijk 2012, p. 2936), this thesis only examines transnational companies and Vietnamese SMEs. Indeed, it appears that corruption involving SOEs is based on political and personal connections between SOE personnel and state regulators—connections that are not available to the private sector. This difference is sufficient to justify separate studies of SOEs and private sector business corruption. Further, the thesis identifies three distinct epistemic communities within Vietnam's private sector: the traditional Vietnamese SMEs (Chapter Four); the transitional Vietnamese SMEs (Chapter Five); and Vietnamese managers working in transnational companies operating in Vietnam (the transnational epistemic community: TEC) (Chapter Six).

The thesis maps out and then contrasts the epistemic assumptions held by these three epistemic communities, examining the compatibility of the assumptions underpinning the epistemic communities' conceptions of corruption, on the one hand, and those underpinning global anti-corruption norms, on the other hand. The thesis also investigates whether the epistemic community whose assumptions are most compatible with those underlying global anti-corruption norms also reported the

⁹ In this thesis, morality is defined as 'a set of personal or social standards for good or bad behaviour and character' (Cambridge Dictionary 2019, morality entry)

highest willingness to comply with the anti-corruption rules. Ultimately, the analysis seeks to explain why the transfer of global anti-corruption norms into Vietnam has not produced the expected reduction in corruption.

8. Thesis structure

The thesis is structured as follows: Chapter Two elaborates the analytical framework. The chapter begins with an overview of the theoretical approaches that are useful when it comes to addressing the research questions, including legal transfer theory, social constructionism, systems theory, and research based on epistemic communities. This thesis uses legal transfer theory to suggest that the transfer of global anti-corruption norms has not produced the expected outcomes in Vietnam because businesses interpret these norms in contrasting ways. Highlighting the limitations of orthodox approaches to corruption, this chapter argues that social constructionism provides a general framework for understanding corruption. However, social constructionism does not provide a concrete method of analysis; rather, systems theory provides a more fully realised framework with which to analyse how social groups interpret legal transfers. This thesis adopts a broader version of systems theory that shifts emphasis away from the highly abstract concepts of sub-systems towards more concrete social organisations (epistemic communities), which interpret external knowledge according to internal norms and assumptions. This theoretical framework is used in Chapter Seven to analyse whether different Vietnamese businesses interpret anti-corruption laws in different ways. In addition, this thesis uses the concept of 'epistemic communities' to explore differences in how companies in Vietnam interpret global anti-corruption norms. Because epistemic assumptions are identified through narratives, to address the research questions, this thesis will use discourse analysis as a method of content analysis and interviews as a data-collection method. In this connection, Chapter Two concludes with a discussion of the methods and techniques used to collect and analyse the data considered in this thesis.

Chapter Three reviews the development of anti-corruption norms in Vietnam since imperial times. This historical review is important, because it provides context for understanding corrupt practices in Vietnam's current business environment. It traces how the perception of what is corrupt or immoral has evolved over time, and how

regime change has contributed to this evolution. The chapter shows that continuity and disrupted changes in structural and normative settings create conflicts of ideologies and a fragmented interpretation of anti-corruption norms. This fragmentation is explored in Chapters Four, Five and Six, which analyse the epistemic assumptions about anti-corruption norms shared by members of the three epistemic communities identified—namely, traditional Vietnamese SME managers, transitional Vietnamese SME managers, and members of the TEC.

Chapters Four and Five analyse the tacit assumptions shared by managers working in Vietnamese SMEs concerning what constitutes corrupt practices versus ethical ways to conduct business. The focus on Vietnamese SMEs is relevant because 90% of Vietnamese registered private companies are small and medium enterprises (Thuy Thu Nguyen & van Dijk 2012, p. 2935). Chapters Four and Five use the idea of epistemic assumptions to explore how Vietnamese SME managers interpret global anti-corruption norms. The chapters are based on the analysis of interviews, which reveal that Vietnamese SME managers form two separate communities: the traditional Vietnamese SMEs and the transitional Vietnamese SMEs. Chapter Four finds that in conducting business, the traditional managers rely more on informal institutions, such as personal relationships, reciprocal obligations and corrupt practices than on formal legal institutions. However, this traditional business approach is evolving, and an increasing number of Vietnamese SMEs use a transitional approach, which is more law-oriented. Although these transitional managers share many of the views about business regulations circulating in the traditional epistemic community, they also believe that formal legal institutions and compliance with anti-corruption laws are also useful for their business. They choose between informal and formal legal institutions depending on which option gives them the most benefits.

Chapter Six analyses the epistemic assumptions held by the TEC. It suggests that Vietnamese managers working in transnational companies that operate in Vietnam constitute a discrete epistemic community that evaluates corruption, ethical business practices, and global anti-corruption norms differently from managers of Vietnamese SMEs. The key difference between the TEC and the other two epistemic communities examined is that in conducting business members of the TEC mostly rely on formal legal institutions. This chapter finds that, in contrast with traditional

Vietnamese SMEs, transnational companies treat legal institutions and anti-corruption compliance as primary considerations. This chapter also argues that, compared to Vietnamese SMEs, members of the TEC are more exposed to and influenced by a Westernised business culture, international business best practices, and global anti-corruption norms. The international exposure experienced by members of the TEC influences their epistemic assumptions about corruption and anti-corruption norms.

Chapter Seven uses the thesis' theoretical framework to compare the three epistemic communities' assumptions about corruption with the assumptions underlying Vietnam's anti-corruption legislation as well as global anti-corruption norms. This chapter addresses the issue raised by the main hypothesis and suggests that there is fragmentation in the interpretation of global anti-corruption norms in Vietnam—i.e., that the different epistemic communities examined here interpret those norms in different ways. It then explores whether convergence between these various assumptions is possible—whether these epistemic communities use, or can be encouraged to use, the same normative and epistemic assumptions as the ones underlying global anti-corruption norms.

Finally, Chapter Eight provides a conclusion to the study, and answers the questions raised by the working hypothesis by demonstrating that the companies most likely to comply with global anti-corruption norms are the ones that share the epistemic assumptions underlying these global norms. The chapter outlines some recommendations for bringing about a convergence of assumptions about anti-corruption norms among the epistemic communities examined. Discussing the contributions and implications of the thesis *vis-à-vis* theory, policy, and practice, the chapter also outlines directions for further research.

Chapter Two – Analytical framework

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1. Introduction

As mentioned in Chapter One, from the 1990s, many governments in developing economies enacted global anti-corruption provisions into their domestic laws. However, research indicates that despite large-scale legal transfers, the reduction in corruption in these countries has been modest (Amukowa 2013; Carr 2007). The central aim of this thesis is to understand the reasons why the transfer of these global anti-corruption norms has not produced the promised result in developing countries. A common explanation for this failure is a lack of institutional capacity and political will (Chene 2008, p. 6; Fritzen 2005; Martini 2012, p. 1; Nawaz 2008, p. 1; Painter 2014, pp. 275; 283). The present study, however, follows scholars such as Carr (2007), Larmour (2006), and Walton (2015), in arguing that in addition to institutional capacity, another factor limiting the effectiveness of global anti-corruption norms is the existence of different interpretations of the norms within these countries;

such contrasting interpretations lead, in turn, to fragmented responses to governments' attempts to implement anti-corruption programs. Engaging with the literature revealing a fragmented response to the anti-corruption reforms in Vietnam (Gillespie 2001; Gregory 2017; Painter 2014; Tsuboi 2005), this thesis hypothesises that companies in Vietnam belong to different epistemic (or interpretive) communities that interpret global anti-corruption norms in different ways.

This chapter first reviews the theoretical approaches that can be used to analyse the transfer and adoption of global anti-corruption norms, such as legal transfer theory, instrumental approaches to the law, social constructionism, systems theory, and research based on the idea of epistemic communities. The chapter discusses which approaches are the most appropriate when it comes to explaining a potential fragmentation in the interpretation of global anti-corruption norms. Then, the chapter turns to the methodology used in this thesis to answer the research questions. Given that community's epistemic assumptions can be identified through the narratives they tell, to address the research questions, the thesis uses discourse analysis as a method of content analysis and interviews as a data-collection method. Finally, the chapter presents the methods and techniques used to collect the data discussed in this thesis.

2. Searching for appropriate theories

This section examines legal transfer theory, instrumental approaches to the law, social constructionism, systems theory; and the concept of epistemic communities. The present study uses legal transfer theory to explain why there is a fragmentation in the interpretation of global anti-corruption norms by companies in Vietnam—i.e., why different Vietnamese business interpret those norms differently. It rejects conventional legal transplant approaches and instead adopts a view of legal transfer informed by 'mirror theory', whereby the law is viewed as attached to, or 'mirroring', its social context. An approach that affords space for analysing how local actors give legal transfers social meaning is essential for this thesis. Indeed, its starting hypothesis is that the reason why the transfer of anti-corruption norms has not worked in Vietnam is rooted in local businesses' contrasting interpretations of those norms. Accordingly, this thesis adopts an interpretive approach, according to which legal transfers have little inherent meaning but rather are given meaning by

recipients (Berkowitz, Pistor & Richard 2003, p. 179; Gillespie 2007, p. 719). The section also reviews the limitations of conventional legal transplant approaches, which are founded on ideas of legal autonomy and laws' instrumentality, and justifies an approach to legal transfer that instead draws on social constructionism and systems theory.

Highlighting the limitations of orthodox approaches to corruption, the present chapter argues that social construction theory provides a general framework for understanding corruption. However, social constructionism does not offer a concrete method of analysis. Systems theory provides a more fully realised framework with which to analyse how social actors interpret legal transfers. This thesis adopts a broader version of systems theory that moves away from an emphasis on highly abstract concepts of sub-systems towards more concrete social organisations (epistemic communities), which interpret external knowledge according to internal norms and assumptions (Teubner 1998). Accordingly, the study uses the concept of epistemic communities as a method of understanding how different companies in Vietnam interpret global anti-corruption norms.

2.1. Legal transfer theory

As discussed in Chapter One, some authors take a legal transfer approach to investigating the shortcomings of Vietnam's anti-corruption reforms (Gillespie 2001; Painter 2014; Tsuboi 2005). They argue that the imported anti-corruption rules conflict with local cultural and organisational ideologies (Gillespie 2001, p. 12; Gregory 2016, p. 227; Painter 2014, p. 275). For example, they suggest that the imported orthodox regulatory approach presupposes the existence of Weberian bureaucracy—an organisational approach that is fundamentally incompatible with the Marxist-Leninist organisational structure in Vietnam (Gillespie 2001, pp. 23–24; Gregory 2016, p. 231). Making a similar point, Painter (2014, p. 275) argues that global anti-corruption norms are 'rejected' in Vietnam because 'they contradict standard precepts of Communist Party rule or because Vietnamese society and historical conditions are said to be "special" or "unique"' and incompatible with Western regulatory systems'. Global anti-corruption norms thus seem to be incompatible with, or at least ill-suited, to regulating key aspects of Vietnamese society. Drawing on this literature, this section examines legal transfer theory as a

possible framework for understanding how the transfer of global anti-corruption norms are received and adopted by businesses in Vietnam.

2.1.1. Legal transfers over legal transplants

Theorists use various terms and metaphors to describe legal transfers¹⁰, these contrasting vocabularies conveying different theoretical assumptions (Gillespie 2008, p. 28). Some scholars in the field (Berkowitz, Pistor & Richard 2003; Heim 1996; Kanda & Milhaupt 2003; Mattei 1994; Watson 1993) use the terms 'legal transplant' and 'legal transplantation'. However, this thesis prefers the term 'legal transfer' over 'legal transplant' because the former can be considered a more neutral term. For instance, Watson's (1978, p. 315) conception of legal transplant assumes a mechanical transfer of knowledge (Nelken & Feest, 2001, p.3). This mechanical view suggests that legal transfers intend to achieve a 'fixed result' and that only 'technical adjustments' are necessary to produce legal reforms (Gillespie 2007, p. 664). Watson's approach is dependent on a view of the law as autonomous from society and suggests that legal transplants are effective as long as they produce a legal change, irrespective of how well the rule works in practice (Watson 1978, p. 315). In turn, the concept of legal transplant implies that legal rules and institutions can be picked up and 'transplanted' with relative ease to achieve their purpose and that the transferred legal rules or institutions remain identical in their new environment (Teubner 1998, p. 12). Thus, this approach does not afford space for examining the social context of legal transfers and the effects of legal transfers on society. The present study disagrees with Watson's position, and prefers the term 'legal transfer'. Unlike 'legal transplant', 'legal transfer' allows for the examination of the effect of transferring legal rules, such as global anti-corruption norms, in the recipients' society. In this way, the term legal transfer is more consistent with a social

¹⁰ In this thesis, the term 'legal transfer' refers to the process of transferring legal rules and their related institutions across geopolitical borders'. The term 'legal rules' includes 'the rules, norms, and standards described in written documents' as well as 'the ideals, doctrines and tacit assumptions that surround and give meaning to written laws and regulations' (Gillespie 2012, p. 29). 'Imported legal rules' refer to the foreign legal rules, that have been transferred into the domestic laws of host countries. In both instances, the term 'legal' is not confined to 'legislation, legal principles and doctrines' but also encompasses non-state regulations, such as 'supply chain agreements, voluntary business codes of conduct', or 'business networks' (Gillespie 2008, p. 27). This more expansive understanding of the legal domain is appropriate for this thesis, which examines how both state and non-state regulations influence the way companies in Vietnam interpret anti-corruption norms. 'Recipient countries' or 'host countries' refers to those countries into which legal rules have been transferred, whereas the term 'recipients' denotes the individuals and social actors in those countries.

constructionist approach to corruption discussed in Chapter One, which assumes that anti-corruption compliance is dependent on its social context.

2.1.2. Mirror theory over legal autonomy

This section explains the dichotomy between legal autonomy theory and mirror society theory. Whereas legal transplant approaches rely on the former theory, this thesis draws on the latter. This distinction between the two theories is important, because they propose radically different approaches to analysing legal transfers, one assuming that the law is detached from society, the other assuming that laws are attached to their underlying social conditions. On the question of legal transfer, the theory of legal autonomy and mirror theory represent two extremes (Gillespie 2007, pp. 666–678). From the perspective of legal autonomy theory, according to which the law is autonomous from society, analyses of legal transfers focus on the legal changes produced by legal transplants and not on any attendant social changes (Kahn-Freund 1974; Watson 1978; 1993). These studies assume that the transplant will succeed, even if those responsible for the legal transplant have little knowledge about how the rules being transferred worked in their country of origin. A major shortcoming of legal autonomy theory is that it does not allow for any examination of the broader societal effects of the imported legal rule.

In contrast, an approach based on mirror theory, which views the law as embedded in its underlying social conditions, does allow for this kind of examination. As its name suggests, in mirror theory, the law reflects society. Thus, Legrand (1996, p.56) suggests that the law is part of a nation's culture and that it cannot easily, if at all, be transferred to a different culture. He regards legal systems as the expression of legal cultures and of culture more generally, and he argues that rules are 'a source of identity' and 'a reflection of a given legal culture' (Legrand 1996, pp. 56–57). He defines 'culture' as 'frameworks of intangibles within which interpretive communities operate and which have normative force for these communities' (Legrand 1996, p. 57). Consequently, in his opinion, the law cannot be analysed separately from the social realities in which it is embedded (Legrand 1996, p. 58).

According to mirror theory, the transfer of laws and institutions does not change social behaviour and customs; rather, the transfer can be adapted to new social behaviours and customs only after the mentalities—the way individuals think about

these social behaviours and customs—have evolved (Legrand 1996, p. 62). In other words, legal transfers can produce social changes only after recipients have integrated the imported legal rule into their legal culture (Berkowitz, Pistor & Richard 2003, p. 167; Nelken 2001). Individuals organise and attribute meanings to legal rules according to a set of cultural principles within a specific legal tradition. To analyse a legal culture, Legrand (1996, p.60) advises exploring ‘the cognitive structure that characterises that culture’ and ‘the epistemological foundations of that cognitive structure’. In other words, mirror theory suggests to analyse how a community thinks about the law and the reasons why this community perceives the law the way it does (Gerber 2000, p. 955; Gillespie 2007; Legrand 1996, p. 60). These reasons are found in the community’s ‘private obligations’ as well as its social status, ‘social milieu’, social networks, mentalities, and historical, economic, and normative contexts, which also shape the community’s perception of corruption (Granovetter 2007, p. 155). The present study evaluates how these various factors influence the Vietnamese business community’s perception of corrupt practices and anti-corruption norms.

This thesis draws on mirror theory because it opens the analysis to a consideration of the effects of society on legal transfers. This approach is consistent with the social constructionist understanding of corruption discussed in Chapter One. Exploring how the transfer of global anti-corruption norms affects recipients’ culture and mentalities offers useful insights into why this transfer has not delivered the expected results. In emphasising the importance of social groups’ interpretation of legal rules, mirror theory can be used to take into account the fragmented interpretation of global anti-corruption norms in Vietnam.

2.2. Social constructionism over an instrumental approach

This thesis needs an interpretive theory to understand how global anti-corruption norms are understood in different epistemic contexts. The way legal transfers are conceptualised depends on whether the law is regarded as an ‘instrument’ or as a ‘narrative’ (Nelken 1996). Examining the effects of the law on social change is very different from analysing how society reinterprets and translates the law (Nelken 2001, p. 47). Whereas Watson (1978; 1993; 1995; 2012), and other scholars who focus on the idea of legal transplants analyse legal transfers from an instrumental perspective, Legrand (1996) analyses legal transfers through a social constructionist

approach. The instrumental approach views the law as autonomous; by contrast, a social constructionist approach is often paired with analyses of legal transfers informed by mirror theory. This section discusses the strengths and shortcomings of these two approaches, explaining why a social constructionist approach is the most appropriate for this thesis.

2.2.1. Instrumental approach

In an instrumental approach, legal transfers are regarded as a way of harmonising and creating common standards and finding legal solutions to similar issues in different countries (Nelken 2001, p. 13). The success of legal transfers depends on the degree of compliance with the imported law in recipient countries and the effective transformation of institutions, rather than on the influence of the imported legal rules on individuals' behaviour (Nelken 2001, p. 40). Thus, an instrumental approach to legal transfers focusses on compliance with the imported legal rules as well as on the capacity for recipient institutions to provide sanctions that enforce these rules. According to this approach, if the law is broken, compliance failures can be rectified with better enforcement.

An instrumental approach underlies the anti-corruption movement and orthodox anti-corruption scholarship, and informs the ways in which global anti-corruption norms and their implementation in developing countries are pursued. For instance, the anti-corruption movement and orthodox scholarship on corruption employ a compliance or rules-based approach, which relies on laws and regulations to control unethical behaviour (Quah 2017, p. 254). This approach is based on deterrence theory, and emphasises the prevention of illegal conduct by developing control and imposing penalties (Quah 2017, p. 254). Applied to the legal transfer of global anti-corruption norms to Vietnam, an instrumental approach suggests that the transfer's disappointing outcomes are due to institutional failures, such as inadequate enforcement of those rules.

Instrumental approaches to legal transfers are also usually foundational.

Foundational theory argues that legal rules have an inherent historical meaning, independent of human beings, that legal professionals can decode (Gillespie 2012, p. 38). In the context of legal transfers of anti-corruption norms, an instrumental approach to corruption assumes that these global norms have a universal meaning,

which everyone can interpret and which will constrain everyone's behaviour in the same way (Gillespie 2008, p. 37). However, empirical studies have demonstrated how habits and patterns of thought in recipient countries influence the meanings associated with legal transfers (Gillespie 2012, p. 31). As Gillespie (2012, p.30) argues, analyses of legal transfers that rely on an instrumental approach misinterpret key characteristics of those transfers by focusing on 'the sender and the message' rather than on 'what receivers think about the transfers'.

A corollary of this misplaced focus on the sender and the message in instrumental approaches is a misconception that legal transfers create the same social conditions in the original and recipient countries, which is not the case in practice (Gillespie 2007). In many countries, such as Vietnam, even though increased resources have been dedicated to anti-corruption enforcement, the transfer of global anti-corruption norms has not produced the expected reduction in corruption. This pattern indicates that the failure of this transfer is not wholly due to a lack of enforcement or compliance as an instrumental approach would suggest. Rather, this thesis argues that transfer failure is caused by the fragmentation of businesses' interpretation of global anti-corruption norms, with different companies interpreting the norms in different ways. Thus, an instrumental approach, with its focus on the sender and the effectiveness of institutions' and individuals' compliance, is not appropriate for this research. Again, this thesis hypothesises that companies in Vietnam interpret and respond to global anti-corruption norms differently because they belong to different epistemic communities that interpret global anti-corruption norms in contrasting ways. If this hypothesis is correct, then this thesis needs an analytical framework that explores how recipients interpret global anti-corruption norms.

2.2.2. Social constructionism

In contrast to the instrumental approach, which assumes a uniform interpretation of legal transfers by recipients, social constructionism offers a way of examining how different social groups within a recipient country may interpret legal transfers differently. The thrust of this thesis is that ethical views about what counts as corruption are formed inter-subjectively within social groups (Ashforth & Anand 2003; Wedel 2012; Zaloznaya 2014). What constitutes corruption, and how it is understood by different actors, is socially constructed. Social constructionism here is distinguished from constructivism. While constructivism focuses on how the

individual cognitively engages in the construction of knowledge, social constructionism assumes that knowledge and meaning are historically and culturally constructed through social processes and action (Young & Collin 2004, p. 373). Therefore, a social constructionist approach to corruption views the meaning of legal rules, such as anti-corruption laws, as socially contingent. This section explains why the meaning of anti-corruption rules is socially contingent.

Social constructionism is anti-foundational. Anti-foundational thinking suggests that the meaning of legal rules is socially constructed in the recipient society, and that legal transfers receive meaning from the way they are interpreted by recipients (Gillespie 2012, p. 30; Robertson 1999, p. 403). Therefore, social constructionism suggests that individuals draw on the knowledge systems in which they are embedded to construct the meaning of laws and regulatory systems (Gillespie 2015, p. 940). For Gerber (2000, p. 965), there is a 'social' or 'shared' cognition of law, meaning that individuals know the law not only as individuals, but also as part of a social context. In his estimation, the challenge with legal transfers is to transform imported legal rules into 'useful knowledge'; in other words, the rules need to be, structured and interpreted in such a way that they can provide solutions to the social problems faced in recipient countries (Gerber 2000, p. 954). Identifying and analysing processes of 'shared cognition' sheds light on individual legal decisions (Gerber 2000, p. 965). It also helps to identify potential fragmentation in the interpretation of legal transfers.

This thesis favours the argument that legal transfers do not have inherent meaning and that the way recipients interpret them impacts these legal transfers' effectiveness. In recipient countries, individuals interpret imported legal texts according to 'local mentalities that reconstitute the legal meaning of those texts' (Gillespie 2007, p. 671). Consequently, local mentalities must be compatible with the regulatory mentalities in host countries, for legal transfers to function in the recipient country as intended by the transferors (Berkowitz, Pistor & Richard 2003, pp. 167–168; Gillespie 2007, p. 671; 2008, p. 56; Legrand 1996, p. 62).

Social constructionism offers an analytical frame with which to explore the contrasting interpretations of global anti-corruption norms by different companies in Vietnam. It rejects the notion of any inherent meaning in legal transfers, and explains

why different social groups interpret the law in different ways. By focusing on companies' interpretations of anti-corruption measures, this study uses an anti-foundationalist approach to emphasise the role of human agency in constructing the meanings given to legal rules. To summarise: a social constructionist approach to corruption overcomes many of the limitations of orthodox approaches to corruption, and provides new insights into the causes of corruption. Social constructionism provides an alternative to instrumental understandings of anti-corruption norms. It draws attention to how social groups in recipient countries interpret global anti-corruption norms, and explains why global anti-corruption norms lack inherent meaning. Social construction approaches to corruption are used by socio-legal theorists (Wedel 2012), sociologists (Zaloznaya 2013; 2014), anthropologists (Nuijten & Anders 2007), organisational behaviouralists (Ashforth & Anand 2003) and economic behaviouralists (Granovetter 2007). Yet, social constructionism does not provide a concrete analytical framework with which to analyse different social groups' uptake of global anti-corruption norms. This shortcoming can be overcome by systems theory, which is discussed in the next section.

2.3. Systems theory

Systems theory, a sub-set of social construction theory, offers a promising way to conceptualise not only how recipients interpret legal transfers, but also how different groups of recipients interact with each other. This section defines systems theory, describes how sub-systems communicate and process external information, and discusses why systems theory provides an appropriate theoretical basis for this thesis.

2.3.1. Systems theory: a definition

According to systems theory, modern societies are divided into multiple separate sub-systems or 'social systems' of communication: the economic system, the political system, mass media, the legal system, and so forth (Nobles & Schiff 2012, p. 270). Each sub-system is regarded as 'autopoietic', which means that sub-systems are self-reproducing and self-replicating (Luhmann 1990, p. 11). The autopoietic theory assumes that each sub-system creates and then refers to its own norms to regulate its members' internal behaviour (King 2006, p. 43). While the openness of sub-systems remains a matter of contention, for Teubner (2013), sub-systems are normatively closed but cognitively open, meaning that each sub-system

can absorb new ideas but will interpret them according to its internal 'normative logic' (Gillespie 2012, p. 36).

When these ideas are applied to legal transfers, it can be stated that each sub-system interprets the external information related to legal transfers through internal epistemic assumptions grounded in its own self-referential modes of thought, and also that each sub-system creates and refers to its own norms in the context of legal transfers (King 2006, p.43). Thus, the recipient legal system is receptive to knowledge or information emanating from outside that legal system, but it uses legal arguments and doctrines to validate this external information (King 2013, p. 71). For his part, Teubner (1998, p. 12) argues that legal transfers are 'legal irritants'. In his opinion, legal rules or institutions do not remain identical when imported into recipient countries, but act as 'a fundamental irritation' (Teubner 1998, p. 12). Imported legal rules are reconstructed in the recipient's language and, reformulated in its codes and statutes, generating new and unexpected events (Teubner 1998, p. 28). The legal meanings of imported legal rules change even if the original legal rule is still recognisable (Teubner 1998, p. 28). Therefore, one legal rule can produce a variety of decisions once it is integrated in diverse social, economic, and cultural contexts (Teubner 1998, p. 31). This social change will, in turn, irritate the legal system (Teubner 1998, p. 28). The concept of 'legal irritation' can explain why legal transfers produce fragmented responses and interpretations.

Members of each sub-system operate with different norms and legitimacy criteria and each sub-system will have only a limited understanding of how other sub-systems operate (King 2006, p.51; 2013, p.73). Therefore, some legal rules might not be seen by particular sub-systems as 'relevant to their operations or [they may be] interpreted by those systems in a different way to that intended' (King 2013, p. 73). Consequently, for the law to effectively regulate other sub-systems, the lawmakers must understand and influence those sub-systems (King 2006, p. 48). Thus, for global anti-corruption norms to be effective in reducing business corruption, these norms must be formulated in a way that comprehends and is capable of influencing businesses, which operate with different norms.

Hiller (2010) distinguishes Luhmann's social sub-systems, which function as highly abstract theoretical models, from social organisations (epistemic communities) that

make concrete regulatory decisions. Hiller (2010) argues that only social sub-systems are capable of functional differentiation, (i.e., they operate using binary codes such as legal/illegal), whereas social organisations, such as government agencies and corporations, are functionally undifferentiated. She argues that 'organizations participate in several different functional systems [such] that their decisions are not governed by just one logic of meaning' although they may have a basic orientation towards a particular logic of meaning (Hiller 2010, p. 68). Social organisations think by means of multiple codes or logics of meaning (epistemologies). What matters for the purposes of comparison are the epistemic assumptions uppermost in the minds of regulatory organisations. Accordingly, this thesis uses systems theory to explore how different sub-systems or social organisations, such as different business groups, interpret global anti-corruption norms. Systems theory also allows for the comparison of the epistemic assumptions regarding corruption shared by these different sub-systems or business groups, and enables the identification of differences and fragmentation between these groups. For this reason, systems theory is particularly well-suited to a social constructionist understanding of corruption.

2.3.2. Communication and interactions among sub-systems

This section describes how sub-systems communicate and interact. Systems theory does not focus on the behaviour or intentions of individuals but rather on the meanings generated by them as communicators operating within organisations (Nobles & Schiff 2012, p.267). Systems theory explains why socially different groups interpret legal transfers in different ways and why there is often miscommunication about the underlying meaning of global norms (Gillespie 2007, p. 681).

According to systems theory, for legal transfers to be effective, dialogue among sub-systems is necessary to produce 'unified normative and cognitive positions' (Gillespie 2012, p. 36). The concepts of structural coupling and co-evolution describe the way sub-systems interact with each other. According to systems theory, communication among organisations operates through 'structural coupling'. 'Structural coupling' is defined by King (2013, p. 71) as the mutual influence of and interdependence among various sub-systems. Structural coupling can overcome the fragmentation of different sub-systems' interpretations by encouraging discourse through a mutually comprehensible conceptual grammar. Teubner (2013) believes

that structural coupling can promote 'co-evolution' and a convergence in how organisations interpret external rules, such as anti-corruption norms. Co-evolution occurs when there is convergence in the meanings generated by sub-systems, which are then using the same normative and epistemic assumptions. The concepts of structural coupling and co-evolution are useful for examining whether different organisations in Vietnam communicate using a mutually comprehensible conceptual grammar. This thesis uses these concepts to explore whether Vietnam's different business groups can communicate with each other and with the legal system, and further, to explore whether their epistemic assumptions can converge, leading to a better anti-corruption compliance. The thesis uses a soft version of systems theory, which suggests that the law is essentially a series of communicative events and that social organisations can communicate with each other, albeit imperfectly (Gillespie 2007, p. 682).

2.3.3. The analysis of corruption via systems theory

Systems theory provides a conceptual architecture with which to understand how social understandings of corruption coevolve and influence each other. It sheds light on the types of epistemic knowledge that can support, oppose, or transmute anti-corruption norms (Tänzler et al. 2012, p. 14). For example, corruption occurs when organisations use unauthorised epistemic assumptions from outside the system to process information. In other words, corruption can be viewed as a consequence of a 'dysfunction of the system' that diverts organisations to serve objectives other than their 'inherent functional objectives' (Tänzler et al. 2012, p. 14).

Systems theory fits with a social constructionist approach to corruption because it explains how the environment in which social groups are embedded influences group thinking about corruption. Systems theory also provides a way of understanding how different social organisations, such as business groups, prioritise epistemic knowledge and respond differently to anti-corruption reforms. For example, there might be fragmentation in the way businesses in Vietnam interpret global anti-corruption norms because particular companies may prioritise certain social norms, such as customary practices or familial obligations, over legal and anti-corruption compliance. Accordingly, this thesis draws on systems theory to examine whether the companies most likely to comply with global anti-corruption norms are the ones that share the epistemic assumptions underlying these global norms. More generally,

the thesis uses the concept of epistemic communities to map how different groups interpret global anti-corruption norms.

2.4. Epistemic communities

This thesis follows Hiller's (2010) postulate that sub-systems operate like epistemic communities. These epistemic communities generate 'shared epistemological and tacit assumptions about the nature of regulatory problems and the appropriate responses' (Gillespie 2007, p. 716). This study uses the concept of epistemic communities to map how different business groups interpret global anti-corruption norms. It suggests there is fragmentation in the way companies in Vietnam interpret and respond to these norms because they belong to different epistemic (or interpretive) communities that interpret these norms in different ways.

The concept of epistemic communities is useful for this thesis because it calls attention to the assumptions about corruption and anti-corruption norms held by members of various social groups. It fits with a social construction approach to corruption because it explains how these communities influence the way their members conceptualise corruption and anti-corruption norms. The idea of epistemic communities can also be used to understand the aggregations of like-minded corporations, and to analyse the hierarchy of assumptions and beliefs that shapes how different types of corporations interpret anti-corruption norms. Indeed, epistemic communities are moulded by ideas which are composed of pragmatic, normative, and cognitive assumptions. Pragmatic assumptions relate to questions of self-interest and material benefits (Suchman 1995, p. 571). Pragmatic assumptions bear on issues similar to those emphasised in the orthodox analysis of corruption, which is grounded in rational-choice theories, which attributes corruption to individual choices based on incentives, and which assumes that corruption is the consequence of 'instrumental' cost-benefit calculations (Dick 2002; Granovetter 2007; Johnston 1996; Wedel 2012; Zaliznaya 2013; 2014). An assessment of what constitutes a material benefit is, in turn, subject to normative assumptions, which refer to understandings of the collective good, of what is right and wrong (Suchman 1995, p. 571). Pragmatic assessments are also influenced by cognitive assumptions, which refer to tacit and automatic perceptions—perceptions of what the members of an epistemic community regard as inevitable and necessary (Suchman 1995, p. 571). Thus, unlike orthodox approaches to corruption based on rational-choice theory,

which mainly focus on how pragmatic assessments, such as the cost-benefit calculations, encourage corruption, this thesis also explores the normative and cognitive assumptions, that influence business groups' ethical standards. In fact, the thesis shows that cost-benefit calculations are filtered through normative and cognitive beliefs.

As mentioned in Chapter One, the term 'epistemic community' refers to a group of actors 'who create and/or apply knowledge and who share a common set of standards, goals, and values' (Rogers, Castree & Kitchin 2013). Epistemic communities form a network of abstract social relationships that have the potential to generate 'shared epistemological and tacit assumptions about the nature of regulatory problems and the appropriate responses' (Gillespie 2007, p.716; see also Valcke 2018, pp.135–138). Recipient epistemic communities interpret imported legal rules in the context of their shared understandings and according to the implicit knowledge and emotions that help define the communities in question (Berger & Luckmann 1966, pp. 49–61; Gillespie 2012, pp. 32, 38).

This is not to say that the transfer of new ideas into these communities and their adherence to the imported legal rules is impossible. Rather, such transfers are possible because two distinct types of thinking emerge within communities: namely, 'categorical thinking', which is largely closed off to taking on new ideas, and 'reflective thinking', which 'meditatively determines responses to new ideas' (Berzonsky & Luyckx 2008; Gillespie 2012, p. 38). Depending on whether they incline more towards reflective versus categorical thinking, some members of a community will be more 'prepared' to engage with new ideas than others (Gillespie 2012, p. 38). Further, pre-existing relations, values, and assumptions in a community can be adjusted if the community is open to new ideas that are not in conflict with its identity claims (Gillespie 2012, p. 53).

Factors that differentiate epistemic communities from one another include the storylines and tacit assumptions that support their sets of beliefs and practices as well as the larger epistemological framework through which the communities interpret legal rules (Castree 2014, p. 288; Gillespie 2007, p. 716; Haas 1992, p. 3; Valcke 2018, pp. 135–138). What defines an epistemic community in this thesis is a degree of cohesion around a set of core beliefs regarding corruption and anti-

corruption norms. However, the boundaries delineating communities are not always clear. Rather, they are often porous and members of one community may be simultaneously embedded in other communities (Gillespie 2007, p. 704).

Communities also demonstrate plurality, insofar as heterogeneous ideas circulate within the same community (Gillespie 2007, p. 716; Valcke 2018, p. 138). Indeed, the stories within a community are not always coherent, because its members have various individual interests and identities (Wry, Lounsbury & Glynn 2011, p. 450). Brown (2006, p. 739) describes the potential for multiple understandings inside communities as the phenomenon of 'plurivocity'. Plurivocity refers to the multiple understandings of stories embraced by the members of each community (Brown 2006, p. 739). Despite encompassing heterogeneous views, however, each epistemic community produces a degree of cohesion around a particular set of 'normative and principled beliefs, which provide a value-based rationale for the social action' of its members; 'causal beliefs, which are derived from their analysis of practices; and 'common practices' (Haas 1992, p. 3). Epistemic communities also influence how group members reject, ignore, or reinterpret legal rules that question their customs and beliefs (Gillespie 2015, p. 943). Epistemic communities can be defined as 'groups of actors that can be strategically constructed and fluid, organized around a shared purpose and similar outputs' (Wry, Lounsbury & Glynn 2011, p. 449). Therefore, diversity inside a community does not undermine its coherence if members share a common purpose (Wry, Lounsbury & Glynn 2011, p. 459).

Epistemic communities can be found in workplaces, among ethnic groups, and other social domains. These communities insulate people from alternative patterns of thought and promote obfuscation regarding outsiders (Ashforth & Anand 2003; Nuijten & Anders 2007). For the present study, the concept of epistemic communities is useful when it comes to delineating the different business groups existing within Vietnam's business environment and identifying the sets of core beliefs regarding corruption circulating within these groups. Indeed, epistemic communities work to reinforce particular and shared understandings of corruption among their members by encouraging members to socialise with insiders and motivating its members to adhere to the communities' values and ideals. The epistemic communities in Vietnam's business environment and their sets of core beliefs are identified through discourse analysis of interview data, discussed in the next section.

3. Methodology

Given that epistemic assumptions can be identified through narratives, this thesis uses discourse analysis as a method of content analysis and interviews as a data-collection method to address the research questions.

3.1. Discourse analysis

According to systems theory, the law is a system of communication, and epistemic communities influence each other through discourse. Discourse is defined by Potter and Wetherell (1987, p.7) as 'all forms of spoken interaction, formal and informal, and written texts of all kinds'. Discourse reflects the social processes and structures, which produce texts and within which individuals or communities create the meanings of those texts (Breit 2010, p. 621). A social constructionist approach to legal rules explores how discourse influences the way ideas are applied in practice to regulate people's behaviour (Gillespie 2012, p. 34). Breit (2010, p. 620) recommends exploring the role of discourse in the social construction of corruption and 'the processes through which social and organizational actors attempt to establish senses of (il)legitimacy in discussions of corruption'. In other words, analysing discourse helps to shed light on what is considered legitimate or illegitimate by companies in Vietnam.

Tänzler et al. (2012, p. 13) explain corruption 'as a discursive effect'. They argue that discourse analysis provides the most efficient method to explore the occasions or interactional moments that influence corrupt practices. Zaloznaya (2013, p. 713) suggests that corruption and transparency are 'imbued with multiple meanings'. Individual morality constitutes 'shared meanings' built and transmitted through social processes and interactions, and individuals 'understand the world and their role within it' in terms of these shared meanings (Zaloznaya 2014, pp. 192–193). Thus, she, too, proposes analysing the occasions or 'interactional moments' that influence corrupt practices (Zaloznaya 2014, p. 195). In particular, she recommends exploring the 'communicative processes' used in families, peer-groups, and institutions, through which individuals construct their relationship to corruption, and which support 'the emergence of shared beliefs that are favorable to corruption' (Zaloznaya 2014, p. 195). Along the same lines, this thesis uses discourse analysis to explore the moral and pragmatic concerns shaped by the social processes and interactions of employees working for companies that operate in Vietnam.

For Breit (2010, p. 620), discourse analysis helps to illuminate ‘the relationship between the “talk” and “action” of corruption’ and how unethical practices are made sense of through language. Discourse analysis focuses on ‘spoken and written language as crucial parts of the social processes through which different conceptions of corruption are (re)produced and transformed’ (Breit 2010, p. 620). Therefore, discourse analysis provides the most appropriate tool for examining how the communicative processes used by businesses in Vietnam support the companies’ epistemic assumptions related to global anti-corruption norms. This thesis uses discourse analysis as a method of content analysis to understand how companies operating in Vietnam conceptualise anti-corruption norms and different business practices. However, the present study does not consider public discourse about anti-corruption norms, a topic that lies beyond the scope of the thesis.

3.2. Data-collection process: semi-structured interviews

Interviews are the most efficient data-collection method for studying communicative processes and the ‘qualitative features of human experience, talk, and interaction’ (Brinkmann 2013, p. 4). This thesis uses semi-structured interviews because, compared to structured interviews, semi-structured interviews allow for more flexibility when it comes to tailoring questions to interviewees’ patterns of response. Semi-structured interviews thus enable the researcher to adapt to the context in which interviewees are located (Brinkmann 2013, p. 21). Interviewers can better focus the conversation on issues that they consider important (Brinkmann 2013, p. 21).

The aim of the interviews was to obtain descriptions of how participants experience and interpret unethical business behaviour, and to compare and contrast the various responses provided by the participants. The interviews explore whether the participants share a common understanding of what constitutes corrupt practices versus appropriate, ethical ways to conduct business. Analysis of the interview data is meant to determine whether the participants’ regulatory preferences align with each other and whether there is cohesion among them about what constitutes corrupt behaviour. This analysis intends to provide insights into how companies operating in Vietnam conceptualise and respond to anti-corruption rules and to illuminate the epistemic assumptions, which influence their interpretation and response to these rules. This analysis also suggests possible areas of convergence

and divergence in interpretation among the different epistemic communities identified, and reveal broader patterns of thinking about global anti-corruption norms in Vietnam.

Semi-structured interviews are used in this study to reveal the narratives—the stories interviewees tell each other—on which business managers operating in Vietnam draw to rationalise, support, challenge, or undermine unethical behaviour, such as corruption (Kornberger & Brown 2007, p. 57). Indeed, epistemic communities are shaped by their members' narratives. Wry, Lounsbury & Glynn (2011, p. 450) argue that stories help social groups 'to project an image of themselves, collectively, as a coherent category with a meaningful label and identity'. These stories define the 'identity core of the collective' and 'delineate the boundaries of membership that constitute it' (Wry, Lounsbury & Glynn 2011, p. 450). Similarly, Barth (1989, p. 130) argues that it is not the internal cultural practices of a group that matter so much as the interactions between that culture and other cultures, and the relative points of view of insiders and outsiders. Barth (1999, pp. 17, 34) adds that these interactions 'set limits that mark social groups off from each other' and from their surrounding environment. Therefore, the narratives extracted from the interviews help to delineate epistemic communities by highlighting similarities and potential differences in how interviewees understand ethically problematic behaviour. This thesis relies on these narratives to extract the interviewees' epistemic assumptions on global anti-corruption norms. The first part of the analysis of the interview data consisted in disaggregating and comparing the narratives the interviewees deployed to determine what constitutes ethical and legitimate behaviour or unethical and illegitimate behaviour for them.

This study then uses discourse analysis to identify similarities and contradictions between these narratives in order to delineate the epistemic communities. The researcher transcribed all the interview recordings on word documents and classified the interviewees' responses to interview questions in a table on an excel spreadsheet to facilitate comparisons. She highlighted keywords to identify themes within the interviewees' responses, extract the interviewees' narratives and identified similarities between these narratives. She then searched for the key epistemic assumptions that informed the narratives. These assumptions were used to circumscribe and define the epistemic communities. Despite difficulties in gaining

access to sensitive information, the interviews were sufficiently rich in detail to provide insights into the business managers' views on ethically (in)appropriate behaviour. As will be explored in more detail in the following chapters, the narratives revealed that different business managers adopted distinct conceptual positions regarding what constitutes unethical and immoral behaviour. These distinct conceptual positions formed basis of the three epistemic communities' delineation.

Forty-two semi-structured interviews were conducted for this research project. Twenty-five interviews were conducted with managers working in Vietnamese small and medium enterprises (SMEs), and seven with Vietnamese managers working in transnational companies operating in Vietnam. In addition, ten supplementary general interviews with business experts such as lawyers, staff from the Vietnam Chamber of Commerce and Industry (VCCI), NGOs, business consultants, diplomats, and academics were conducted (see Appendix One). These supplementary interviews were used to deepen the analysis and to support the findings resulting from the extraction of individual narratives to identify more general epistemic assumptions. A review of relevant secondary literature, such as academic studies, journal and newspaper articles, as well as research reports from various organisations (IOs, NGOs, government agencies) also corroborated the interview data. This secondary literature was used to support the findings from the analysis of the interview data and to overcome the limitations of qualitative research by providing an overview of what different business groups think about anti-corruption norms. This process allowed the researcher to generalise the findings drawn from analysis of the individuals' interviews to apply to the thinking of specific business groups operating in Vietnam. While the findings generated through qualitative research add depth and richness to the analysis, they cannot be generalised as easily as findings from quantitative studies. For this reason, a review of secondary sources to support the findings from the interview data was necessary.

Thirty-nine of the interviews were conducted in a face-to-face setting. Most of these face-to-face interviews were conducted in Hanoi and, to a lesser extent, Ho Chi Minh City during two field trips. The first trip took place in March 2018, and the second one in July/August 2018. Two of the interviews were conducted by phone, and one interviewee replied to the interview questions in writing, emailing his responses during the period between January and April 2019. Some of the interviews were

conducted in English, some were conducted in Vietnamese with a translator, and one was conducted in French. In many cases, where the interviewees gave the researcher permission to do so, the interviews were tape-recorded.

Participants were located with the help of a local law firm and the National Economics University as well as through snowballing, also called 'snowball sampling'. 'Snowball sampling' consists of asking participants if they know others who meet the criteria of the research and who might be interested in taking part (Liamputtong 2020, p. 22). Then, 'a snowball effect develops, and successive research participants become involved in the study' (Liamputtong 2020, p. 22). Snowball sampling is particularly relevant with groups whose members are unlikely to take part without referral from others in their own network, as was the case with Vietnam's business managers (Liamputtong 2020, p. 22).

All the interviews strictly followed the procedures described in the author's application for ethics approval from the Monash University Human Research Ethics Committee (MUHREC). All interviewees were provided with an explanatory statement and were required to sign a consent form before the interviews were conducted. See Appendix Four for MUHREC's approval of the project, and for samples of the explanatory statement and consent form provided to each interviewee. In compliance with Monash University Ethics policies, the names of all the interviewees have been modified to ensure their anonymity.

4. Conclusion

This chapter showed that the instrumental and rules-based approaches used in orthodox scholarship on corruption are not suitable for this thesis, because they ignore the social embeddedness of ideas about corruption. In contrast with such orthodox approaches, this thesis adopts a social constructionist approach to corruption, which suggests that corruption is the result of group processes rather than individual actions. Unlike a constructivist approach which focuses on individual interpretations, a social constructionist approach allows to analyse how the social context in which Vietnam's businesses are embedded influences their interpretation of anti-corruption norms.

This thesis draws on legal transfer theory because it affords scope for investigating the effect of transferring legal rules, in this case, global anti-corruption norms, in the recipients' society. Legal transfer theory fits with a social constructionist approach because it focuses the analysis on the interpretation of legal transfers by social groups, rather than individuals. In addition, the study uses a 'soft' version of systems theory to argue that societies are comprised of discrete epistemic communities that interpret external knowledge according to internal norms and assumptions. Unlike other social constructionist approaches to corruption, systems theory will generate insights into the divisions within society regarding anti-corruption norms and the likelihood of interaction and convergence among these groups. The concept of epistemic communities also helps to identify the epistemic assumptions regarding corruption and global anti-corruption norms shared by different kinds of companies in Vietnam and to highlight a potential fragmentation in interpretation of these norms.

Finally, to analyse the normative and cognitive understandings of corruption from the perspective of different types of companies in Vietnam, the study uses discourse analysis as a method of content analysis and interviews as a data-collection method. Discourse analysis of semi-structured interviews with managers of companies operating in Vietnam is necessary to identify the narratives circulating within Vietnam's business communities, which might resist the adoption of global anti-corruption norms. Discourse analysis also highlights similarities and differences in interpretation of these norms by the managers, and helps to delineate the epistemic communities examined in this thesis.

The next chapter reviews the historical development of anti-corruption regulations in Vietnam, with subsequent chapters then using the theoretical framework previously described to investigate the interview data gathered from business communities in Vietnam. The historical analysis presented in Chapter Three aims to provide a comprehensive background for understanding how the Vietnamese state and social actors have conceptualised corruption over time.

Chapter Three – Anti-corruption initiatives throughout Vietnam’s history

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1. Introduction

This chapter analyses Vietnam’s various anti-corruption initiatives, and the different regulatory approaches used for those initiatives, throughout the country’s history. It aims to understand why successive governments changed their anti-corruption approaches, and examines the political-economic context in which Vietnam’s government has incorporated global anti-corruption norms into its current laws. The chapter explores how successive Vietnamese political regimes have conceptualised corruption and implemented anti-corruption regulation. The key element in this historical analysis is continuity and change in anti-corruption regulation. As Marr (2000, pp. 1–5) suggests in his study on history and memory in Vietnam, contemporary mental habits and perceptions develop through repeated and prolonged actions and behaviours inherited from the past. Thus, this historical analysis is relevant to understanding the current nature and prevalence of corruption in Vietnam because historical patterns of anti-corruption regulation influence the way contemporary lawmakers think about corruption regulation today.

The current state structure of Vietnam is built from various systems where new influences came to overlay but not completely eradicate the old (Gillespie 2002, p. 173). Vietnam’s socio-political institutions developed through a mix of Chinese, French colonial, socialist, contemporary East Asian and Western influences where ‘[i]mported laws and institutions have been superimposed over indigenous Vietnamese cultural precepts and habits’ (Bui Ngoc Son 2017, p. 135; Gillespie 2002, p. 173). Vietnam has been influenced by Confucianism, the modernisation of law under French colonisation, resistance against France, US Capitalism in South Vietnam and the war with the USA (Sato 2009, p. 224). The following sections analyse how the anti-corruption norms used by successive Vietnamese governments have evolved over five main periods: the pre-colonial period; the French colonial period; the high socialist period; and the Post-1986 (*Đổi Mới* reforms) period; and the post-*Đổi Mới* reforms period, during which the Vietnamese Government transferred global anti-corruption norms.

2. The pre-colonial period

The regulation of corruption by the pre-colonial government was strongly influenced by ideas and institutions imported from China, such as Confucianism, a Chinese school of thought created by Confucius (551-479 BC). As Bui Ngoc Son (2017, p. 142) notes,

Confucianism is a tradition and a philosophy about a good way of life, including a good way of governing. Particularly, in response to the historical context of political chaos, classical Confucians' central concern is a good political order which in their belief depends on personal cultivation of virtual values. Confucian philosophy therefore develops different moral, political, and legal ideas, concepts, and principles.

There is no evidence of the existence of written laws in Vietnam before Chinese domination of the region; instead, indigenous laws seemed to have been orally transmitted and memorised (Bui Ngoc Son 2017, p. 141). Thus, this section focuses on Vietnam's regulations from the start of Chinese domination. It explores how the Chinese regime disseminated Confucian principles and values in Vietnam's society and legal system. A key value in this context was the concept of 'virtue rule', which regulated rulers and bureaucrats' behaviour, and which can be considered as a precursor for Vietnam's anti-corruption regulations. The section also examines the legal codes and formal rules designed to regulate bureaucrats' behaviour and to prevent corrupt practices from being promulgated by Vietnam's successive dynasties.

The discussion is relevant for this thesis because Confucian principles and values still exert an influence on Vietnam's current government and on the wider population's behaviour. Bui Ngoc Son (2017, pp. 149–150) argues that the Confucian legal culture still informs Vietnamese people's attitudes towards legal institutions and practices. As will be discussed further in Chapter Four, her argument is supported by the interview data, which indicate that Confucian values still shape traditional Vietnamese SME managers' practices. The Confucian moral principles that were introduced during imperial Vietnam also continue to influence Vietnamese thinking about corruption. Thus, examining the influence of Confucianism in

Vietnam's imperial laws illuminates how the Vietnamese interpret anti-corruption norms today.

2.1. Chinese domination and Confucianism's influence

Chinese ideas and practices started influencing Vietnam after the invasion of the *Han* dynasty armies in 111 BC. For 1,000 years (111 BC–938 AD), first under the *Han* dynasty (206 BC–220 AD) and later under the *Tang* dynasty (589–907 AD), Chinese scholarship, political theories, religious values, family structures and bureaucratic practices moulded the indigenous Vietnamese mindset (Bui Ngoc Son 2017, pp. 143–144; Gillespie 2006, p. 42). The *Tang* Code—which is at the base of the traditional Chinese legal system—was in force during the last three centuries of Chinese domination and continued to influence Vietnamese law for hundreds of years (Bui Ngoc Son 2017, p. 145; Ta Van Tai 1989, p. 37). For example, many provisions in the *Lê* Code (from 1428) were closely modelled on *Tang*-era laws (Bui Ngoc Son 2017, p. 145; Ta Van Tai 1989, p. 37).

At the turn of the fifteenth century, during China's *Ming* domination period (1407–1427), the *Ming* dynasty, pursued a series of educational, fiscal, agrarian, social, and political reforms based on Confucian principles in an effort to further inculcate Confucian norms and practices into Vietnam (Smith 1973, p. 10; Taylor 2013, p. 11). During the *Lê* (1428–1788) dynasty and later the *Nguyễn* (1802–1945) dynasty, Vietnamese rulers borrowed extensively from Chinese laws and bureaucratic processes (Gillespie 2006, p. 43; Ta Van Tai 1989, p. 39). During the first period of the *Lê* dynasty (1428–1527), the emperor built up an elaborate bureaucratic machinery, based on the Chinese *Ming* model. It was tightly controlled by the sovereign, and extended to the village level—imposing a system of population control, taxes, and corvee levies (Ta Van Tai 1989, p. 39). As Buddhism and its compassionate philosophy lost influence in the political sphere, Confucianism gradually became the predominant ideology (Smith 1973, p. 9; Ta Van Tai 1989, p. 39). In the late fifteenth century, 'Confucian values were propagated as never before; new laws governing education, administration, land tenure, taxation, conscription, and public morality were promulgated' (Taylor 2013, p. 11). Confucianism was eventually adopted as the state ideology (Jamieson 1993, p. 11).

During the ten centuries of Chinese domination, China transferred Confucian culture into the principles and institutions of Vietnamese society and state governance

(Smith 1973, pp. 1–5; Vu Anh Dao 2017, p. 12). For example, Chinese officials replaced districts' hereditary rulers and Vietnamese imperial institutions were modelled after those of the Chinese state (Woodside 1988, p. 7). Ultimately, Confucianism was the form of political-legal thinking that exerted the most profound influence on legal practices in Vietnam (Gillespie 2006, p.43). Yet, although they appreciated and absorbed many aspects of Chinese culture, the Viet people never completely gave up their indigenous beliefs and practices (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 2). Therefore, Confucian values co-existed with indigenous beliefs and practices creating legal confusion and uneven compliance with formal laws.

2.2. Confucianism and virtue rule

From the fifteenth century, the state was organised around three pillars: the emperor, Confucian ideology, and bureaucracy (Gillespie 2002, p. 173). Emperors and the mandarinates represented 'the embodiment of moral virtue' and most mandarins justified their privileges by claiming Confucian moral supremacy (Gillespie 2002, p. 173). Confucian ideology was premised on a social hierarchy with the emperor at the top, followed by mandarins, and then village notables and family heads; this hierarchy legitimised and provided the moral basis for personal rule (Gillespie 2002, p. 173). Ta Van Tai (1989, p.41) suggests that

The particularistic considerations in Confucian ethics resulted in unequal treatment under the law of different categories of persons, depending on their class or family status. Privileges were granted [to] imperial clan members or officials, whereas some social groups, such as serfs and entertainers, were legally disadvantaged.

Another aspect of virtue rule is that because of their education, mandarins were considered as morally 'perfected', and this gave them the right and legitimacy to rule (Gillespie 2002, p. 173; Nguyen Ngoc Huy & Ta Van Tai 1987, p. 61; Woodside 1998, p. 17). This aspect of virtue rule can still be glimpsed in Vietnam's contemporary 'ask-give mentality', which surrounds official-citizen interactions and which can encourage corrupt practices, such as bribery.

Legality and morality were thus intrinsically intertwined in virtue rule; there was no clear separation between them because infractions of the Confucian moral codes were treated as criminal violations (Gillespie 2006, p. 48; Ta Van Tai 1989, p. 41).

Pham Duy Nghia (2005, p. 76) argues that '[a]s a set of social norms, Confucianism not only substitutes for the law in many aspects of life, but also contributes heavily to the conception of the law in Vietnam'. Gillespie (2006, p. 43) elaborates,

From the *Lê* dynasty onwards, Vietnamese emperors applied a Sino-Vietnamese version of virtue-rule [*đức trị / nhân trị*] and legal rule [*pháp trị*]. These principles rested on [...] the cultivation of virtuous conduct through the five cardinal relationships [...]: 'benevolence' [*nhân*], 'righteousness' [*ngĩa*], 'ritual' [*lễ*], 'knowledge' [*trí*] and 'sincerity' [*tín*].

Confucian scholars were convinced that laws are unnecessary if citizens can be persuaded by education, social pressure, and virtuous examples to live morally (Gillespie 2006, pp. 45–46). The state asserted its political, religious, and moral authority through government teachings developing 'doctrines separating and specialising state power' (Gillespie 2002, p.173). At the same time that imperial rulers in China and Vietnam promoted virtue rule, however, they controlled social behaviour with draconian penal laws (*pháp trị*) and a strong administrative apparatus (Gillespie 2006, p. 45). Nonetheless, the supremacy of morality and virtue rule over state laws still has relevance today. As will be discussed in Chapter Four, traditional Vietnamese SME managers seem to prioritise Vietnamese common moral values over formal laws when it comes to regulating their behaviour.

In the nineteenth century, neo-Confucianism became a dominant influence (Jamieson 1993, p.11). Neo-Confucianism focused on the concept of 'proper social relationships', based on 'a wider set of ideas regarding the nature of reality' (Jamieson 1993, p.11). According to a neo-Confucian adage, law is 'the lowest form of morality when substituting familial and patron-client interests for state policy' (Gillespie 2001, p. 25). In imperial Vietnam, there was a tendency to analogise the state to the family; in turn, the distinction between private and public functions was not clearly defined, given that the emperor was the head of both the bureaucracy (outer court) and the imperial household (inner court). As Gillespie (2002, p. 173) puts it,

Bureaucrats routinely interfered in the imperial household and in turn, members of the imperial household interfered in bureaucratic matters. By functioning like an extended family, distinctions between state and society and

public and private were obscured. The interests of rulers were synonymous with those of the state.

The family was viewed as a microcosm of the social world (Jamieson 1993, p.12). As Jamieson (1993, p. 173) notes, Vietnamese culture venerates the family, and the individual 'can be no more than an element of the family'. The ideas or actions of the individual must be subordinated to the family hierarchy and '[a] nation is just a larger family, also with a hierarchy' (Jamieson 1993, p. 173). Reflecting on the importance of the family in Vietnamese culture, Phan Châu Trinh (cited in Kiernan 2017, p.343), nationalist leader and reformer, once declared that the Vietnamese 'know only their family and do not know their country'. Yet, Confucianism, by elevating family and other personal relationships as the most important elements in individuals' lives, encouraged some corrupt practices, such as nepotism and favouritism (Vu Anh Dao 2017, p.156).

Despite the pre-eminence of Confucian values, such as virtue and incorruptibility, corruption already existed during the pre-colonial era at the top and lower levels of imperial governance (Vu Anh Dao 2017, p. 153). For example, during the *Lê* dynasty (1428–1788), Confucian scholar-officials were recruited through an examination system, that was undermined by corrupt practices (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 19; Yu 1990, p. 131). Later, during the *Nguyễn* dynasty (1802–1945), according to Ta Van Tai (1989, p. 203), the *Nguyễn* government's public works programs were affected by graft, corruption, and mismanagement.

2.3. Pre-colonial Vietnam's anti-corruption regulations and norms

Vietnam's pre-colonial anti-corruption regulations can be divided into four major periods: those of the *Lý* dynasty, the *Trần* dynasty, the *Lê* dynasty, and the *Nguyễn* dynasty.

2.3.1. The *Lý* dynasty (1010-1225)

The *Lý* emperors ruled through relatively well-organised military and civil bureaucracies and a Book of Punishments (*Hình Thư*) was promulgated in 1042 (Ta Van Tai 1989, p. 38). Emperor *Lý Thái Tông* notably promulgated regulations aimed at preventing judges from being too harsh and condemning innocent people (Ta Van Tai 1989, p. 38). Nguyen Ngoc Huy and Tà Van Tai (1987, p.7) identify several major legal developments under the *Lý*, such as the influence of Chinese law,

including the five-penalty system, the ten heinous crimes, the redemption of penalties, amnesty, and the regulation of public offices and court rites; the introduction of the principle of *res judicata*; and the influence of Buddhism on both the substance of criminal law and the penal administration. The 'three religions' of Confucianism, Taoism, and Buddhism influenced Lý laws, although Buddhism was the most influential, especially in the area of criminal law (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 7; Smith 1973, p. 9). Because only the remnants of Lý laws have been preserved (Yu 1990, p. 13), it is not possible to examine the Lý dynasty's anti-corruption regulations and norms in detail. However, it seems that there was a clear attempt by Lý emperors to regulate bureaucrats and control judges' behaviour and decisions (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 7).

2.3.2. The Trần dynasty (1225-1400)

During this dynasty, despite the enhanced role of hereditary aristocrats in government, professional bureaucrats gained importance. The civil service examination system developed, and graduates filled public positions at the village level, managed the population registration process, collected taxes, and enforced the law (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 13). At least two dynastic codes were promulgated. The first code, the *Quốc Triều Thông Chế* (Book of General Statutes of the National Dynasty), was promulgated by the dynastic founder Trần Thái Tông in 1230 to reform criminal law and rites. In 1341, Emperor Trần Dụ Tông implemented a new *Hình Thư* (Book of Punishments) as well as another book, the *Hoàng Triều Đại Điển* (Great Institute of the Dynasty) (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 13). However, only a few remnants of the Trần laws have been preserved (Yu 1990, p. 13). Thus, Vietnam's first real anti-corruption initiatives can be found in the Lê and Nguyễn imperial codes, in which many provisions were devoted to preventing corruption on the part of mandarins.

2.3.3. The Lê dynasty (1428-1788) and Nguyễn dynasty (1802–1945)

The Lê dynasty's legal system included a Penal Code, the *Quốc Triều Hình Luật* (The Law of Our Dynasty), usually known as the Lê Code, revised several times during the Lê dynasty (Yu 1990, p. 5). The Lê Code was supplemented by several other documents concerning substantive laws, such as the *Thiên Nam Dư Hạ Tập* (Collection of the Leisures of the South Heaven), an encyclopaedic work on

literature, political events, institutions, laws, and regulations; the *Quốc Triều Thư Khế* (Legal Forms in Use under the Lê); the *Hồng Đức Thiệu Chính Thư* (Book of Good Government of the Hồng Đức Period), consisting of laws and decrees and summaries of cases; the *Quốc Triều Chiếu Lệnh Thiệu Chính* (The Dynasty's Edicts and Decrees Promulgated for Good Government). The dynasty also produced procedural laws, such as the *Quốc Triều Khâm Tụng Điều Lệ* (Procedural Code of the Lê Dynasty), consisting of important procedural rules classified into 31 chapters (Ta Van Tai 1989, p. 40; Yu 1990, p. 5). The Lê Code reflected the socio-political realities of Vietnamese society, incorporating many distinctively Vietnamese popular customs and practices and making significant contributions to the legal tradition of East Asia' (Ta Van Tai 1982, p. 525; Yu 1990, p. 5). The Lê Code represented the culmination of a long process of political, social, and legal development from the beginning of the country's history and many of its provisions have remained influential in contemporary Vietnam (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 2).

In addition to implementing administrative measures, the government also attempted to control the population through moral teachings and constraints. Thus, as Nguyen and Tạ Van Tai (1987, p. 61) report,

Vietnamese lawmakers of the Lê dynasty put greater emphasis than their Chinese counterparts on codes of ethics by which they hoped to enforce moral norms for all kinds of social classes: they promulgated two such codes in 1474 and 1663 with specific moral rules for specific categories of persons. They were especially anxious to protect the prestige and moral authority of the bureaucrats vis-à-vis the people.

The *Nguyễn* dynasty was the last imperial dynasty in Vietnam. In 1811, the Gia Long Emperor appointed a commission that drafted the *Nguyễn* dynasty code, the *Hoàng Việt Luật Lệ* (Laws and Decrees of Imperial Vietnam), also known as the Gia Long Code (Ta Van Tai 1989, p. 40). Many of the Lê Code's prescriptions remained under the *Nguyễn* dynasty, but the Vietnamese population continued to 'live by their own norms' (Young 1979, p. 771) and customs that were popular at the time contradicted the official laws of the *Nguyễn* Code (Ta Van Tai 1982, pp. 551–552). Tạ Van Tai (1982, pp. 551–552) suggests that this contradiction explains the popular saying '*phép vua thua lệ làng*' (the laws of the Emperor have to give way to village

customs). This adage also indicates that there was already a conflict between official laws and customary laws in Vietnam at the time.

In the *Lê* and *Nguyễn* laws, public officials were granted specific privileges including lesser or milder penalties for guilty officials (Ta Van Tai 1989, p. 104; Yu 1990, p. 43). During the *Lê* dynasty, all guilty officials were granted a one-degree reduction in the penalty. The higher the rank of an official, the more exemptions from the normal procedure and sanctions of criminal law that this official would get (Ta Van Tai 1989, p. 104). The *Nguyễn* dynasty treated guilty public officials more favourably than other criminals, except in the case of serious crimes, including bribery (Ta Van Tai 1989, p. 104).

The *Lê* and *Nguyễn* codes contained procedures for suing judges, court clerks, and other judicial parties for denial of justice; they also instituted heavy penalties in an effort to deter judicial abuse and bribery (Ta Van Tai 1989, p. 230; Yu 1990, pp. 26; 28). For example, in 1662, Trương Văn Liñh, was punished with death for a bribe he previously received when he was deputy head of *Quốc Oai* Prefecture. The penalty was in conformity with Articles 14, 16, 17, and 138 of the *Lê* Code. Indeed, Article 138 punished with decapitation those guilty of taking bribes of 20 *quán* or more. Liñh's bribery, occurring during his term of office, was discovered only after his retirement, and his penalty, in accordance with Article 14, could have been reduced had his crime not involved corruption (Ta Van Tai 1989, p. 230). However, Article 14 of the *Lê* Code provided that '[a]s error or negligence was the foundation for redemption, the option of redemption also disappeared for intentional crimes such as corruption, deceit or forgery' (Ta Van Tai 1989, p. 250). These regulations show that, during imperial times, corruption was treated as a very serious crime.

Indeed, the *Lê* dynasty's laws paid close attention to the possibility of misconduct and oppression by officials, and also to the protection of ordinary citizens against governmental wrongdoing (Yu 1990, p. 17). For example, during the *Hồng Thuận* period (1509-1516), a series of Confucian-oriented decrees were issued such as the [Treasures for Good Government], distributed in 1511 (Yu 1990, p. 23). This decree included fifty articles aimed at improving law and order and stated that 'local officials must perform their duty faithfully and settle legal cases impartially' (Yu 1990, p. 23). The *Lê* Code chapter on 'Violations of Regulations' contained several articles that

imposed a strict standard for, and restrictions on, the behaviour of officials and other members of the ruling class. These articles were added to the provisions related to bribery or extortion of money normally found in all Chinese and Vietnamese traditional codes. Consequently, as Nguyen Ngoc Huy and Tà Van Tai (1987, p. 59) note,

A system of careful record keeping was instituted to keep track of the behavior and performance of all officials. They were held accountable for violating any rule in the official code of conduct: diligence, truthfulness in official reports, probity, protection of state secrets, respect for hierarchical authority, adherence to etiquette and maintenance of harmony with colleagues, and disinterestedness and impartiality. The officials were also restricted in their privileges, such as ownership of land and serfs.

The most significant restraints imposed on officials were those dedicated to preventing their possible misconduct and protecting citizens from potential abuses. Nguyen and Tà Van Tai (1987, p. 59) write:

The *Lê* Code cracked down on many types of abuses by officials, in their dual role of administrators and judges, such as collection of unauthorized contributions and excessive or illegal taxes; extortion of money from offenders who received pardon from the emperor; looting people's property, especially while exercising an alleged power to arrest them; [...] obstruction of justice by [...] protecting and not prosecuting powerful offenders [...]. The imperial clansmen and powerful families were warned against similar misuse of their power and position.

During the *Lê* dynasty, any violation by officials or courts of law could be criminally punished (Yu 1990, p. 17); and these laws were indeed respected in practice. Tà Van Tai (1989, pp. 43–44) argues that officials had no choice but to adhere to the statutory laws in order to stay clear of the statutory sanctions. For example, at the lowest level of government—the district—officials were required to have at their residence two volumes containing the laws of the country as well as a compendium of edicts, decrees, and orders. The *Lê* Code punished with decapitation officers or soldiers who, during a campaign, captured the enemy but released them for a bribe (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 64). The code also promoted impartiality

in the courts by minimising the opportunity for judges and clerks to take bribes or illegal fees (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 69). The *Lê* Code also called for officials who actively facilitated tax evasion and corvee levees to be punished 'with demotion or the heavy stick' (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 60). At the central government level, both higher officials who, during the establishment or review of the registers, 'delayed the process, interfered through messengers for private purposes, let errors persist in the registers, or carelessly lost them' and their subordinate clerks who made unjust classifications for a bribe would be condemned to penal servitude or exile (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 60).

During the seventeenth century, 'military-oriented policies and the decline of Confucian studies had resulted in the deterioration of civil bureaucracy, and the consequent exploitation of people by it, especially in the settlement of legal cases' (Yu 1990, p. 26). As Yu (1990, p. 30) puts it,

Most officials, at the capital or in the province, were corrupt, and even ministers and censors who were in positions of surveillance of the bureaucracy were only following their own personal interests. Judges were bribed with money or threatened by power. [...] Suffice it to say that under these circumstances, cases were not decided fairly, injustice brought society into disorder, and the people suffered from oppression.

Consequently, a new series of decrees aimed at prohibiting abuses of power, detailed the functions of officials at each hierarchical level and specified legal procedures in law suits (Yu 1990, p. 26). Yu (1990, p. 26) argues that no violation of these rules by officials was excused, and that people were allowed to accuse officials in the event of the latter's unfair actions. Some regulations were meant to improve bureaucratic transparency and required officials to submit reports on their activities and on all the legal cases to the ruler (Yu 1990, p. 28).

Yet, the issue of unfairness in legal procedures prevailed during the eighteenth century and was due to corruption among officials as well as interference from powerful groups (Yu 1990, p. 33). Therefore, new regulations from the second half of the eighteenth century—such as *Quốc triều hình Luật* and *Khám Tụng Điều Lê*—encouraged citizens to 'accuse nobles and officials of acts of oppression, the unfair settlement of legal cases, and so on' (Yu 1990, p. 33).

Regarding anti-corruption institutions, in traditional Vietnam, there was no separation between the general court system and the administrative judicial system; thus, public officials were, concurrently, judges (Ta Van Tai 1989, p. 232). As a remedy for this problem, an institution, the Censorate, was created to place a check on officials' abuse of powers, rights violations and misapplications of the law (Ta Van Tai 1989, p. 232). As Ta Van Tai (1989, p.232) notes, '[b]esides its judicial appeal function, the Censorate in both *Lê* and *Nguyễn* Vietnam played the role of the administrative inspectorate in modern Western countries or the procuratorate in communist regimes'.

Thus, in imperial Vietnam, corruption was defined as a breach of administrative procedures by officials. Although the anti-corruption approach at the time did not include prevention, corruption was punished by formal laws. These laws were used to deter officials from engaging in corrupt practices, and anti-corruption regulations specifically targeted abuse of powers by officials/mandarins. They were meant to protect citizens from these abuses, and violations were harshly punished. Anti-corruption norms were influenced by Confucian norms. These norms assumed that officials are morally perfected and that consequently, corruption involved a lack of moral rectitude, with morality being considered more important than legality. Although the state used laws and procedures to control bureaucratic behaviour, moral virtue was the overriding consideration. Furthermore, because of the influence of Confucianism, which promotes family as the most important element in society, some family-related practices, such as nepotism, were not considered corrupt.

This section has shown that, historically, the Vietnamese state has used laws not to establish models of behaviour, but rather to set penalties. Vietnam's imperial laws were based on Confucian principles, which prioritise morality and moral norms over formal laws when it comes to regulating corrupt behaviour. As will be examined in more detail in subsequent chapters, this regulatory approach is still predominant in contemporary Vietnam, where companies' managers rely more on moral norms than formal rules to regulate themselves. The present section has also highlighted the connection between virtue rule in neo-Confucian governance and morality-based approaches to corruption. As a result of this connection, some corrupt practices, even though they are prohibited by formal laws, can still be considered moral. There is also continuity between Imperial Vietnam's and contemporary Vietnam's anti-

corruption norms, given that the Communist Party still uses morality/virtue rule to regulate corruption within the Party—as will be discussed later in this chapter.

3. The French colonial period (1862–1945)

France colonised the southern province of Cochin China in 1862, but throughout the colonial period, the provinces of Annam (Central Vietnam) and Tonkin (Northern Vietnam) remained under the titular leadership of the *Nguyễn* emperors and were French protectorates (Gillespie 2002, p. 174; Nguyen Ngoc Huy & Ta Van Tai 1987, pp. 29–31; Taylor 2013, p. 484). However, Frederick (1973, p. 97) argues that there was little difference between a protectorate and a colony during this time, and that the French were dominant and had the power to legislate and administrate with similar ‘administrative ends’ in both—whether those in charge were Vietnamese or French officials.

Emperors were subject to the potential of being overridden by colonial officials, who had to endorse imperial edicts. Rural Vietnamese living in *Nguyễn*-controlled provinces continued to be governed by the mandarin and village notables (Gillespie 2002, p. 174; Nguyen Ngoc Huy & Ta Van Tai 1987, pp. 29–31; Taylor 2013, p. 484). This section first briefly explains the two legal systems that co-existed, i.e., the French-influenced system and the traditional Vietnamese system; explores the new forms of corruption that appeared during this period; and discusses the anti-corruption regulations that were promulgated at the time.

3.1. Two parallel legal systems

During the French colonial period, Vietnam’s legal system was a mix of French-influenced laws and Vietnam’s traditional code. During the reign of the Đồng Khánh emperor (r.1886-88), new criminal statutes and codes inspired by the French civil law system were promulgated to supplement Vietnam’s traditional codes (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 31). For example, the French promulgated the 1883 Abbreviated Civil Code (*Précis de Législation Civile*) for Cochin China, a code that had only a limited number of provisions related to personal status and family relationships. Thus, for matters not regulated by the 1883 Abbreviated Civil Code, the French courts still applied the *Nguyễn* Code and even the *Lê* Code. Later, the French promulgated the 1918 Criminal Code for Tonkin, the 1921 Modified Criminal Code (*Code Pénal Modifié*) for Cochin China, and the 1933 criminal code for Annam

(Nguyen Ngoc Huy & Ta Van Tai 1987, p. 31). In Tonkin and Annam, the *Nguyễn* Code eventually became inoperative; it was repealed by Article 1954 of the 1931 Civil Code for Tonkin, and by Article 1708 of the Civil Code for Annam (promulgated in stages from 1936 to 1939) (Nguyen Ngoc Huy & Ta Van Tai 1987, p. 31).

Thus, there were two parallel administrative and legal systems, with a small percentage of Western-educated middle- and low-ranking indigenous government officials and business people mediating between the colonial leaders and the indigenous population (Gillespie 2002, p. 174). The *Lê* and *Nguyễn* codes retained a lasting influence among the French colonial courts in Vietnam. In these courts, the French 1883 Civil Code and statutory laws were used as well as the *Nguyễn* Code for subject matters not covered by the Civil Code (Ta Van Tai 1982, p. 552). The French colonial courts also occasionally used Vietnam's customary laws (Ta Van Tai 1982, p. 552).

3.2. New forms of corruption

By the late 1880s, Vietnamese society started to change, with new social relationships emerging under the influence of capitalism and colonialism (Vu Anh Dao 2017, p. 149). As discussed by Gillespie (2002, p. 174), corruption increased during the colonial period:

The authoritarian colonial state used universal laws instrumentally to impose order, without providing counterbalancing liberal democratic institutions capable of defining and policing boundaries between public and private interests. [...] By the end of the colonial period, French influence in urban centres had reordered traditional patterns of social organisation with Western bureaucratic institutions and processes. Located on the periphery of the colonial administrative map, the corporate village structures that had once moderated the behaviour of mandarins and village officials degenerated, giving rise to unprecedented levels of corruption, nepotism and patron-clientism.

During the Great Depression—specifically, during the period 1928-1931—the export of rice declined by 68 percent, creating new opportunities for corruption. MacLean (2013, pp.37–38) writes:

This decline led to a dramatic jump in the number of people seeking seasonal employment as ‘workers’, which reportedly increased from approximately fifty thousand to over two hundred thousand during this period. The resulting competition meant that communist activists in the nascent but still clandestine ‘red’ trade union movement were heavily dependent on close relatives and sympathetic figures to help them obtain jobs. This challenging task frequently required ‘presents’ (bribes), often equal to one month’s salary, to be given to Vietnamese foremen.

Corruption during colonial times was so prevalent that, in 1923, the radical Vietnamese political journalist and publicist Nguyễn An Ninh launched a new newspaper, *La Cloche Fêlée* (The Cracked Bell), in which he campaigned against colonial injustice and corruption (Frederick 1973, p. 127; Kiernan 2017, p. 346). Even some Saigon newspapers mentioned ‘charges of malfeasance of one sort or other directed against some highly placed official or prominent merchant’ (Kiernan 2017, p. 346). Furthermore, in 1922, the journalist and politician Nguyễn Phan Long wrote for *L’Echo Annamite*—a newspaper directed to Vietnamese public servants and intellectuals whose goal was to ‘serve the superior interest of France and Indochina’—to express his concern with the French administration’s corruption (Frederick 1973, pp. 122–123).

3.3. Anti-corruption regulations

During colonisation, the French rulers tried to displace centuries of virtue rule with European legal norms and institutions. Law was the primary written record of government policy, and its implementation required a complex administrative and judicial system (Gillespie 2002, p. 174). However, Western state institutions suffered from a lack of legitimacy among the Vietnamese population; they were associated with colonial repression by all but a few of the urban intelligentsia (Gillespie 2002, p. 174).

Thus, the French approach to corruption was essentially rule-based. It contrasted with the former emperors’ anti-corruption approach, which was based on a mix of virtue/morality rule and criminal penalties prescribed by laws. The anti-corruption regulations implemented by the French were largely ineffective, in part because they lacked legitimacy among the Vietnamese population, which was used to relying on virtue rule to regulate their behaviour. Young (1979, p. 770) argues that there was a

gap between the Vietnam population and the ruling class, and that Vietnam 'consisted of self-contained villages linked together by a neo-Confucian bureaucracy staffed by a gentry class and supported by indirect taxes'. French law (with the exception of criminal law) did not apply to the indigenous population, and only influenced the large colonial centres (Saigon, Hanoi, Tourane (Da Nang)). After Vietnam gained its independence, the colonial laws were eventually abolished, and officials trained during the colonial period were purged. There is very little evidence of the French legal system in Vietnam's current anti-corruption norms.

4. The high socialist period (1945–86)

The revolutionary period brought about a complete rupture from colonial legal institutions, and radically changed the neo-Confucian legacy. At the end of the war for independence in 1954, Vietnam was separated into two military zones, with the French forces and the state of Vietnam army regrouping south of the seventeenth parallel and the People's Army of Viet Nam forces and the Democratic Republic of Vietnam (DRV) establishing themselves in the North (Kiernan 2017, p. 391). As a result, Vietnamese society became more fragmented (Jamieson 1993, p. 213). Jamieson (1993, pp. 213–220) uses the term 'supervillages' to describe this process: regions became semiautonomous 'states within states' that 'closed and maintained their boundaries by a potent combination of inflated ideological rhetoric, armed militias, and a resurgence of in-group solidarity'. Each of these supervillages had its own politico-religious centre, its own charter, and its own sets of mutual obligations and expectations.

Prior to the 1950s, centralised administrative rule did not directly impact how the villages governed themselves (MacLean 2013, p. 8). Local-level cadres sometimes did not understand the documents issued by high-level officials to guide local affairs, or else they resisted or ignored them (MacLean 2013, pp. 8–9). Moreover, because of the shortages caused by the planned economy, and the constant bargaining over and hoarding of resources, rural populations could not carry out what the central government asked them (MacLean 2013, pp. 8–9). Until reunification in 1975, South and North Vietnam used different legal systems. Both South and North Vietnam faced corruption issues, but their respective governments' approach to corruption

differed. This section examines corruption and anti-corruption initiatives in South and North Vietnam during the high socialist period.

4.1. South Vietnam

In the 1950s, the Republic of Vietnam created a relatively effective administrative structure, but lacked the ability to generate a genuine sense of commitment on the part of the population (Jamieson 1993, p. 228). For Jamieson (1993, p. 228), the Republic of Vietnam was ‘the very antithesis of a “supervillage”’: ‘a bureaucracy that embodied principles that related in no fundamental way to the family and village paradigms of Vietnamese culture’. It was ‘an impersonal bureaucratic machinery’ where corruption and malfeasance in office was widespread.

The ‘American War’ developed new opportunities for southern bureaucrats to engage in corrupt practices (Vu Anh Dao 2017, p.13). In the 1960s, the salary of the lowest-ranking American official was enormous by Vietnamese standards (Jamieson 1993, p.293). The massive American presence was an economic disaster for those groups within the population, such as civil servants, who did not work for the Americans and who experienced a severe loss of economic well-being (Jamieson 1993, p.294). The consumer price index for working-class families increased drastically, whereas wages and salaries increased very slowly, especially for government employees (Jamieson 1993, p.295). Civil servants usually had a second job during their off-duty hours, and also solicited bribes to make ends meet (Jamieson 1993, p.295).

French legal institutions remained in place in South Vietnam until reunification (Gillespie 2002, p. 175). Thus, the anti-corruption approach of South Vietnam’s government was a rule-based approach. After reunification, the French system was replaced by an imported Soviet legal system (Gillespie 2002, p. 175).

4.2. North Vietnam

In North Vietnam, the Indochinese Communist Party (ICP) spearheaded Vietnam’s declaration of independence in 1945. The ICP aimed to replace the colonial state with revolutionary organs (Marr 2013, pp. 28–29). The ICP’s revolutionary ideology was inspired by the Soviet Union and China; it emphasised the central role of the Communist Party in ‘implementing policy through mass-mobilisation campaigns rather than bureaucracies’ (Gillespie 2002, p. 175; Taylor 2013, p. 566). The DRV

created a National Assembly, military and civil courts, and other legal institutions imported from the Soviet Union, such as State Economic Arbitrators and Procurators (Gillespie 2002, p. 175; Marr 2013, pp. 28–29).

The distinction between the CPV and the North Vietnamese state and their respective roles in elaborating and enforcing laws, were not clearly defined (Gillespie 2002, p. 175; Marr 2013, p. 28). Only a limited number of laws were passed by the early National Assembly and ‘the issue of party subordination to state law had little practical relevance, since there were few laws’ (Gillespie 2002, p. 175). Law and party policy were interchangeable, and implementing agencies did not make a distinction between them. Moreover, the responsibilities between party committees and state administrators overlapped (Gillespie 2002, p. 175). As Sidel (2008, p. 1) put it,

[L]aw was severely repressed, undervalued and used as an instrument of Party policy during this era. The Vietnam Workers Party, later the Vietnamese Communist Party, directed the legal system often down to the individual trial level, in much the same way that the Party not only led but directed, or at least sought to lead and direct, often at the micromanagement level, many other elements of Vietnamese economic, political, military and social life.

Following reunification in 1975, the revolutionary nature of party rule became increasingly unsuited to the tasks of managing a modern state with a professional bureaucracy (Gillespie 2002, p. 175; Vasavakul 1997, p. 337). Questions were raised during the Fifth and Sixth Party Congress about whether revolutionary ideology should continue to dominate state institutions. This section explores corruption and anti-corruption regulations in North Vietnam during the high socialist period.

4.2.1. Corruption in socialist North Vietnam

During the high socialist period, North Vietnam’s bureaucracy suffered from red tape, incompetence, inefficiency, duplication, profligacy, corruption, abuse of power, and clientelism (Beresford 1988, pp. 163–164, 172). As MacLean (2013, p.6) writes,

The ‘governing documents’ (decrees, orders, decisions, resolutions, instructions, circulars, and so on) central- and provincial-level officials issued

dictated how resources were to be allocated downward. [...] Ideological concerns often overrode pragmatic ones [...] and since bureaucratic decision making rather than supply and demand determined the redistribution of material resources, chronic shortages became a defining feature of everyday life.

During the period in which the Soviet command and control planning system was used, most corruption related to the diversion of goods. Before the start of *Đổi Mới* reforms, approximately forty per cent of state-produced goods passed through non-state distribution channels (Gillespie 2002, p. 168).

4.2.2. Anti-corruption regulations

As noted previously, Confucianism gave rise to moral norms that continue to influence Vietnamese officials and citizens' attitudes towards corruption and determine what practices are considered as immoral/corrupt. As a result, Confucianism has shaped the anti-corruption regulations implemented by Vietnam's successive governments since imperial times. However, the development of socialism introduced new moral norms associated with Marxism. During the high socialist period, because there was no private sector, anti-corruption laws focused on the misappropriation of socialist property (*tài sản xã hội chủ nghĩa*) into illegal private markets (Gillespie 2002, p. 168). Thus, as Gillespie (2001, p.18) notes, the Penal Code 1986

raised the state's interests above all others, reserving especially severe penalties for crimes against state sovereignty, property and administrative processes. It also criminalised activities 'sabotaging the infrastructure of socialism in the area of politics, security, national defence, economy, science and technology, culture or social affairs' and 'the realization of state plans in the area of socioeconomic affairs'.

Young (1979, p. 770) suggests that neo-Confucian mandarins became Marxist administrators. Gillespie (2001, p. 3) writes:

Official explanations for corruption are usually framed in theoretical terms as deviations from Marxist-Leninism. Like their neo-Confucian predecessors, contemporary rulers attribute corruption to moral lapses in officials. For this

reason, moral campaigns combating corruption especially target party members, who are expected to lead society through exemplary behaviour. Criticism, self-criticism and ideological purification campaigns are the major weapons in the party's anti-corruption arsenal.

Marxism shares similar frames of reference with Confucianism, such as the belief in 'collective discipline' and the 'fulfilment of social obligations' (Gillespie 2002, p. 183; Young 1979, p. 774). Even if neo-Confucian morality conflicted in some respects with the Marxist-Leninist principles of state ownership and class struggle, it strongly influenced Marxist-Leninist party-state relationships in Vietnam (Gillespie 2002, p. 183). The CPV drew heavily upon the neo-Confucian principle of 'exclusive righteousness' (*chính nghĩa*) and the concept that 'superior men' are morally obligated to lead society (Gillespie 2002, p. 183). Accordingly, high-ranking party officials were obliged to act as moral exemplars for the rest of the society, with '[p]arty authority and legitimacy [depending] on the public believing assertions of moral rectitude' (Gillespie 2002, p. 184). Lê Duẩn, the General Secretary of the CPV's Central Committee between 1960 and 1986, wrote in 1974 that Leninist doctrine served as 'a new neo-Confucian mold for the social organization of Vietnam' (cited in Young 1979, p. 777). Like the mandarins who had to 'lead the people to virtue', the cadres of the CPV were to be 'the vanguard for the Vietnamese leading them to a better social order' (Young 1979, p. 777). Thus, Article 2(2) of the CPV Statute adopted in the CPV's 9th National Congress on 22 April 2001 provides that in one's role as a state official, one must 'constantly study and steel oneself to improve one's knowledge, working ability, political quality and revolutionary ethics; adopt a wholesome lifestyle; struggle against individualism, opportunism, departmentalism, bureaucracy, corruption, wasteful spending and other negative phenomena' (Gillespie 2002, p. 184).

Thus, the CPV's anti-corruption approach resembled, at least in certain aspects, pre-colonial morality-based regulations. There is continuity between anti-corruption norms adopted before and during Vietnam's socialist period, with the latest norms being influenced by both Confucianism and Marxism. With both ideological frameworks informing anti-corruption approaches in North Vietnam, corruption during the high socialist period corresponded to a lack of moral rectitude by public officials. Thus, anti-corruption norms since the beginning of the socialist period aimed to

promote, among public officials and party cadres, moral rectitude as well as loyalty to the CPV and the revolution.

5. Post-1986: the *Đổi Mới* reforms period

In 1986, the Vietnamese government launched the *Đổi Mới* ('renovation') program aimed at progressively transitioning towards a 'socialist market economy' through market reform and integration with the world economy (Painter 2005, p. 267). The end of Soviet aid in 1989 also forced Vietnam to attract other sources of investment and engage with the non-communist world (Gillespie 2002, p. 175). For Beresford (1988, p. 79), 'the economic crises of the 1980s have led to a renewed drive to eliminate bureaucratism, arrogance and corruption in an attempt to revitalize public confidence in the Party's leadership'. The key aspect of the *Đổi Mới* reforms was the dismantling of the command economy and the legalisation of private commerce. *Đổi Mới* consists of macroeconomic policies designed to encourage private investments, notably from foreign companies. Examples of these policies include the decrease of price controls on agricultural goods, improvements in property rights, the devaluation of the Vietnamese Dong, and the allocation of financial resources (through subsidies, preferential bank loans, land speculation, and other means) to SOEs for purposes of industrialisation (Tromme 2016, p. 289).

Despite the reforms introduced during the *Đổi Mới* period, there is continuity with the high socialist period that defined bureaucratic corruption as 'the misuse of official power for private advantage (public-office corruption) causing an unacceptable degree of harm to *trật tự pháp luật xã hội chủ nghĩa* (socialist legal order)' (Gillespie 2001, p. 9). '[P]arty guidelines, state policy, the interests of citizens, community and state' continue to be the elements used by procurators to classify behaviour into either criminal or administrative offences (Gillespie 2001, p. 9). For example, '[n]on-political administrative abuses causing low levels of harm to [*trật tự pháp luật xã hội chủ nghĩa*] attract administrative sanctions (Order No 41-L/CTN 1996: art. 1)' (Gillespie 2001, p. 9).

The following sections provide an overview of Vietnam's Communist Party-led political system as well as its business system since the *Đổi Mới* reforms, explaining how these two systems are interrelated—and thereby create an environment conducive to corruption. The increase in corruption following the *Đổi Mới* reforms

created political problems that encouraged the government to introduce new anti-corruption reforms based on global anti-corruption norms.

5.1. Understanding Vietnam's Communist Party-led political system

Vietnam is a one-party state headed by the CPV. The National Party Congress is the highest body of the CPV; it elects the Central Committee, in which political power is formally vested (Gainsborough 2010, p. 10). The Central Committee elects the Politburo and the general secretary of the Party (Gainsborough 2010, p. 10). The Politburo runs party affairs (Gainsborough 2010, p. 10). The general secretary of the CPV, the president, the prime minister and the chairman of the National Assembly, Vietnam's parliament, are all members of the Politburo (Gainsborough 2010, p. 10). The CPV sets policy direction, which the government implements. The government is accountable to the National Assembly and reports both to the National Assembly and to the president (Gainsborough 2010, p. 10). The present section explains how this complex system creates legal confusion. It also discusses how Vietnam's political system conflicts with global anti-corruption norms due to the difficulty of differentiating the CPV from the state and the lack of boundaries between the public and private sectors.

5.1.1. Differentiating the Party from the state

In effect, in Vietnam, there is no separation of powers between the Party and the state because the CPV is the only legal party; it has control over Vietnam's strategic policies and state institutions (Vu Anh Dao 2017, p.21, 23). Sidel (2008, p. 2,18) suggests that the CPV dominates, without opposition, Vietnam's government and ministries, law, legal system, economic life and social life. According to the 1992 Constitution¹¹, the CPV organs are required to operate within the framework of the state's law while the National Assembly, in constitutional theory though not in practice, is the highest ranking organization of the state and the only body with constitutional and legislative powers (Gainsborough 2010, p. 10; Gillespie 2002, p. 168). However, the 1992 constitution does not clearly define party-state relations, and the lack of a clear distinction between the CPV and the state undercuts the effectiveness of anti-corruption laws (Gillespie 2002, pp. 175–176). Furthermore, the

¹¹ Vietnam's communist government promulgated five successive constitutions in 1946, 1959, 1980, 1992, and 2013 (Bui Ngoc Son 2018, p. 137).

2013 Constitution did not fundamentally change Vietnam's political regime, which remains the same today (Bui Ngoc Son 2018, p. 176).

Vietnam's dualistic legal ideology creates legal confusion (Gillespie 2001, p. 23). Bui Ngoc Son (2018, p.168) argues that '[t]he 1992 Constitution and the Vietnamese communist party's constitutional rhetoric included ambiguous and contradictory language which lacked substantive meanings', such as 'the ambiguous and broad language of "socialist rules of law state"'. She adds that there is a 'contradictory constitutional confirmation of both the supreme position of the National Assembly and the leading role of the Party to call for curtailing the party power in favor of parliamentary supremacy' (Bui Ngoc Son 2018, p. 168).

Although the government has implemented 'rational' legal instruments, the 'Marxist-Leninist "socialist legality" (pháp chế xã hội chủ nghĩa) doctrine, which for decades expounded the three tenets of socialist governance—the people as owners, the party as leader, and the government as manager—unequivocally remains in place' (Gillespie 2001, pp. 23–24). The Party Statute provides that 'the Government and its party affairs sections take collective action and responsibility [sic] against corrupt cadre to ensure the principles of democratic centralism'; possible sanctions include 'self-criticism', demotion, and expulsion from the Party (Gillespie 2002, p. 187). Gillespie (2002, p. 187) points out that the Party Statute 'does not indicate whether party rules apply before, after, or in addition to state laws'; nor does it provide clear information regarding the relationships between the Party and the state investigations. It seems that state prosecution is allowed only in the case where party discipline removes immunity from their party members (Gillespie 2002, p. 187). Furthermore, in 2013, the CPV established an anti-corruption body, the Central Steering Committee on Anti-Corruption, headed by the CPV's General Secretary himself (Malesky & Pham Ngoc Thach 2019, pp. 103–138). Thus, the lack of separation between the CPV and the state and the fact that the CPV and the state's anti-corruption prerogatives are intertwined conflict with global anti-corruption norms, which promote and assume a clear separation of powers.

5.1.2. The lack of boundaries between the public and private spheres

In socialist transforming societies, such as Vietnam, there are no clear economic boundaries between the public and the private sectors. With Gillespie et al. (2020, p.

580) suggesting that, in Vietnam, the boundaries between public and private property are not clearly defined. Gainsborough (2010, p. 43) makes a similar claim:

it is usually impossible to determine where bureaucratic interests end and business interests begin, either because they are one and the same or because bureaucratic institutions with gatekeeping responsibilities in one area have businesses operating in that same area.

He suggests that 'any attempt to separate out public interests from private interests is likely to end in failure' (Gainsborough 2010, p. 92). For example, the state tightened its control over enterprise assets in the second half of the 1990s through the creation of the State Capital Management Department under the Ministry of Finance and the initiative to establish general corporations (*tổng công ty*) (Gainsborough 2010, p. 75). The development of general corporations was originally meant to 'create economies of scale by grouping enterprises in a similar sector so that they could compete on the international stage' (Gainsborough 2010, p. 75).

The intermingling between the public and private sectors is described by Hoang (2018, p. 662), in her study on the relationships between the state and private investors in Vietnam's real-estate market. She (Hoang 2018, p. 662) suggests:

the relationships between the private and public sectors are often murky and highly contentious. These relations involve entrepreneurial practices where public officials and private investors provide social services while simultaneously lining their pockets.

Adding to this point, Hun Kim (2017), in his study of Vietnam's urban development, explains that during the first half of the 1990s, major urban development projects involved joint-stock ventures between SOEs and private investors from East and Southeast Asia where SOEs 'used land as invested capital, while foreign partners brought capital as well as planning and construction expertise' (Hun Kim 2017, p. 673). He also points out that despite free-market reforms, 'the state still technically owns all land in the country' and argues that state agencies and urban developers negotiate urban development regulations together (Hun Kim 2017, p. 671).

In reality, although Vietnam's government has introduced free market reforms, the overriding regulatory objective has been to preserve the state benefit and to allow

the CPV to maintain most of its authoritarian control (Gillespie 2002, p. 178; Vu Anh Dao 2017, p. 22). Privatisation only occurred for the smaller state enterprises, and only a small percentage of state companies have been privatised since the early 1990s (Gainsborough 2010, p. 89). Even after privatisation, in practice, the state retains a high percentage of the privatised company shares (Gainsborough 2010, p. 89). By 2013, SOEs accounted for about a third of the economy, and they contributed almost 30% of the growth in GDP from 2005 to 2013 (Kunmin Kim & Nguyen Anh Tru 2019, p. 4). Gainsborough (2010, p. 82) even suggests that Vietnam's business environment is characterised by the existence of monopolies or oligopolies in key sectors, as well as a poorly developed financial sector. He also suggests that there is a conflict of ideologies between a market economy and the socialist political system. Making a similar argument, Segon, Booth and Pearce (2010, p.8) argue that Vietnamese businesses receive 'contradictory ideological messages' about, on the one hand, the commercial freedom conveyed by the *Đổi Mới* reforms and, on the other hand, the need for socialist-type 'state economic management'. The lack of a clear separation of powers between the CPV and the state, and the absence of boundaries between the public and private spheres, help explain why the implementation of global anti-corruption norms in Vietnam has not produced the expected outcomes. This argument is supported by Bui Ngoc Son (2018, p. 143), who suggests that the leading role of the state-owned economic sector and the state's ownership of all lands promoted by the 1992 Constitution are inconsistent with market-based rules, and the root cause of corruption and social conflicts.

5.2. The increase of corruption following *Đổi Mới*

While corruption was common during the period of the socialist command economy, the *Đổi Mới* market reforms created new opportunities for corruption (Gillespie 2002; Tromme 2016, p. 287; Wescott 2003). Following the *Đổi Mới* reforms, the state could no longer simply suppress markets in order to curb corruption. Although party leaders were familiar with the corruption that permeated the command economy, the structural changes required to prevent corruption in a mixed-market economy lay beyond their experience.

According to Gainsborough (2010, pp. 53–54), many studies explain the increasing corruption since *Đổi Mới* in terms of close political-business relations; insufficient

reform, including regulatory loopholes resulting from the transition from plan to market; decentralization; poor legal implementation; and a decline in ethical standards among public officials. Other scholars suggest that corruption increased with the privatisation of public assets and the creation of private markets. Following the *Đổi Mới* reforms, trading activities that had previously been considered corrupt, were suddenly encouraged, multiplying the opportunities for officials to participate in the economy in corrupt ways (Gillespie 2001, p.1). The wave of privatisation initiated at the start of the *Đổi Mới* reforms mostly benefited party cadres and the elite, reinforcing existing socio-political structures (Gillespie 2002, p. 168; Wouters, Ryngaert & Cloots 2013, p. 211). A new business elite has emerged from the existing system; it includes public officials and their relatives (Gainsborough 2010, p. 16).

Vu Anh Dao (2017, p.154) suggests that while free market policies have produced a wealthy class and economic growth, they have also created a desire among citizens to raise their standard of living, even if this requires using unethical means. The policies have thus changed citizens' social/moral values (Vu Anh Dao 2017, p.154). For instance, new types of social relationships and networking ('based on mutual responsibility and benefit and cultivated by the exchange of favours and gifts') have developed to facilitate access to certain types of goods, that would be inaccessible otherwise, potentially encouraging corruption (Vu Anh Dao 2017, p.15).

The *Đổi Mới* reforms also increased the size of state bureaucracy in terms of public sector employment, creating new opportunities for corruption in that domain as well (Gainsborough 2003, p. 73; Nawaz 2008, p. 4). Through a decentralisation process, local authorities have obtained more responsibilities and also greater discretion in managing their spatial and economic development (Hun Kim 2017, p. 672; Nawaz 2008, p. 4). This decentralisation process has also provided local officials with 'considerable discretion' to ask for bribes for issuing licenses and permits, increasing global administrative corruption (Nawaz 2008, p. 4). Decentralisation has also produced uncertainty and fragmented processes with 'overlapping jurisdictions, unbounded roles and responsibilities, and the simultaneous operation of multiple legal orders' (Hun Kim 2017, p. 673).

Expanding on this point, Nawaz (2008, p. 1) argues that Vietnam's opening to a market economy has increased corruption in the administrative, political, judicial and private sectors. He argues that Vietnam's fast economic growth has put pressure on institutions originally conceived for 'a centrally planned command economy'. Nawaz (2008, p. 2) adds that corruption, notably corruption in business transactions, is a common characteristic of 'fast-growing economies'. Indeed, fast economic growth increases the demand for administrative processes, such as the delivery of permits and licences, and therefore increase opportunities for corruption (Nawaz 2008, p. 3). In this sense, political, legal, and economic reforms have not developed as quickly as the business sector creating a gap between the law and business practices as well as legal loopholes (Wouters, Ryngaert & Cloots 2013, p. 211). Adding to this point, Sato (2009, p. 221) argues that in periods of economic transition,

a rapid and abrupt incoming cash flow supersedes the pace of political and economic reform [...] so that the gap between the new laws and [the] legal system on the one hand, and the reality of the local culture and people's consciousness on the other, is filled with an escalation in corruption.

Transitional periods also create confusion among the judiciary vis-à-vis the application of new laws, creating opportunities for judicial corruption (Nawaz 2008, p. 6). Malesky and Pham Ngoc Thach (2019, p. 139) also point out that the *Đổi Mới* reforms have created 'legal grey zones that facilitated the rise of corruption and rent-seeking'. For Tromme (2016, p.290) 'marketisation, internationalisation and decentralisation created more opportunities for both bribe-takers and bribe-givers to extract lucrative *rents*'. Officials and their connections took advantage of 'obscure and inconsistent policies and laws' (Tromme 2016, p.291).

5.3. Political problems caused by corruption

From the 1990s, increasing corruption following the *Đổi Mới* reforms caused a legitimacy crisis within the CPV. Notable corruption scandals, such as the Tamexco scandal in 1996 (Tromme 2016, p. 288), added to this crisis. Rampant corruption was regarded by the CPV leaders as 'a national calamity' that undermined economic reforms and the confidence in the Party and the state (Gillespie 2002, p. 167; Tromme 2016, p. 288). Malesky and Pham Ngoc Thach (2019, p. 138) suggest that the Vietnamese Government believed that corruption jeopardized the CPV's survival. This belief was justified by the normative requirement that high-ranking party officials

must act as moral exemplars for the rest of the society (Gillespie 2002, p. 184). Thus, in order to regain legitimacy, from 1994, Vietnam's government started introducing legal reforms aimed at improving the efficiency of public services and reducing corruption (Tromme 2016, p.290). It initiated new anti-corruption reforms based on the transfer of global anti-corruption norms.

6. The post- *Đổi Mới* reforms period: the transfer of global anti-corruption norms

The Vietnamese Government has advanced several anti-corruption initiatives since the 1990s. At first, these initiatives focussed on public corruption and followed the orthodox anti-corruption approach; later legal reforms targeted business practices. This section explores the various anti-corruption measures implemented by the government since 1990, discussing the normative approaches used by the government. The section also examines how the transfer of global anti-corruption norms conflicts with Vietnam's ideological and institutional frameworks, hindering the effectiveness of these norms in Vietnam.

6.1. Vietnam's anti-corruption reforms since *Đổi Mới*

Responding to pressures from IOs, the anti-corruption reforms initiated in the 1990s first targeted public services. They aimed at reducing bureaucratic discretionary powers and simplifying administrative procedures. Then, from the beginning of 2000s, the government introduced new reforms aimed at gaining access to international markets. These reforms started to incorporate measures geared to the private sector. In addition, the government implemented regulations to increase transparency among public officials and enhance access to public information; it also encouraged the public to come forward with complaints about corruption. These anti-corruption initiatives included, too, the creation of anti-corruption bodies.

6.1.1. Public service reforms

In the early 1990s, the government produced legal documents targeting corrupt practices, such as Decision No. 240/HDBT (1990) and Prime Minister's Decision No.114/TTg (1992), which focused on the dangers of corrupt activities and smuggling (Malesky & Pham Ngoc Thach 2019, pp. 103–138). In 1994, with the funding from IOs, the Vietnamese Government initiated the Public Administration Reform (PAR) program. This reform aimed to create a 'dependable system of rule-

bound public administration' (Painter 2003, p. 259). To tackle bureaucratic corruption, PAR, sought to professionalise public officials and to prevent them from making corrupt decisions by streamlining bureaucratic processes and establishing bureaucratic behavioural standards (Gillespie 2002, p. 167; Painter 2003) (see the Ordinance on Anti-Corruption and Public Employees 1998). PAR also simplified various business regulations, such as procedures for establishing a company, and for submitting permit and licence applications (Martini 2012, p. 2). The key point of PAR was to reduce bureaucratic discretionary powers.

Another key point was the amendment of the Penal Code 1995 to include banking and environmental offences among the recognised violations of public duty (Gillespie 2002, p. 167). These statutes used public-duty definitions of bureaucratic corruption to criminalise 'behaviour that consciously deviates from formal duties and accepted norms for private advantage' (Gillespie 2002, pp. 167–168). Article 1 of the Ordinance on Anti-Corruption 1998 also defines corruption as 'taking advantage of "responsible positions" [*vị trí có trách nhiệm*] and "state power" [*quyền lực nhà nước*] to embezzle, accept bribes or otherwise obtain a personal benefit' (Gillespie 2002, p. 176). Similarly, Article 277 of the Penal Code 1999 describes corruption as 'infringements upon the legitimate activities of agencies and/or organisations' by those 'taking advantage of position of power' for personal gain or 'violating the law' (Gillespie 2002, p. 176). Bureaucratic corruption is also considered as 'the misuse of official power for private advantage (public-office corruption) causing an unacceptable degree of harm to [*trật tự pháp luật xã hội chủ nghĩa*] (socialist legal order)' (Gillespie 2001, p. 9). In these regulations, corruption is composed of two elements: abuse of power and violation of the law. The regulations fit with PAR public-duty understandings of bureaucratic corruption (Gillespie 2002, p. 176).

Decree No 71/1998/ND-CP Promulgating Regulations on Exercising Democracy in the Activities of Agencies set up standards of bureaucratic reporting: agency heads were required to submit reports twice a year on the implementation of laws combating 'red-tape, authoritarianism, corruption, harassment of the people and weakness in the implementation of tasks, plans and law' (Gillespie 2002, p. 180). The government also simplified administrative procedures in ministries and agencies at the central and local levels, restructuring ministries through mergers, re-defining roles and functions, and making personnel procedures more transparent (Wescott

2003, p.259). In addition to the general inspectorate, several ministries were given anti-corruption prerogatives (Wescott 2003, p.259).

6.1.2. Reforms based on conditionalities

From the beginning of the 2000s, the government introduced new reforms to gain access to international markets. Vietnam further opened its economy internationally through the 2001 US-Vietnam Bilateral Trade Agreement and its accession to the WTO in 2007 (Malesky & Pham Ngoc Thach 2019, pp. 103–138). Meanwhile, the government developed an anti-corruption legal framework to bolster its legitimacy and satisfy international partners and investors' requirements (Malesky & Pham Ngoc Thach 2019, pp. 103–138). The government implemented a revised Anti-Corruption Ordinance in 2002 (Malesky & Pham Ngoc Thach 2019, pp. 103–138).

In order to join the WTO and attract foreign direct investment, the Vietnamese government also enacted various laws related to the business sector, such as the Competition Law (2004), the Enterprise Law (2005), the Law on Procurement (2005), the Law on Thrift and Anti-Waste (2005) and the Anti-corruption Law (2005) (ACL 2005) (Fruitman 2013, pp. 128–129; Malesky & Pham Ngoc Thach 2019, pp. 103–138). The ACL 2005 criminalises several types of corrupt practices (Malesky & Pham Ngoc Thach 2019, pp. 103–138). The issue of corruption was also included in the resolution of the 3rd Plenum of the Party Central Committee (10th term) in August 2006.

In 2009, the Vietnamese government ratified UNCAC, revised the ACL (2005) and the Law on Procurement, and initiated the National Strategy for Anti-Corruption Towards 2020 (Malesky & Pham Ngoc Thach 2019, pp. 103–138). While Vietnam's anti-corruption measures up to that point had mainly focused on the public sector, the National Strategy for Anti-Corruption Towards 2020 includes the construction of a fair and competitive business environment among its goals (Martini 2012, pp. 6–7). Since initiating the National Strategy, Vietnam has participated in various regional and international forums targeting corruption (Martini 2012, p. 7).

In 2009, the government promulgated Decision 137, which mandates compulsory anti-corruption training at all educational levels (Malesky & Pham Ngoc Thach 2019, pp. 103–138). Simultaneous CPV decisions authorised government officials to dismiss corrupt provincial People's Committee (PCOM) Chairmen and ministers via

the National Assembly (Malesky & Pham Ngoc Thach 2019, pp. 103–138). The Government Inspectorate and the World Bank also created the ‘Vietnam Anti-Corruption Initiative Program’ in 2011 (Martini 2012, p. 8).

In addition, the new Vietnamese Penal Code introduced in 2015 provides anti-corruption regulations, which target ‘office-holders in enterprises and organizations other than state organizations’ in its corruption section (WIPO Lex 2015). This Code indicates that Vietnam is moving towards adopting a broader understanding of corruption that goes beyond public officials’ practices to include the private sector. Some anti-corruption provisions are also found in the following laws: the Law on Public Officials and Civil Servants (2008), the Law on Public Employees (2010), the Land Law (2013), the Public Investment Law (2014), and others (UNDP 2017, p. 29).

Freedom House (2016) argues that the reduction of corruption and the increase of transparency among SOEs has become an economic priority for the Vietnamese Government. Several party and civil service reforms aimed at reducing corruption and increasing accountability were announced at the 6th Plenum of the 12th CPV on 11 October 2017. These reforms included ‘streamlining party institutions, by eliminating the overlapping executive functions of the Party Secretary and People’s Committee Chairman at the district and commune levels of government’, and reducing the size of civil service by 25% while increasing the competitiveness of and remuneration for the remaining officials (Malesky & Pham Ngoc Thach 2019, pp. 103–138).

On 1 July 2019, a new anti-corruption law No. 36/2018/QH14, dated 20 November 2018 (ACL (2018)), came into effect, and Decree No. 59/2019/ND-CP (Decree No. 59) was enacted to provide details for the implementation of the ACL (2018) (Thuy Hang Nguyen & Minh Tri Quach 2019). This new regulation replaced the former regulation on receiving and giving gifts (Decision No. 64/2007/QD-TTg). The ACL (2018) also contains new provisions to prevent conflicts of interests among public officials, providing details about the circumstances in which former public officials can work with non-state enterprises following their resignation or retirement from public office (Thuy Hang Nguyen & Minh Tri Quach 2019; Vi T Vu et al. 2019). The new regulations also require that non-state enterprises that rely on public capital on a large scale—namely, publicly held companies and credit institutions—establish

internal rules and methods to ensure openness and transparency within their operations (Thuy Hang Nguyen & Minh Tri Quach 2019). These methods include internal policies governing conflicts of interest, as well as policies requiring heads of organisations and their deputies to detect and prevent corruption (Vi T Vu et al. 2019). Such companies are now subject to investigation by government inspectorates (Vi T Vu et al. 2019).

This new anti-corruption legislation also targets the private sector. It provides that heads or deputies of non-state enterprises are liable for corruption activities committed by their employees (Thuy Hang Nguyen & Minh Tri Quach 2019). It gives non-state enterprises the right to impose appropriate sanctions and disciplinary measures on heads and deputies who have allowed corruption to occur within their enterprises (Thuy Hang Nguyen & Minh Tri Quach 2019). However, the ACL (2018) leaves it to companies' discretion to determine what disciplinary measures and sanctions are appropriate (Vi T Vu et al. 2019). Companies that fail to implement appropriate policies are subject to administrative penalties but criminal liability for bribery and corruption remains limited to individuals (Vi T Vu et al. 2019). There is still no corporate liability for corruption under Vietnamese law (Vi T Vu et al. 2019).

6.1.3. Increasing transparency among public officials

The ACL (2005) requires asset disclosure from public officials and introduces whistle-blower protections (Malesky & Pham Ngoc Thach 2019, pp. 103–138). In 2006, the then-Prime Minister Nguyễn Tấn Dũng also issued Decree 26/2006/CT-TTg, which prohibits the use of public funds for personal gifts (Malesky & Pham Ngoc Thach 2019, pp. 103–138). Similarly, the Prime Minister's Decision No.64/2007/QĐ-TTg promulgated the Regulations on Giving and Receiving Gifts and Returning Gifts Applicable to Agencies, Organisations, and Units Using State Budget and Cadres, Civil Servants and Public Officials (Decision 64) (Vu Anh Dao 2017, p.25). However, as mentioned previously, the ACL (2018) replaced this regulation and now prohibits public officials from receiving gifts under their management and in connection with their public duties (Thuy Hang Nguyen & Minh Tri Quach 2019; Vi T Vu et al. 2019). Public officials must now refuse and disclose all gifts received for an improper purpose, regardless of the value of the gift (Thuy Hang Nguyen & Minh Tri Quach 2019). Yet, Decree No. 59 does not define the term 'improper gifts' (Thuy Hang Nguyen & Minh Tri Quach 2019). Decree 68/2011-ND-CP also required public

officials to disclose their personal property and assets if they worked for government agencies or other bureaucratic units (Malesky & Pham Ngoc Thach 2019, pp. 103–138).

6.1.4. Public anti-corruption initiatives

Regarding public anti-corruption initiatives, in 1998, following the enactment of the anti-corruption ordinance, the government established a hotline to receive business complaints (Wescott 2003, p.259). With the promulgation of the civil code in 1998, the public can seek redress for complaints and ask for mediation in disputes with public officials (Wescott 2003, p.259). However, Vu Anh Dao (2017, p.106) argues that these reforms were ineffective in reducing corruption.

More recently, the National Assembly has approved several regulations that ‘strengthen citizens’ roles and capitalize on citizens’ interest in governance and public administration’, such as the Law on Access to Information (2016). This legislation requires that legal documents, budgets, and land infrastructure plans be available online at every level of government and allows citizens to request information while requiring agencies to reply within a mandated time frame (Malesky & Pham Ngoc Thach 2019, pp. 103–138).

6.1.5. Anti-corruption bodies

Regarding anti-corruption agencies, in 2005, Vietnam’s government created several special agencies, including a special investigation unit in the Ministry of Public Security (MPS); a designated anti-corruption office in the Procuracy, which manages prosecutions; and a Steering Committee that, chaired by the Prime Minister, coordinates anti-corruption reforms (Painter 2014, p. 274). In 2012, the CPV replaced the Office of the Central Steering Committee on Anti-Corruption (OSCAC) by the ‘Central Steering Committee on Preventing and Combating Corruption, managed directly by the Politburo, and housed within the Internal Affairs Commission’ (Tromme 2016, p.288). In February 2013, the Party established a Central Steering Committee on Anti-Corruption that was headed by the General Secretary himself (Malesky & Pham Ngoc Thach 2019, pp. 103–138). The Central Department for Internal Political Affairs was re-established to support this committee (Malesky & Pham Ngoc Thach 2019, pp. 103–138). Thus, the CPV has taken control of the key anti-corruption agency. However, without politically independent anti-

corruption agencies, anti-corruption laws have little chance of being applied impartially. The lack of independence of anti-corruption agencies also jeopardises the efficacy of law-based approaches to anti-corruption reforms.

In short, the anti-corruption reforms introduced by the Vietnamese Government beginning in the 1990s followed the orthodox approach to corruption and global anti-corruption norms by developing an anti-corruption legal framework; criminalising corrupt practices; professionalising bureaucrats; simplifying administrative procedures; reducing the size of public service; establishing behavioural standards; increasing transparency and accountability in the public and private sectors; increasing access to public information and whistle-blower protection; and creating anti-corruption bodies. At the same time, Vietnam's anti-corruption initiatives shifted from socialist approaches to law-based approaches to corruption. The next section analyses how these law-based approaches to anti-corruption conflict with Vietnam's socialist organisation.

6.2. The contrast between global anti-corruption norms and Vietnam's institutional and ideological frameworks

Vietnam's government introduced new anti-corruption reforms in the middle of the 1990s in order to safeguard the CPV's legitimacy but also to attract foreign investment and to be able to join the WTO. Vietnam's anti-corruption reforms were funded by IOs; thus, it makes sense that they were based on the global anti-corruption norms that these organisations promote. Vietnam's reforms follow the orthodox Western regulatory corruption approach (discussed in Chapter One), which promotes legal change, the criminalisation of corrupt practices, better transparency and accountability, and the professionalisation of bureaucrats.

PAR, for example, was introduced by the government with the financial and technical help of the United Nations Development Program (UNDP) and in accordance with public-choice theory (Gillespie 2001, p. 3). PAR targets bureaucratic corruption with a legal-rational choice approach and assumes that corruption arises from uncontrolled bureaucratic discretion. PAR adopts a 'public duty' definition of bureaucratic corruption; this definition criminalises 'the use of public office or trust for private gain, the abuse of a public or private position in favor of the position-holder, his family, friends or bribers and the selective or arbitrary application of public rules to benefit the official in charge and those who pay him for the favor' (Shihata 1996, p.

455). PAR included various regulations influenced by Western anti-corruption strategies, which presuppose a clear separation between the CPV and the state and 'legally-definable public and private duties' (Gillespie 2002, p. 167).

Similarly, the ACL (2005) follows the orthodox regulatory corruption approach and specifically targets public officials. It refers to principles of transparency and accountability in public decision-making and bureaucratic processes, and it criminalises and sets out deterrents against corrupt behaviour (OECD 2005). The ACL (2005) defines corruption as 'acts committed by persons with positions and/or powers of abusing such positions and/or powers for self-seeking interests' (OECD 2005). Similarly, Article 3 of the ACL (2018) defines corruption as 'an office holder's abuse of his/her official capacity for personal gain'. These definitions are similar to the one most commonly used by the anti-corruption movement, which conceives of corruption as 'the abuse of public office for private gain' (World Bank 1997).

Thus, PAR and the implementation of the ACL (2005) and the ACL (2018) draw on rational-choice theories as well as a Weberian model that, as discussed in Chapter Two, presupposes that laws and government policies structure bureaucratic decision-making. However, this approach fails to take into account Vietnam's Marxist-Leninist political and regulatory system, in which party and state policies routinely supersede legal rules (Gillespie et al. 2020, p. 580). Furthermore, Vietnamese judicial courts are subordinate to political institutions (Bui Ngoc Son 2018, p. 165) and lack political independence.

Adding to this point, Benedikter and Loan TP Nguyen (2018, p.26) suggest that 'bureaucratization in Vietnam has little to do with the expansions of rational-administrative structures in the Weberian sense of modern bureaucracy, or economic efficiency in public management theory and good governance. Rather, bureaucratization refers to uncontrolled and rampant state expansion'. For them, 'state-directed planning satisfies the self-serving interests of Vietnam's crony bureaucracy', prioritising 'patronage, personal relationships, and money-making aspirations [...] over formal laws and regulations' (Benedikter & Loan TP Nguyen 2018, p. 27).

Despite profound economic reforms under *Đổi Mới*, Vietnam's political regime remains comparatively unchanged. The uncontested rule of the CPV prevails, as do

authoritarian power structures and the firm adherence to Marxist-Leninist institutions of governance (Benedikter & Loan TP Nguyen 2018, p. 1). Yet, global anti-corruption norms contradict standard precepts of the CPV (Painter 2014, p. 275). Vietnam's party-state distinction is outside the scope of Western democratic notions of the state, and fails to adhere to the presumption underlying PAR anti-corruption reforms that Party and state are necessarily separated (Gillespie 2002, p. 186). According to Gillespie (2002, p. 186), '[w]here the party functions as a revolutionary organ, the "legitimate activities" of state officials are based on party resolutions, party interpretations of state law and direct personalistic rule through party affairs sections'. Thus, whereas the transplantation of global anti-corruption norms in Vietnam presupposed a voluntary submission of the CPV to state law, this sort of submission is improbable—given that the CPV is regulated by legal and extra-legal 'revolutionary' state power (Gillespie 2002, p. 186). Furthermore, the public-choice theory on which Vietnam's anti-corruption reforms are based, seems incompatible with a socialist ideology (Gillespie 2001, p. 6).

These reforms also followed a Western/neo-liberal model elaborated for capitalist societies. For example, global anti-corruption norms promote free markets and aim to target monopolies, which are seen as a form of corruption. However, these norms are ill-suited to a socialist-transforming country, such as Vietnam. Despite introducing these reforms, Vietnam's government has never abandoned its socialist ideology, and Benedikter and Loan TP Nguyen (2018, p. 2) suggest that ideological dilemmas have resulted from fusing socialism with capitalism. Gillespie (2001, pp. 10, 12) argues that there are ideological conflicts between PAR and Vietnamese traditional values, and also between 'local "cultural" ideologies' and 'the dominant politico-legal ideology'. Similarly, Bui Ngoc Son (2018, p.147) argues that 'communist morality does not necessarily reflect Vietnamese traditional moral values'. Law-based anti-corruption reforms require 'a dominant legal ideology that unequivocally pledges due process and legal institutions' (Gillespie 2001, p. 28). However, in Vietnam, the meaning of laws and policies varies depending on what level of government is involved, and also on whether state or public actors are at issue (Gillespie 2001, p. 5). Conflicts of ideologies involving legalism, 'socialist legality', and local 'cultural' precepts create legal confusion and ultimately undermine the effectiveness of anti-corruption reforms. Introduced by the government as part of

Đổi Mới, these reforms contradict the government's core socialist ideology (Gillespie 2001, pp. 25–26).

There are also some disparities between the ideologies associated with global anti-corruption norms and Vietnam's local ethical standards. These disparities limit the effectiveness and social support of public-choice anti-corruption laws (Gillespie 2001, pp. 6–7). Whereas global anti-corruption norms define corruption as public officials' abuse of power, Vietnam's state-party apparatus defines corruption as public officials' lack of moral rectitude. Thus, practices that are considered corrupt according to global anti-corruption norms, such as bribery or nepotism, do not necessarily contradict Vietnam's ethical standard and socialist legal order. This conflict of ideologies fosters legal confusion and amplifies fragmentation in the interpretation of global anti-corruption norms, fragmentation that is, this thesis argues, the key problem hindering the effectiveness of transferring global anti-corruption norms into Vietnam.

7. Conclusion

The first official anti-corruption regulations appeared in Vietnam during imperial times. These regulations were influenced by Confucianism and aimed to promote moral rectitude among mandarins and to prevent abuses of power. Although the French colonialists tried to introduce anti-corruption regulations during the colonial period, these were ineffective because the Vietnamese population still regulated themselves according to traditional virtue rules rather than imported legal rules, which consequently lacked legitimacy.

With the revolution and the introduction of a Soviet legal system, Vietnam's socialist government focused its anti-corruption regulations on the misappropriation of socialist property into illegal private markets. The concept of virtue rule still prevailed, given that corruption was considered as a lack of moral rectitude, on the part of public officials and party cadres. Since the high socialist period, there has been no clear separation between the CPV and the state—or between the public and the private sectors. Therefore, the market reforms initiated in 1986 created a conflict between socialist and free-market ideologies. These reforms also led to new opportunities for corruption, jeopardising the CPV's legitimacy and prompting the government to introduce further anti-corruption reforms.

The reforms introduced in the 1990s were based on global anti-corruption norms, which assume that corruption involves the violation of formal rules and that anti-corruption programs should promote transparency, the development of ethical business standards, and the criminalisation of corrupt practices. For example, Vietnam's anti-corruption regulations define corruption as an abuse of power by public officials and assume that formal laws regulate public officials' behaviour. However, global anti-corruption norms contradict Vietnam's ethical standards as well as Confucianism and socialist ideologies. In today's Vietnam, corruption is still considered as a lack of moral rectitude on the part of public officials, and Vietnamese officials still regulate themselves according to morality rather than according to a set of formal rules.

Furthermore, Vietnam's legal system still includes a mixture of formal laws and customs, which sometimes conflict with each other. This conflict generates legal confusion and uneven compliance to formal laws. Ultimately, all these elements create fragmentation in the interpretation of formal rules in general and of global anti-corruption norms in particular. Thus, this chapter's findings partially explain why the transfer of global anti-corruption norms into Vietnam have not produced the expected outcomes. With the present chapter having developed a state-centred explanation of Vietnam's fragmented responses to global anti-corruption norms, Chapters Four-Six focus on non-state actors and examine the causes and consequences of this fragmentation within Vietnam's business sector.

Chapter Four – Traditional Vietnamese SMEs

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1. Introduction

With Chapter Three having explored how the Vietnamese Government has implemented global anti-corruption norms, the analysis presented in Chapters Four,

Five and Six (collectively, the analysis chapters) add to our knowledge about how the Vietnamese business community views these norms. As discussed in Chapter One, the existing literature on business corruption in Vietnam is limited to quantitative perception studies that assess what types of corruption firms believe are prevalent in Vietnam (CECODES, VFF-CRT & UNDP 2017; Malesky et al. 2019; Rand & Tarp 2012; 2017; Segon, Booth & Pearce 2010). These studies say little about the underlying business practices and precepts that support, reject, or transmute anti-corruption norms. By contrast, examining normative and cognitive understandings of business corruption from the perspective of business managers illuminates how social construction influences compliance patterns (UNDP 2017, p. 2).

The analysis chapters use the concept of epistemic communities to investigate how different business groups draw upon sets of norms and assumptions to interpret global anti-corruption norms. The working hypothesis guiding this thesis is that companies are more likely to comply with global anti-corruption norms if they share the epistemic assumptions that underlie these norms. Therefore, this chapter and the next chapter analyse the epistemic assumptions held by managers working in Vietnamese SMEs¹² about what constitutes corrupt practices and ethical ways to conduct business. It uses these epistemic assumptions to explore how Vietnamese SME managers interpret and respond to global anti-corruption norms.

Analysis of the interviews with SME managers and business experts revealed distinctions between Vietnamese SMEs' epistemic assumptions, suggesting that these SMEs belong to two separate communities. The interviews indicated that some Vietnamese SME managers are more embedded in a traditional approach to business ethics than others. Members of this 'traditional' community share the view that informal institutions and corrupt practices are more beneficial for their businesses than formal legal institutions and compliance with anti-corruption laws. This view is based on deeper assumptions about the need to rely on personal

¹² In this thesis, the term 'Vietnamese SME' refers to a micro-enterprise, a small enterprise or a medium-sized enterprise registered under the Law of Enterprise in Vietnam whose annual average number of insured employees is not greater than 200, and which satisfies one of the following criteria: the total capital is not greater than 100 billion dong (around 6 million AUD), or the enterprise's revenue from the previous year is not greater than 300 billion dong (around 20 million AUD) (Law No. 04/2017/QH14 on Support for Small- and Medium-sized Enterprises n.d.).

relationships to conduct business in Vietnam, about the inevitability of corruption, and about the crucial importance of using informal institutions—institutions that, according to the traditional view, are the only way for their business to thrive. The assumptions of this traditional community are the focus of the present chapter.

This traditional community can be distinguished from a second community, whose members' responses show that the traditional approach to business in Vietnam is evolving. Although members of this second community, 'transitional' SMEs, share many of the traditional views about ethical ways to conduct business circulating in the traditional business epistemic community, their approach to business is more law-oriented. The transitional community will be the focus of Chapter Five. In turn, both the traditional and transitional Vietnamese SME communities are distinct from the transnational companies (TEC: transnational epistemic community) discussed in Chapter Six.

This introduction explains how the traditional Vietnamese SME epistemic community has been identified and delineated. The main characteristic that distinguishes the traditional Vietnamese SME community from the transitional and the transnational communities is that traditional SMEs prioritise informal institutions over formal institutions in conducting business. The remainder of the chapter then analyses the norms and tacit assumptions shared by members of the traditional epistemic community, as indicated by the interviews, and how these norms and assumptions shape this community's interpretation of and responses to anti-corruption rules.

1.1. Delineating the traditional Vietnamese SME epistemic community

This chapter's analysis is primarily based on semi-structured interviews conducted with 25 managers of Vietnamese SMEs. Information about the interviewees is summarized in a table at the end of the thesis (see Appendix Two and Three¹³). The interviewees were asked to reflect on Vietnam's business environment; their opinions regarding ethical, unethical, and corrupt practices; and their interpretation of anti-corruption norms and rules. The interviewees come from diverse backgrounds. Their personal characteristics, such as gender, age and level of education vary, as do their occupational characteristics, such as the extent of their professional experience and the position they hold within the companies that they own or work

¹³ The names of all the interviewees have been modified to ensure their anonymity.

for. The characteristics of the SMEs managed by the interviewees are also diverse. The SMEs operate in a range of industries, including information technology, cosmetics, entertainment, investment, tourism, and education services. There is also significant variation in the size of the SMEs as measured by the number of employees (they range from 1 to 300 employees), and they vary, too, in terms of the asset types that they control. They include micro, small and medium enterprises, such as limited liability companies and household enterprises. Two of the managers included among the interviewees were not Vietnamese, but they were able to reflect on the Vietnamese business community because they have conducted business in Vietnam for many years. The opinions expressed during the interviews are quite representative of the diversity of Vietnam's SMEs and of those who manage these enterprises.

The data collected from the interviews, which inform the discussion of the findings presented in the analysis chapters, were cross-checked against interviews with business experts such as lawyers, staff from the VCCI, NGOs, business consultants, diplomats, and academics (see Appendix One). In addition, the findings from the interviews were also corroborated by articles and reports on Vietnam's private sector, political economy, laws, and social characteristics, as well as by studies on corruption in Vietnam.

In this thesis, research on epistemic communities is used to examine whether there is a correlation between the compatibility of norms and assumptions of the identified communities with global anti-corruption norms, on the one hand, and a willingness among the members of these communities to comply with the global norms, on the other hand. Ultimately, this analysis aims to explain why compliance with global anti-corruption norms among businesses in Vietnam remains fragmented. We can differentiate between different epistemic communities because they embrace different storylines and tacit assumptions (Gillespie 2007, p. 716; Haas 1992, p. 3; Valcke 2018, p. 137); it is on this basis that a distinction has been drawn between traditional Vietnamese SMEs, transitional Vietnamese SMEs, and transnational companies. The analysis of the interviews substantiates this division.

For the present study, membership in an epistemic community is determined by shared assumptions regarding immoral/unethical behaviour, corruption, and anti-

corruption norms and rules. The term 'corruption' in this thesis refers to illegal and/or dishonest behaviour, whereas 'immoral/unethical behaviour' is defined as behaviour that does not conform to accepted standards of morality/ethics.

Although heterogeneous views may be held by members of the same community, what defines a community, in this context, is a degree of cohesion around a set of core beliefs regarding corruption, anti-corruption norms, and rules. This set of core beliefs can be identified through discourse analysis of interview data. Despite the diversity among the Vietnamese SME managers interviewed, the interviews reveal coherent sets of assumptions regarding business ethics and the meaning of global anti-corruption norms.

1.2. Traditional Vietnamese SMEs prioritise informal institutions over formal institutions

The main characteristic that distinguishes traditional Vietnamese SMEs from the other two epistemic communities discussed in this study is this: in conducting business, traditional SMEs rely more on informal institutions, such as personal relationships, customary business practices, and corrupt practices, than on formal legal institutions. 'Rely' here means that traditional SMEs not only prefer to use informal institutions but they also depend on and trust these informal institutions in conducting their business. As will be explained in more detail later in this chapter, traditional SMEs' reliance on informal institutions goes further than a personal choice or preference but is rather seen as a necessity, on some occasions, for these SMEs' businesses to develop and thrive. Analysis from the interview data shows that there is a cognitive belief among traditional Vietnamese managers that informal institutions provide the most appropriate form of business organisation. This cognitive belief is equivalent to an ideological belief.

These informal institutions are described in the social-legal literature as relational transactions and are based, among other elements, on 'reciprocity' (the principle of getting something back for something given) and flexibility (Macneil 2000, pp. 879–880). Trust-based relationships, built on reciprocal and personal obligations, are central to the operation of this informal order. At the same time, this informal order seems to encourage traditional Vietnamese SMEs to engage in corrupt practices, such as bribery, collusion, and nepotism.

There are institutional reasons why traditional Vietnamese SME managers prefer informal institutions over formal institutions. These reasons are rooted in the weaknesses of formal institutions—weaknesses that are widely documented in the literature exploring transitional economies in general and Vietnam in particular. The research of McMillan and Woodruff (2000), for example, argues that in transitional economies, where the law is dysfunctional and legal enforcement is ‘inadequate’, businesses rely on an informal or ‘private order’, which is founded on trust-based bilateral relationships, social networks, communal norms, trade associations, and market intermediaries. Businesses’ reliance on informal social networks and the significance of their ‘reputation’ within these networks stems from their inability to rely on effective legal systems and courts to order their affairs and protect them if disputes arise (McMillan & Woodruff 2000, p. 2456).

Similarly, Hoang (2018, p. 662) suggests that businesses rely on personal relationships because Vietnam lacks strong legal institutions and because the law is ‘open to interpretation’ by public officials. Thang Van Nguyen and Rose (2009) have also asserted that a cognitive reliance on trust-based personal relationships is a feature of transitional economies, where public institutions are underdeveloped. Small businesses face significant uncertainty and resource constraints that lead them to rely on trust-based networks (Thang Van Nguyen & Rose 2009, p. 180). They suggest that the lack of fully functioning public institutions pushes firms to do business only with people or companies with whom they have established relations of trust (Thang Van Nguyen & Rose 2009, p.167). This pattern is especially prominent in Vietnam, they note, because property rights are not ‘well defined’ (Thang Van Nguyen & Rose 2009, p.166)—or perhaps because they are ‘open to interpretation’, given Hoang’s (2018, p. 662) research findings.

Vietnamese SMEs’ reliance on trust-based personal relationships due to institutional dysfunction was explicitly noted by the academic experts and governmental employees interviewed in this research. Prof Tong, professor of economics in a Vietnamese national university, suggested that Vietnamese businesses have developed a tacit reliance on trust-based personal relationships because formal institutions are insufficiently developed. Similarly, Mr Tuyen, senior official in a foreign development agency, asserted that Vietnamese businesses rely on informal

institutions because the formal legal system does not provide anything above and beyond the informal order.

Analysis of the interviews also reveals that Vietnamese SME managers' preferences for informal institutions is based both on what is pragmatically beneficial for their businesses and on their understandings of what is culturally accepted and expected—a deeper, normative acceptance of corruption as a way of doing business. Indeed, some practices that are characterised as corrupt according to global anti-corruption norms are construed as both pragmatically and normatively justified in the understandings of traditional Vietnamese SME managers.

These findings add to the literature emphasising that traditional Vietnamese SMEs' reliance on informal institutions and corrupt practices is due not only to institutional factors but also to the role of SME managers' pragmatic and cultural understandings. Indeed, the SME managers' prioritisation of relational transactions reflects Vietnam's traditional adherence to Confucian values, which support trust-based personal relationships over formal rules. The traditional relational and informal business context in which Vietnamese SMEs operate has been examined in the literature (Hakkala & Kokko 2007; Lai Xuan Thuy & Truong Quang 2005; Taussig 2005; Tenev et al. 2003). Analysing Vietnam's law and society, Lai Xuan Thuy and Truong Quang (2005, p. 390) describe Vietnam as a 'relationship-based country'. Similarly, Quan Hien Nguyen (2006, p.1) suggests that traditionally, in Vietnam, companies use informal and relational approaches instead of the legal process to resolve disputes.

Thus, this chapter argues that the transfer of global anti-corruption norms based on a rules-based approach to corruption has had little influence on traditional Vietnamese SME managers' business practices, because these managers do not rely on formal laws in conducting business. The next section argues that traditional SME managers' reliance on informal institutions is based on pragmatic assessments—that is, a cost-benefit calculus used by these managers. In other words, these traditional managers choose to rely on informal institutions and corrupt practices because they believe that these informal institutions are more beneficial for their businesses, compared to formal institutions and compliance with anti-corruption laws. Section 3 then explores how, in addition to being bolstered by the pragmatic reasons underlying traditional SMEs' preference for informal institutions, this preference is also justified by deeper

normative and cognitive assumptions, which hinder these SMEs' compliance with global anti-corruption norms. Ultimately, these findings help explain why the transfer of such global norms has not produced the expected reduction in corrupt behaviour in Vietnam.

2. Pragmatic assumptions underlying traditional SMEs' preference for informal institutions

Analysis of the interviews reveals pragmatic reasons for traditional Vietnamese SMEs' preference for informal institutions. Indeed, a core epistemic assumption underlying this attitude is that trust-based personal relationships and corrupt practices are more beneficial for SMEs' business than compliance with anti-corruption laws.

The next sections analyse the interviewees' main justifications for holding this assumption. The first justification involves the belief that establishing strong, personal, and cordial relationships makes business easier to conduct. A second justification is that these relationships provide more flexibility compared to the rigidity of legal rules. Third, the traditional managers do not believe that legal compliance is beneficial for their business. Finally, they view corrupt practices, which provide the means for building personal relationships in business, as ultimately more profitable than compliance with anti-corruption rules.

2.1. Trust-based personal relationships make business easier

Identifying what traditional managers see as the pragmatic benefits of personal relationships, this section first explains that traditional managers try to develop trust-based relationships with public officials in order to open a business, to avoid getting a fine, or to circumvent being prosecuted. The section then examines how traditional managers cultivate personal relationships with other businesses to get funding—and also because they believe that developing such personal relationships is less costly than using legal services.

Most interviewees stated that opening a business is much easier if you have connections with public authorities, who can facilitate business administrative procedures, assist with the search of business rental premises (since land is still owned by the state), or offer protection from predatory competitors. For example, Mr

Minh, director of a small garment company, suggested that maintaining good relationships with public officials helps to protect the company, adding that ‘the government can help you to have security, to be in a safe business environment’. By ‘a safe business environment’, Mr Minh implied a stable, profitable business environment. The interviewees also asserted that, if business owners do not already have relationships with public officials when they start their business, they will try to build these connections. Mr La, an associate in a Vietnamese law firm, went so far as to suggest that some business owners start their companies precisely because they have prior connections with public officials, and they know that their business will benefit from these connections.

This attitude is encouraged by the way public officials may abuse their power or not feel any compunction about enforcing regulations against a business if the business owner has not cultivated good relations with those officials. According to the former owner of several restaurants, in her industry, if the owner of a restaurant does not have good relationships with public officials, the officials will visit the restaurant randomly and ask the owner for bribes or threaten to fine them. Conversely, as she and other interviewees noted, if the owners have good relationships with public officials, they can conclude an agreement, and the officials will not randomly come to ask for money. This type of agreement entails, for example, the regular payment of a sum of money by the owners to the public officials, whose ‘fee’ has been agreed to beforehand. Along similar lines, Mr La suggested that if businesses have relationships with public officials, they might avoid criminal convictions. Traditional Vietnamese SMEs’ preference for personal relationships over legal compliance is supported by the 2017 PCI Final report (Malesky et al. 2018). The report suggests that companies with a lower quality of management—a common characteristic of many traditional Vietnamese SMEs—would prefer to contact their provincial leaders directly when they face a problem, rather than using formal institutions (Malesky et al. 2018, p. 13)

Another factor that encourages businesses to rely on personal relationships and informal institutions is the under-development of the banking sector. The former owner of several restaurants pointed out that in Vietnam, banks do not provide loans to private companies or individuals. Thus, when someone wants to start a company, he or she must either already have the capital or must borrow money from his or her

relatives. The interviewee's claim is supported by the literature. Hoang (2018, p. 662) argues that, in Vietnam, state banks are the main sources of internal capital allocation and that obtaining a loan from these banks requires personal relationships with the state and ties to the Communist Party, which SMEs usually lack. Tran Dinh Khoi Nguyen and Ramachandran (2006, p. 196) have also explained that because Vietnam's bank regulations favour SOEs and large Vietnamese companies instead of SMEs, 'SMEs tend to look for other sources of funds, from suppliers, relatives and friends, to finance their operations'.

Therefore, Vietnamese SMEs depend on social networks for access to capital and business services, with this networking providing the necessary information about reliability (Thuy Thu Nguyen & van Dijk 2012, p. 2938; Tran Dinh Khoi Nguyen & Ramachandran 2006, p. 196). However, Vietnamese SMEs' business networks are weaker than those of SOEs, which benefit from easier access to land and financial support (Thuy Thu Nguyen & van Dijk 2012, p. 2938). Because Vietnamese SMEs rely on informal relational lending between friends and relatives rather than on formal loans from banks, they must gain the trust of the people who lend them money. The fact that Vietnamese SMEs must rely on their relationships to finance their business further explains the importance of trust-based personal relationships among Vietnamese private businesses.

A further pragmatic benefit recognised by the interviewees is that personal relationships offer more cost-efficient means of acquiring advice and information necessary for their businesses. The former owner of several restaurants acknowledged that small businesses generally use their personal relationships instead of seeking legal advice from law firms, because they regard leveraging such relationships faster and cheaper. Another interviewee pointed out that lawyers are not easily accessible for small companies, because there is a shortage of lawyers. As a consequence, he felt that businesses prefer to rely on social networks rather than using legal services. Some interviewees also noted that small Vietnamese private companies do not prioritise legal compliance, even if they believe that obeying the law is important, because they do not have enough resources to pay for legal services or to hire internal lawyers. Adding to this point, Ms Tuyen, a senior official in a foreign development agency, argued that traditional Vietnamese businesses do not see the point of using legal services because these services lack

credibility and quality. Mr Du, an official from the VCCI, likewise suggested that Vietnamese SMEs do not trust lawyers. The idea that Vietnamese businesses do not see the benefits of hiring lawyers has also been explored by Hoang (2018, p. 671). She explains this tendency in terms of businesses' perception that lawyers build personal relationships with public officials to achieve their objectives, something that businesses think they can do on their own.

2.2. Relying on personal relationships provides more flexibility compared to the rigidity of legal rules and compliance

The interviews also reveal that traditional Vietnamese SMEs rely on relational business because it provides them with more flexibility than do formal contracts. For example, interviewees suggested that Vietnam's business regulatory environment is uncertain and changeable compared to that of other countries, especially Western countries, where the business environment is perceived as more regulated and stable. They expressed a desire for flexibility to facilitate their market entry and exit, such as when establishing a business and terminating contracts. They located this flexibility outside of the formal legal system.

Mr Lee, the director of a Vietnamese medium-sized steel manufacturing company, who is originally from Taiwan, said he enjoys the fact that there is more freedom and flexibility to conduct business in Vietnam than in other more regulated countries. He attributed this flexibility to the lower level of adherence to the formal rules by Vietnamese businesses, and the laxer enforcement by government officials, that is typical in more developed economies. For Mr Truyen, the director of a transport company, Vietnamese businesses are very flexible because they 'do not take business too seriously'. For example, it is very common for Vietnamese SME managers to work full-time in another company or as a public servant while also running their own business. For many, opening a business is more a means of getting an extra income on top of their full-time salary than it is a full-time career option. For this reason, Mr Truyen suggested, many businesses prioritise simplicity, efficiency, and flexibility above compliance with anti-corruption laws. Mr Tanh, the manager of a small garment company, stated that he conducts business in a more flexible way when he works with Vietnamese companies than when he works with foreign companies. He admitted that while he disliked some aspects of Vietnamese businesses' more elastic approach towards the law and their contractual obligations,

he still enjoyed the flexibility of Vietnam's business environment, including the way contracts can be adapted depending on the situation.

The traditional SME managers also appear to accept that engaging in corruption provides businesses with the flexibility they need, as small and medium-sized enterprises, to operate successfully. As an illustration, Dr Banh, a senior official from the VCCI, argued that good relationships with public officials can 'solve a lot of issues because they provide some flexibility'. Regarding bureaucratic procedures, for example, he explained that it can be difficult for businesses to get the necessary information and that a phone call to a public official can save a lot of time. He declared: 'if you have good relationships, it [completing the necessary procedures] is much more efficient'. Adding to this point, Mr Mo, a free-lance economic consultant based in Ho Chi Minh City, pointed out that businesses can 'always negotiate' bribes. In other words, bribes are 'flexible', and the amount of money that businesses must pay to public officials is not fixed. This claim is confirmed by Rand and Tarp (2017, p.131), whose work has shown that the prevalence and amounts of bribe payments vary according to firms' exposure to the public, visibility and size, and degree of interaction with public officials. The fact that bribes can be negotiated makes them look fairer to businesses who prefer to pay an amount proportionate to their profits rather than a fixed amount. Mr Mo asserted that Vietnam is more libertarian than Western countries when it comes to business, because the laws are less rigid and more open to interpretation by the authorities. Prioritising relational transactions with public officials is potentially more advantageous for small enterprises, which might pay a smaller amount in bribes compared to larger companies. For all these reasons, traditional Vietnamese SME managers prefer relying on informal institutions because they believe these institutions provide the flexibility their businesses require to survive in Vietnam's unpredictable market, over the rigidity of legal compliance, which does not provide this flexibility. This finding further explains why the transfer of global anti-corruption norms has had little influence on traditional Vietnamese SMEs' business practices.

2.3. Legal compliance does not provide any benefit

Many interviewees expressed the view that formal laws in general, regardless of the law in question, have nothing to offer to small and medium-sized businesses. The views expressed by Mr Gon and Ms Phi, the owners of coffee-shops in Hanoi and

Ho Chi Minh City respectively, were typical of the responses of the traditional managers on this point. Mr Gon considered formal laws useless for small businesses. He asserted that they did not offer such businesses any protection, and suggested that only large companies need legal knowledge. Similarly, Ms Phi thought that formal laws are useful only for large companies and that small companies do not need them because they regulate themselves through customary ways of doing business. Mr Tuyen also indicated that because SMEs rely on trust-based relationships to reduce risk, they do not need formal laws, including anti-corruption rules because these laws do not offer more protection than the established private order.

The attitude of traditional managers towards the law goes beyond seeing it as irrelevant to small business and extends to a view that it constitutes a burden that hinders the development and profitability of their businesses. Mr Toang, owner of a karaoke bar, stated that legal compliance restricts a business' profits, declaring, 'we cannot follow the laws and regulations if we want to make profits'. Similarly, Mr Be, the director of a small steel company, said, 'If we really strictly follow the law, probably, we do not get profits, we cannot make benefits'.

Another reason why these managers do not see the law as beneficial to them, or even view it as working against them, stems from their sense that the law works to the benefit of the state and the interests of public officials. This understanding has been noted elsewhere. Malesky and Pham Ngoc Thach (2019, p. 132), for example, argue that a majority of Vietnamese companies believe that the main purpose of regulation is not to protect employees and citizens, but to provide an excuse for extracting bribes from businesses. The comments of Ms Huong, the former owner of several restaurants, resonate closely with Malesky and Pham Ngoc Thach's findings. Ms Huong said that the government modifies laws to serve its own interests. She regarded the law as 'a tool' for the government 'to get more benefits'. The director of a small coal and mining equipment company likewise stated that Vietnam's government manipulates laws according to its own interests. Similarly, other interviewees expressed the view that the law benefits only the richest or most powerful people, as well as the view that laws only function for public officials who use them to extract bribes from businesses.

Many interviewees stated that SMEs engage in corrupt practices because formal laws are unclear, such that they do not always understand them. Interview responses reference how some laws are contradictory and inordinately complex for non-legally trained people. Ms Chanh, the owner of a small clothes shop, suggested that small shop owners tend to rely on customary practices and ask other businesses for advice rather than look at regulations, because the laws are hard for them to understand. She considered herself to be an exception, because she holds a law degree; but she said she is used to providing legal advice informally to the other shop owners who ask her for help.

The understanding of the law voiced by the managers of traditional SMEs seems to reflect Hun Kim's (2017, pp. 674–675) concept of 'regulatory opacity', which Hun Kim has used to describe Vietnam's legal system. The regulatory opacity of the law in Vietnam stems from the absence of clear interpretations of written regulations and laws; it also derives from a superfluity of laws, such that there are inconsistencies and contradictions among them, and, conversely, the absence of laws regulating matters that are in need of regulating. Hun Kim (2017, p. 675) also points to the opacity that comes from problems of enforcement, which result, in turn, from over-application, under-application, and irregular use of the law, as well as from inconsistent interpretations of the law within and between different jurisdictions.

In parallel with Hun Kim's critique of Vietnam's inconsistent legal system, the interviewees stated that the lack of clarity of anti-corruption laws and regulations makes it difficult for Vietnamese businesses to know how to avoid corrupt practices. The regulatory opacity of the Vietnam legal system, as described by Hun Kim, has been noted by other scholars, who likewise corroborate the interviewees' perceptions. Malesky and Pham Ngoc Thach (2019, p. 132) suggest that complex government regulations, which are 'burdensome and full of contradictions', create opportunities for public officials to engage in corrupt practices. Similarly, Vu Anh Dao (2017, p.119) argues that the Vietnamese legal system gives rise to loopholes that encourage the misuse of the law for private benefit. Traditional Vietnamese SME managers' view that laws are a tool for public officials to extract bribes from them reinforces their distrust in formal legal institutions.

Another shared understanding is that because formal laws are not properly enforced, there are no incentives for Vietnamese SMEs to use them. The weaknesses in the judicial system and enforcement more generally mean that the SMEs see no practical benefit to the law. Expressing this view, the director of a transport company suggested that Vietnamese SMEs do not pay attention to laws because the legal framework and the judicial system do not work effectively. He added that Vietnam's laws are unpredictable and change too frequently, discouraging businesses from using them.

The perception of poor enforcement was also evident in the interviews with experts, public officials, and professionals. Mr Du, an official from the VCCI, confirmed that one reason why businesses rely more on personal relationships than on contracts and the legal system is that Vietnam's court system is not effective in resolving disputes or enforcing contracts. Similarly, Ms Tuyen, a senior official in a foreign development agency, suggested that businesses regard legal services as useless because the judiciary system is not fair and transparent. She explained, 'if you want businesses to use legal advice, you need a fair regulatory system. Companies do not seek legal advice because the law is not enforced anyway'. In her opinion, the level of compliance by businesses depends on the level of enforcement by the state: a low level of enforcement explains a low level of compliance among companies.

Vietnamese companies that do not respect the law are not afraid of being prosecuted, because the law is not properly enforced. Similarly, Ms Hoan, a senior associate in an international law firm, asserted that businesses' attitudes towards the law can only change if they see an improvement in terms of enforcement.

Therefore, the lack of effective and credible regulations creates a general sense of distrust towards formal legal institutions among traditional Vietnamese SME managers. This distrust towards formal legal institutions ultimately discourages traditional SMEs from using them, and prompts them to revert to informal institutions that they trust more.

2.4. Engaging in corrupt practices is more profitable than compliance with anti-corruption laws

A key epistemic assumption underlying traditional managers' reliance on informal institutions is that engaging in corrupt practices provides more opportunities to make

profits than does complying with anti-corruption rules. The data collected from the interviews suggest that traditional SME managers follow a cost-benefit calculus when it comes to evaluating corrupt practices. For example, Ms Dong, a senior officer at Vietnam's Ministry of Justice, argued that most Vietnamese companies do a cost-benefit calculation when searching for the cheapest solutions to the business challenges they face. They evaluate whether engaging in corrupt practices provides them with a greater benefit than complying with the law.

The perceived cost-effectiveness of corrupt practices was a recurrent theme in the SME interviews. One interviewee admitted that businesses give bribes to public officials because they gain benefits from doing so. Likewise, the interviews confirmed that managers of traditional SMEs are not convinced that complying with anti-corruption laws is better for their business than engaging in corrupt practices (Lien Nguyen & Horowitz 2018, p. 22). Lien Nguyen and Horowitz's (2018, p. 24) report suggests that 'improving compliance and integrity are not yet priorities for Vietnamese SMEs given the challenges they face on day-to-day basis'. The report also explains that Vietnamese SMEs 'face a conflict between maintaining ethical business practices and making profits'.

The interviewees cited various reasons for bribing public officials, such as expediting administrative procedures—e.g., the process of obtaining business licences. According to Mr Du, an official from the VCCI, many Vietnamese SMEs believe that paying bribes to public officials is a more efficient way to go through administrative procedures than paying for a lawyer. In discussing the bribes paid to public officials to speed up administrative procedures, Ms Chi, the director of a small tourism and event company, remarked:

Obviously, I dislike that practice, but for my own good, if I do not do that [bribe], it takes a very long time to obtain licences. The authorities may cause some difficulties. There is no other way to obtain administrative documents quickly.

These interview findings corroborate the research of Rand and Tarp (2017, p.131)¹⁴, who argue that the main reasons why Vietnamese firms pay bribes is 'to get

¹⁴ Rand and Tarp (2012) conducted a survey with a view to describing bribe payments and the potential determinants of bribing behaviour in Vietnam's business environment.

connected to public services', 'to deal with tax and tax collectors', and 'to gain government contracts'. Segon, Booth and Pearce (2010)¹⁵ also suggest that most bribery and corruption in Vietnam relates to 'facilitation of services and processes'.

Not all the interviewees agreed that legal compliance was less profitable for their businesses, but the contrary opinion was a minority view. One interviewee identified the additional costs of bribery, and stated that at least some Vietnamese SMEs attempt to avoid it. For him, Vietnam's business environment is very competitive, and the costs of corruption (such as bribery) increase prices and reduce profits. Thus, in some circumstances at least, Vietnamese SMEs try to avoid engaging in corrupt practices to increase their competitiveness. Mr La, an associate in a Vietnamese law firm, suggested that some Vietnamese SMEs try to avoid paying bribes because they do not want to look like it is easy for public officials to take money from them. He explained:

If, as a business owner, you give a bribe to a public official today, another official might come the next day and ask you for another bribe. [...] So, engaging in corrupt practices can end up being very costly for a business.

However, most interviewees associated corrupt practices with profitability and business growth. For instance, Mr Ruong, the middle-aged vice-director of a medium-sized construction investment and development company, suggested that businesses that strictly follow the rules and do not engage in corrupt practices eventually lose revenue and business opportunities. He added, 'most companies I know and people I know accept illegal things to get revenues and to create jobs for their employees'. Mr La stated that most Vietnamese SME managers decide to engage in corrupt practices because, overall, their businesses benefit from those practices. The interviewees' understandings of the benefits of corruption for their businesses appear to support the arguments of Rand and Tarp (2012, p.575), who suggest that despite bribes' uncertain and random nature and their 'distorting' impact on Vietnam's economy, most Vietnamese companies do not consider bribery as an obstacle to business development.

¹⁵ Segon, Booth and Pearce (2010) conducted a survey with Vietnamese managers and entrepreneurs related to their perceptions of corruption, the prevalence of corrupt practices, and their attitudes towards corrupt practices.

In some cases, interviewees' accounts of the reasons why companies engage in corrupt practices went beyond the idea that they are necessary to ensure that a business is able to operate profitably. Interviewees also suggested that such practices can help businesses expand and get ahead of their competitors. For example, Ms Trang, the manager of a small IT company, stated that engaging in corrupt practices helps companies to obtain contracts, especially for public projects. Another interviewee asserted that corrupt practices, such as collusion, can help Vietnamese companies to develop. The director of a small transport company referred to collusion between companies seeking public tenders, whereby the companies, by agreeing to share the market between themselves, cut out other competitors and ensure that they eventually get more contracts than if they were working alone. These statements are confirmed by a number of scholars. Nawaz (2008, p.5) suggests that there is a lack of competition in public procurement due to the prevalence of corruption. For Tromme (2016, p.301), some Vietnamese companies benefit from corruption, which helps them acquire contracts for public projects. Vu Anh Dao (2017, p.103) also argues that corruption is common practice in public tenders in which bidders and investors negotiate with each other to decide who will be the winner.

In sum, the interviews reveal that traditional Vietnamese SMEs recognise pragmatic incentives for relying on informal institutions. The core epistemic assumption underlying this preference is that using informal institutions and corrupt practices is in the best interests of the managers' businesses. Traditional managers assume that informal institutions in the Vietnamese business environment, including corrupt practices, provide more opportunities for SMEs to develop and make a profit than would be available if those SMEs relied on formal institutions and laws. Traditional Vietnamese SMEs' business interests align with and are served by the informal system, rather than the formal system. This finding explains again why the transfer of global anti-corruption norms based on a rules-based approach to corruption has had a limited influence on traditional Vietnamese SMEs practices. Yet—as will be discussed in the next section—traditional Vietnamese SMEs' pragmatic assumptions are influenced by deeper normative and cognitive epistemic assumptions, with their self-interest in turn reinforcing their epistemic belief that relational transactions are normatively and cognitively superior to formal rules.

3. Normative and cognitive assumptions underlying traditional SMEs' preference for informal institutions

Analysis of the interview data reveals that traditional Vietnamese SMEs' reliance on relational business and corrupt practices is informed not only by institutional weaknesses and pragmatic reasons but also by deeper normative and cognitive assumptions. This section explores how Vietnamese businesses traditionally rely on Confucian values, which support trust-based personal relationships over formal rules in conducting business. The analysis explains how this reliance on trust-based personal relationships can lead traditional SMEs to engage in corrupt practices, such as bribery, nepotism, and collusion. The section also reveals that traditional Vietnamese SME managers share the core epistemic assumption that they lack the agency¹⁶ needed to resist or combat corruption. This assumption about agency ultimately hinders their compliance with global anti-corruption norms.

3.1. Vietnamese SMEs' traditional emphasis on trust-based personal relationships

After explaining the concept of 'trust-based personal relationships' within Vietnam's business context, the sub-sections that follow show how traditional Vietnamese SMEs rely on reciprocity and gift-giving to build such relationships. A key consequence of traditional Vietnamese SMEs' emphasis on trust-based personal relationships is that they prioritise their social and familial obligations as well as local customs over Vietnam's formal legal system, which they do not trust. This discussion ultimately aims to demonstrate that formal rules are not a prime consideration for traditional Vietnamese SMEs, and that, consequently, the transfer of anti-corruption norms based on a rules-based approach has had little influence on these SMEs' business practices.

3.1.1. The concept of 'trust-based relationships' in Vietnam's business context

Trust¹⁷ is necessary in any business transactions. However, whereas businesses in Western and more developed economies tend to rely on formal institutions to build trust, traditional Vietnamese SMEs build trust through informal institutions, such as

¹⁶ In this thesis, the term 'agency' refers to the capacity of individuals to act independently and to make their own choices.

¹⁷ Here 'trust' is understood as meaning a '[f]irm belief in the reliability, truth, or ability of someone or something' (Oxford Dictionaries, trust entry n.d.).

personal relationships and corrupt practices. On this point, traditional Vietnamese SMEs differ from the transnational epistemic community (TEC) which, as will be explored in more detail in Chapter Six, relies on formal institutions and formal laws to build trust.

The concept of trust in Vietnam's business environment is explained by Thuy and Quang (2005, p.391), who argue that 'trust' is 'a type of expectation that alleviates the fear that one's exchange partner will act opportunistically'. They add:

Trust provides a means of coping with risk and uncertainty in exchange relationships, reducing transaction costs by enforcing honest behaviour, encouraging firms to learn to become more interdependent, increasing partner tolerance for each other's behaviour, and facilitating the informal resolution of conflict.

Because traditional Vietnamese SMEs do not trust formal institutions, they need to establish trust-based personal relationships with their partners and public officials. As acknowledged by Thang Van Nguyen and Rose (2009, pp.166, 171), Vietnamese businesses actively and intentionally develop trust with their partners over time, by establishing personal and business relationships and using their social networks. As McMillan and Woodruff (2000, p.2432) point out, 'longer-lasting relationships involve significantly more trust'.

The interviewees describe the means by which such trust is built, suggesting that trusting relationships develop through direct interactions and shared engagement in social activities. As the vice-director of a medium-sized construction investment and development company puts it,

To build relationships, we have to make contacts in person, get some interaction with some people from the top management, make contact with them privately, through coffees, beers, etc.—and then it's easier to get an approval.

Similarly, Mr Du, an official from the VCCI, stated that companies build relationships through dinners and 'drinking activities'. He added that 'relationships are built much faster by getting involved in those activities'.

The experiences described by the interviewees are supported by the work of Thang Van Nguyen and Rose (2009, pp.166, 169, 171), who suggest that in Confucian cultures, like Vietnam's, direct interactions are essential to building trust. Therefore, businesses need to engage in social activities to develop personal relationships. The research of Hoang (2018, p. 660) likewise indicates that in Vietnam's culture, engaging in 'leisure pursuits [...] facilitates trust and comfort and bonds individuals together'. Along the same lines, interviewee Prof Tong stated that business owners invest in their relationships with public officials for a long time, in the hope that, eventually, public officials will feel obliged to help them out. His remarks suggest that trustful relationships develop over time, helping to build up mutual obligations. That said, reflecting on the importance of building mutual obligations between businesses and public officials, Hoang (2018, p. 664) notes that there is a risk of mutual destruction between businesses and public officials. She explains that businesses are vulnerable to public officials, who can at any moment arbitrarily enforce regulations that will push them out of the market. At the same time, businesses have the power to threaten public officials' good reputation by revealing their involvement in corrupt practices. However, Hoang (2018, p. 664) suggests that trust between businesses and public officials minimises the risks of 'mutual destruction' of this sort. Judged by global anti-corruption norms, direct interactions between businesses and public officials, and the kinds of social activities in which Vietnamese businesses engage with public officials to build trusting relationships, can be considered corrupt. However, they are widely regarded as ethical business practices by traditional Vietnamese SMEs. Thus, Hun Kim (2017, p. 677) suggests that 'relationship building' is not necessarily considered costly or problematic by Vietnamese businesses, who do not treat the practice as 'pure corruption'. This finding highlights the contradictions between the assumptions underlying global anti-corruption norms, which condemn such relationship-building practices, and Vietnam's traditional relational business model, which promotes these practices.

3.1.2. Traditional SMEs rely on reciprocity and gift-giving

The interviews reveal that instead of using formal institutions and laws, traditional Vietnamese SMEs rely on reciprocity to build trusting relationships with their partners and public officials. Gift-giving is a method commonly used by traditional Vietnamese SMEs to develop reciprocal obligations. Establishing reciprocity through gift-giving is

a widespread practice within traditional businesses, in part because it is deeply rooted within Vietnam's Confucian values and principles. However, this traditional reliance on reciprocity and gift-giving can lead to corrupt practices, such as bribery and collusion.

Traditional Vietnamese SMEs' reliance on reciprocal obligations is supported by the literature. McMillan and Woodruff (2000, pp. 2422–2423) suggest that in most Asian countries, 'contracting typically rests on personal relationships', with those relationships achieving stability when '[b]oth sides recognize an obligation to try to maintain it [i.e., the relationship]'. Making a similar point, Hun Kim (2017, p. 677) suggests that business relationships in Vietnam are sometimes developed by 'exchanging important information and opportunities with one another, such as prereleased planning information or guaranteed procurements for construction contracts'.

Thang Van Nguyen and Rose (2009, pp. 168–170) have also addressed the centrality of relational business and reciprocity in Vietnam. They posit that relational business is based on reciprocal obligation and mutual assurance, and that it derives from the East Asian concept of *guanxi* (or social connections). In this system, social connections involve 'calculations of reciprocal favors and obligations that one must pay and repay to others in the network': 'one party voluntarily provides a benefit to another, invoking an obligation of the other party to return the favour'. In other words, social connections require obligations and trust between businesses (Thang Van Nguyen & Rose 2009, p. 170).

One of the principal ways in which businesses develop reciprocity is through gift-giving. Gift-giving is generally considered by traditional SMEs an effective means of cultivating and maintaining the relationships that will give rise to reciprocity and trust. For example, some interviewees stated that giving gifts to public officials is necessary to maintain and cultivate good relationships with them, even if the gift is a small one. Thus, there is a general acceptance among traditional Vietnamese SME managers that reciprocity and gift-giving are necessary to conducting business in Vietnam.

Traditional Vietnamese SMEs' emphasis on reciprocity and gift-giving can be explained by pragmatic reasons, as noted in Section 2. For example, reciprocity and

gift-giving are useful when it comes to speeding up administrative procedures, avoiding fines, or protecting their businesses from public officials' abuses of power. Thus, Hoang (2018, p. 661) argues that gift-giving can help businesses access key information, attract more opportunities, and '[make] enforcing agreements easier', especially if the gifts in question are sophisticated and personalised (Hoang 2018, p. 661). Hoang (2018, p. 663) also confirms that gifts are used as a form of bribery to speed up administrative procedures.

However, traditional SMEs' reliance on reciprocity and gift-giving goes beyond pragmatic concerns and economic transactions. Hoang (2018, p. 661) suggests that gift-giving practices in Vietnam's business environment are essential because they show the gift-giver's 'care and commitment to developing a long-term, meaningful relationship'. The interviewees also characterised reciprocity and gift-giving as part of Vietnamese culture. As Mr Munster, the director of a small Vietnamese tourism company, who is originally from a Western European country, put it: 'for Vietnamese people, if you give something, you expect something in return'. However, the embedded cultural value of reciprocity and gift-giving can lead some traditional SMEs to engage in corrupt practices, such as bribery and collusion. Most of the interviewees regarded collusion between private companies as a normal practice, because it is part of Vietnamese culture for businesses to help each other. Some interviewees went so far to define collusion between applicants during public tenders, and also the sharing of confidential information by public officials with particular companies, as 'unwritten/untold rules'—that is, as tacit assumptions. For example, Mr Truyen, the director of a transport company, stated that

Companies are competitors in the same industry, but you cannot win all the time. For things to happen, you need supporters: if I get the contract all the time, I will get attacked by other companies. There are unwritten rules and some companies associate with each other. Only a limited number of companies can carry the project, so they have to understand that you cannot have it all.

Mr Munster justified the prevalence of collusion in Vietnam in terms of historical and cultural reasons. He declared, for example, that 'people in Vietnam always favour people they already know. It is something common and expected'.

Most of the interviewees also considered gift-giving to be part of Vietnamese culture. For Dr Banh, a senior official from the VCCI, although gift-giving is not acceptable from a legal point of view, it is accepted 'from a social perspective'. Similarly, Ms Tuyen, a senior official in a foreign development agency, described gift-giving as a fundamental part of Vietnamese culture:

Vietnam is driven by culture and customs. Vietnam's culture really values respectfulness. You must show your respect materialistically or spiritually. The Vietnamese do not verbally say thank you. Anything verbal is rhetoric. You have to show your respect with a gift.

Mr Mo, a freelance economic consultant, explained that while Westerners would consider gift-giving as bribery, for Vietnamese businesses, this practice is 'a way of doing business'. He remarked, 'it is reciprocal, I help you, you help me [...] it [gift-giving] is not an issue here [in Vietnam]'. Indeed, gift-giving is deeply cultural, to the extent that it is the Vietnamese way of saying thank you, because a verbal thank you is not considered sufficient. Along these lines, Ms Dong, a senior officer at Vietnam's Ministry of Justice, argued that gift-giving is considered ethical by most businesses, because it is a way for the businesses to thank the public officials who helped them.

Gift-giving as a demonstration of reciprocity is so entrenched that it goes beyond instrumental relations with public officials and extends to any relationship with a partner or person involving support or assistance. Thus, reciprocity is required even where there are familial bonds. As Mr Toang, the owner of a karaoke bar, put it,

To do business, you need to create connections; but even when you have some connections, you also need to give gifts to keep those connections. Even inside the family. For example, my uncle supports me with my business, so, whenever I ask my uncle for help, I also have to give him gifts because my uncle is the supporter of my business. I have to maintain the relationship.

Mr Toang's comments show that SME managers consider reciprocity to be an essential element of doing business in Vietnam. Even where there are bonds of familial trust, the expectations for reciprocity persist.

Although the interviews reflect a general acceptance of the cultural and pragmatic requirements of the practice of gift-giving, when pushed about the details of gift-

giving to public officials, the interviewees did draw some lines in connection with the ethics and acceptability of gift-giving—even as they noted the difficulties of identifying these lines clearly. Although the obligations of reciprocity do not disappear in business contexts, for some interviewees, the value of a gift or the circumstances in which it is offered (or asked for) might render a gift inappropriate or unethical.

Ms Tuyen suggested that it is hard to establish when gift-giving is considered ethical or unethical. Qualifying this statement, an interviewee suggested that it is morally acceptable to give gifts to public officials—at least up to a certain value. She explained: 'I think it is normal, it is in our culture: if someone helps you, we need to offer them gifts'. Other interviewees, however, stated that it was ethical to give gifts only during the Tet holidays. For Ms Dong, giving a gift is unethical if the public official asked for the gift. Making a similar argument, Mr Du, an official from the VCCI, argued that the circumstances surrounding gift-giving to public officials will determine whether the gift is ethical or not. For example, in the case of public tenders, giving gifts to the public officials in charge is ethical if the gift is given during Tet, or as long as the public officials do not promise to favour those who have given gifts. Beyond these cases, Mr Du admitted that it is difficult to classify the circumstances that define whether giving a gift is ethical.

From the interviewees' responses, it appears that the general understanding is that gift-giving is unethical if the gift is clearly given in the expectation that the official will provide a specific favour. By contrast, it is acceptable to give a gift to develop a long-term relationship. Clarifying this point, Dr Banh, a senior official from the VCCI, stated that giving a gift to a public official is ethical if it occurs after the official has already helped you. For example, it is ethical to give a gift to a public official who helped you get a business licence, but it is not ethical to give a gift before, to obtain a favour. It seems that a general norm is that gift-giving is always appropriate when it is used to express gratitude after an official has acted. Vietnamese businesses also seem to give gifts to maintain long-term relationships so that officials enable them to thrive. However, these distinctions do not accord with understandings of corruption embodied in global anti-corruption norms. According to these norms, public officials' expectation of or knowledge that they will receive a thank-you gift is considered an

inducement, as would gifts given to maintain long-term relationships with public officials.

The difficulties of determining the limits of acceptable gift-giving have been noted by scholars studying gift-giving practices in Vietnam and Asia. Vu Anh Dao (2017, p.151) has argued that Vietnam's gift-giving culture often blurs into bribery precisely because the boundaries between the two are not clearly defined. More broadly, Segon, Booth, and Pearce (2010, p.2) argue that the tradition of gift-giving in Asia is a good example of the cultural relativity of the concepts of bribery and corruption, which are interpreted differently by various cultures and in different contexts.

These analyses further demonstrate that traditional Vietnamese SMEs' reliance on reciprocity and gift-giving encourages them to engage in corrupt practices such as bribery and collusion. This finding is supported by Gillespie's (2001, p. 5) study, which suggests that traditional Vietnamese SME managers accept the necessity of paying bribes to public officials, even though they are criminally corrupt, because they believe that '*lộ lòng biết ơn*' (evoking gratitude) is essential to operating a private business. Adding to this point, Thang Van Nguyen et al. (2016, p. 355) suggest that bribes are regarded by Vietnamese businesses, especially newly created companies, as 'investments in networks'. Thus, the centrality of reciprocity to traditional Vietnamese SME managers' understandings of conducting business goes some way towards explaining the prevalence of corrupt practices involving public officials and Vietnamese businesses.

3.1.3. Traditional SMEs rely more on their own social obligations than formal laws

The interviews also reveal that social obligations play a more significant role in regulating businesses than formal laws. More specifically, traditional Vietnamese SMEs seem to rely heavily on social obligations and on related values, such as common sense, loyalty, trust, and gratitude in their business operations. When the interviewees were asked to name the most important values for them and their company, the majority mentioned values such as 'trust', 'honesty' and 'maintaining a good reputation'. Importantly, for the interviewees, these values do not have the meanings assigned to them within a formal legal system, but rather the meanings they acquire within the relational system and the system of customs in which they

operate. Therefore, a business would tend to downplay a notice of formal allegation of fraud against another business, instead placing more weight on a history of honest and trustworthy relations between the two businesses.

Thus, Mr Toang, the owner of a karaoke bar who also works in a bank, explained that

In some companies, when a new manager comes, there will be a change of employees. The new manager will invite the employees from his previous work and replace the current employees because he trusts the former employees better. It is not about competences or skills. It is about trust.

Discussing the company he owns, he added the following comment: 'For example, I have a manager. My manager has been working for me for a long time, but recently he seemed less motivated. But he has gained my trust, and because I trust him, I kept him on as my manager'.

Following this theme, interviewees were asked which criterion they considered more important during the recruitment process: professional skills or personal qualities. Only a few considered professional skills to be more important than personal qualities, on the grounds that Vietnamese SMEs need qualified employees in order to compete with other companies. Instead, most interviewees stated that they prioritise personal qualities because, though an employee can acquire professional skills, his or her personal qualities will remain the same. 'Honesty' was most often cited as the essential personal quality in an employee. Importantly, in using the term 'honesty', the interviewees were referring to their employees' sense of loyalty towards their employer and their ability to be trusted with the best interests of the business.

These findings again show that traditional managers rely on the values of honesty, mutual trust, and loyalty—values that arise from the managers' reliance on social obligations to regulate themselves and their relations with other businesses and their employees. The loyalty of the employee to the employer and his or her ability to put the business' interests first seems more important than employees' formal or legal wrongdoings. The priority given to the values characterising social obligations means that they can override reliance on formal rules, such as codes of conduct and international business best practices.

3.1.4. Traditional SMEs prioritise familial obligations over legal compliance

Another aspect of traditional SME managers' reliance on a private order of business is their prioritisation of familial obligations over compliance with anti-corruption laws. Indeed, the interviewees indicated that it is ethical to fulfil familial obligations even in circumstances that might run counter to formal laws. Prof Tong, professor of economics in a Vietnamese national university, confirmed that the culture of favouring relatives is still very common in Vietnam, and that many Vietnamese companies consider it to be an ethical way of doing business.

In the interviews, managers often justified nepotism by attributing it to the traditionally expected behaviour of fulfilling one's obligations to one's family. This expectation, and how it can take priority over legal compliance, is captured in this statement from Ms Trang, a manager in a small IT company:

Especially in the public sector, favouring relatives is an unwritten rule; it is very common and considered as normal. In Vietnamese culture, supporting your family and relatives should be your priority, above following the rules.

The historical and cultural discussion of family and society in Vietnam in Chapter Three helps explain the importance that traditional Vietnamese SME managers accord to familial obligations. Vu Anh Dao (2017, pp. 13, 62) has asserted that the obligation to grant favours and privileges to relatives is a core Confucian value. Because of the strength of this accepted value, Vu Anh Dao (2017, pp. 13, 62) argues that in Vietnamese culture, businesses and public officials tend to favour relatives rather than act in the public interest. The impact of familial obligations on the behaviour of public officials has also been established by Gillespie (2001, p. 11), who argues that there are strong cultural expectations that public officials will bend the law in favour of their family, patrons, and members of the local community.

The influence of this value is strongly evident in contemporary business practices. Vietnamese businesses will accept any risks of prosecution for engaging in corrupt practices, because they are willing to sacrifice themselves for their children's future or for the well-being of their relatives in general (Vu Anh Dao 2017, p. 127). The interview data revealed substantial evidence of this value in play among traditional SMEs. For example, Ms Chanh, manager of a small clothes shop in Hanoi, cited 'helping her family' as one of her most important guiding values. She runs her

business with her family, and admitted that she only works with her relatives because she only trusts family members. Similarly, another interviewee considered it ethical to favour relatives in the recruitment process on the basis that relatives are likely to work harder than other employees.

These statements by interviewees suggest that some SMEs prefer hiring relatives not only because there is a cultural obligation or expectation in Vietnam to support one's family, but also because they trust the members of their family more than other people. Thus, the centrality of familial obligations and the trust that this entails within family relations overlaps with and reinforces the strong regard traditional Vietnamese SMEs have for relational transactions over formal legal transactions, and the belief that the former are ethically superior to the latter.

3.1.5. Traditional SMEs prioritise custom over formal laws

The interview data reveal that traditional Vietnamese SME managers prefer to model their behaviour on common practices and how, as a result, their understanding of the rules for ethical behaviour is guided more by custom than formal law. This section first explores traditional SME managers' tendency to link business ethics to customary practices rather than formal rules, and then considers how this reliance on custom means that traditional managers are unlikely to employ codes of conduct or to engage in formal dispute resolution.

A central finding from this study is that ethical and behavioural attitudes guiding SMEs are strongly influenced by traditional customary practices rather than a formal rules-based approach. Indeed, for traditional SMEs, customs seem to fill the regulatory space that formal laws and processes fill for transnational companies. This finding is supported by research highlighting the significance of custom in Vietnamese social and business organisations. For example, Sato (2009), who has examined the effectiveness of alternate methods of dispute resolution as a tool for preventing corruption in Vietnam, suggests that customary law still prevails over state law (Sato 2009, p. 224).

Data from the interviews show that customs are modelled after relational transactions. According to the interviewees, Vietnamese SMEs regulate their behaviour by mimicking what other people do rather than by looking at the law. The director of a coal and mining equipment company suggested that Vietnamese

businesses tend to look at what other businesses do—at their customs and routines—and that a business will only use the law when something goes wrong. However, he made a distinction between SMEs, which follow the pattern just mentioned, and large companies, which look at the law first and then look at what other people do. His perspective appeared to be shared by another interviewee, the manager of a garment company, who stated that ‘the general common practices in the society’ form the basis of ethical behaviour.

This reliance on customs is explained by McMillan and Woodruff (2000, p.2445), who argue that relational business requires the development of a community of businesses based on social norms or on social or business networks (McMillan and Woodruff 2000, p.2435). Expanding on this point, Thang Van Nguyen and Rose (2009, p.168) argue that the informal institutions on which Vietnamese businesses rely, are based on ‘socially sanctioned norms of behaviour, [...] embedded in cultural values and ideology’. Thus, these ‘rules’ of behaviour come out of common practices.

The importance of customary rules in regulating citizens’ behaviour and their co-existence with formal rules is also examined by Lindsey (2002, p.4), who refers to Ehrlich’s (1936 cited in Lindsey 2002, p.4) sociological distinction between the ‘law in books’ and the ‘living law’. For him, this distinction is similar to the dichotomies between ‘official vs unofficial law’ and ‘transplanted law vs indigenous law’ (Lindsey 2002, p. 5). In other words, although both informal rules and practices and formal laws play a role in regulating people’s behaviour (Lindsey 2002, p. 5), according to Ehrlich, social behaviour is more influential than states’ laws.

This would seem to be the case in Vietnam. Indeed, many Vietnamese proverbs highlight the predominance of local norms and practices over formal legal principles, such as ‘*một bồ cái lý không bằng một tý cái tình*’ (‘a granary of reason does not equal a little bit of feeling’), ‘*luật pháp là hình thức đạo đức thấp nhất*’ (‘law is the lowest form of morality’) and ‘*phép vua thua lệ làng*’ (‘the laws of the emperor yield to the customs of the village’) (Gillespie 2006, p. 48; Yu 1990, p. 2). One of the reasons why traditional SME managers prioritise business customs over the law is because, as mentioned previously, they do not trust Vietnam’s government and formal legal system and institutions. Thus, anti-corruption regulations based on a rules-based

approach, like global anti-corruption norms, are at a disadvantage when it comes to influencing traditional Vietnamese managers who rely on customary practices rather than formal laws to regulate their behaviour.

- Traditional SMEs are unlikely to employ codes of conduct/ethics

A consequence of traditional SMEs' reliance on customs over formal rules is that they are unlikely to employ codes of conduct or codes of ethics to regulate their employees' behaviour. Indeed, while most of the SME interviewees thought that a company's codes can offer an effective way to reduce unethical business practices without reliance on the law, only two interviewees said they had adopted codes of conduct. Further, neither of these codes regulated the relationships and interactions that the business and its employees have with public officials.

Interviews with employees in public offices revealed some pragmatic reasons that might explain the low uptake of codes of conduct on the part of traditional SMEs. Mr Du, an official from the VCCI, argued that most Vietnamese SMEs do not have codes of conduct or ethics because they do not see their benefit. What is more, Ms Tuyen, a senior official in a foreign development agency, suggested that the compliance costs of following codes of conduct are too high for small companies.

Judging from SME managers' responses, the predominant understanding is that employee behaviour is modelled on that of other employees and the managers, directors, or owners of the company, rather than on an official company code of conduct. One interviewee remarked that a code of conduct is of use only if the managers and directors adhere to it, suggesting that the behaviour modelled by the directors and managers is more important. The behaviour of directors or managers is seen as the model to follow inside the company. Similarly, Mr Muyen, the director of a trading company, commented:

From an Asian point of view, we see the business as we see the family. The company is like a family. In the same way that children are influenced by the parents, employees are influenced by their boss. A code of conduct reflects the management values. The staff will follow the managers; otherwise they will be fired.

Business experts interviewed for this thesis also noted the emphasis placed in Vietnam on managers as role models for employee behaviour. Reflecting on the

traditional Vietnamese business community, Ms Hoan, a senior associate in an international law firm who was interviewed as a business expert for this thesis, stated that Vietnamese employees' attitudes towards codes of conduct are strongly influenced by a company's demonstrated level of commitment to and enforcement of the code in question. In particular, she pointed out that the impact of a code of conduct inside a company depends on how it is implemented or practiced by more senior staff especially. She added that 'in Vietnam, employees normally follow their managers/supervisors. Their attitudes towards corruption should be an example for people at other levels: it affects their [the employees'] mindset'.

- Traditional SMEs prefer not to use the judicial system

Another consequence of traditional SMEs' reliance on customs is that these SMEs prefer to resolve their disputes among themselves rather than using legal institutions. On the basis of his experience as a commercial lawyer in Ho Chi Minh City, Quan Hien Nguyen (2006, p. 2) argues that 'Asian merchants in the Vietnamese market' tend to refer to moral norms and commercial practices to resolve commercial disputes, and to 'mobilize business or political networks' rather than using the legal system' (Quan Hien Nguyen 2006, p. 2). This view accords with a remark offered by one of the SME managers interviewed. He stated: 'laws and regulations are the last choice for dealing with disputes and conflicts'. To substantiate this claim, he pointed out that most people in Vietnam do not know what the laws are or cannot understand them, and they therefore want to avoid the costs of engaging legal services and of judicial procedures.

The Vietnam 2015 Justice Index (VLA & UNDP 2016, p. 12) confirms that, overall, disputants in Vietnam choose to solve problems by themselves or opt to use informal measures, instead of turning to local judicial institutions. Existing studies offer persuasive explanations as to why Vietnamese businesses rarely take each other to court, or do so only as 'the last resort' (Thang Van Nguyen & Rose 2009, p. 169). Studies point to the relatively high costs of legal actions as well as the low levels of public confidence in formal legal institutions. McMillan and Woodruff (2000, p. 2422) argue that in countries such as Vietnam, the costs of using the formal legal system and going to court to resolve disputes sometimes exceed the costs of using personal relationships. They also point out that rampant corruption in the court system renders it an unreliable option for businesses (McMillan & Woodruff 2000, p. 2425).

For its part, the Vietnam Justice Index points to ‘unclear procedures for dispute settlement, lengthy processing time and inefficiency in dispute resolution’ to explain businesses’ preference for informal institutions. Other disputants’ concerns mentioned in the Index include high costs, complex procedures and lack of confidence in the integrity of judges and court staff (VLA & UNDP 2016, p. 12). Indeed, Vietnamese SMEs do not trust, and sometimes even fear, the judicial system because it is corrupt. As the director of a small tourism and event company put it: ‘In general, Vietnamese people are very afraid of the judiciary system, going to Court, the authorities, and the government’.

Thus, given the costs, corruption, and other challenges noted in the Index, businesses have more incentives to use personal relationships than formal laws. Ms Chanh, the owner of a small clothes shop in Hanoi, suggested that when a company has a dispute with another company, its options are to use dialogue-based dispute resolution options, such as informal mediation, or even physical threats. Her comments indicated that both of these options were preferable to legal procedures, which she labelled as lengthy and costly. The tactic of resorting to physical threats for dispute resolution has been noted in the literature on inefficient legal systems. McMillan and Woodruff (2000, p.2457) point out that a legal system’s inefficiency sometimes leads ‘private-order organizations’ to use threats of physical violence to resolve disputes.

For most of the Vietnamese SME managers interviewed, amicable dispute resolution is preferable to using judiciary institutions, which they do not trust, in order to reduce costs, save time and ensure that their business reputation remains intact. For example, Mr Hoa, owner of a coffeeshop in Ho Chi Minh City, stated that amicable dispute resolution allows a business to ‘avoid bad publicity’. Ms Quang, co-director and co-owner of a small cosmetics company, added that ‘in Vietnam, companies do not want people to know about their disputes’, implying that it could cost them business.

The interviewees’ comments are supported by Thang Van Nguyen and Rose (2009, p.169) who explain that, in Vietnam, social networks provide social alternatives to state-based sanctions for contractual violations. Perhaps most important among these is the loss of reputation. Making a similar point, McMillan and Woodruff (2000,

p.2423) argue that the threat of retaliation and the fear of losing business partners help regulate businesses' behaviour (McMillan & Woodruff 2000, p. 2433). They also note that in case of disputes, businesses do not want to get 'a reputation among their other customers of being difficult to deal with' (McMillan & Woodruff 2000, pp. 2425, 2439). In Vietnam, the threat of social sanctions that negatively impact on a business' reputation is particularly salient, because reputation in general is considered by Vietnamese businesses as their most important asset (McMillan & Woodruff 2000, p. 2439). Thus, Mr Hang, partner and founder of a Vietnamese law firm, suggested that Vietnamese businesses avoid taking other companies to court because maintaining good relationships with these companies, relationships that often require a long time to establish, is more important than winning a dispute. Thus, the recourse to formal mechanisms can cause reputational damage even for the businesses who are 'victims'. Accordingly, although there are indeed structural issues that discourage traditional Vietnamese SMEs from using the judicial system, such as costs, the length and complexity of procedures, and systemic corruption within the system, traditional Vietnamese SMEs' reluctance to use the courts is also influenced by a deeper epistemic assumption: namely, that using the judicial system to resolve their problems can cause companies to lose face and suffer reputational damage.

To sum up: Section 3.1 has argued that Vietnamese companies traditionally rely more on 'trust-based' relationships, which they develop through reciprocity and gift-giving, than on legal relationships. The perceived importance of their own social and familial obligations—the foundations of their trust-based relationships—means that they place the need to fulfil these obligations over the need to comply with anti-corruption laws. The reliance on private ordering also expresses itself as a preference to regulate behaviour through accepted customs or by modelling the behaviour of others in their community, rather than by relying on formal rules, such as those associated with Vietnam's formal legal system, which they do not trust.

This preference for informal institutions is culturally and historically embedded, based on core traditional Confucian values, which promote reciprocity, gift-giving, familial obligations, and shared customary practices. Traditional SME managers ultimately prioritise these values over formal laws—including global anti-corruption norms—to regulate their behaviour. The pragmatic assessments discussed in the

previous section reinforce this preference. Thus, traditional Vietnamese SMEs seem to have an aversion to state regulation of commerce, and to avoid using formal legal institutions in their daily business operations. This aversion to formal rules ultimately affects their response to anti-corruption legislation and other forms of commercial legislation. In turn, this finding partially explains why the transfer into Vietnam of global anti-corruption norms, which are grounded in a rules-based approach to corruption, have not produced the expected outcomes.

3.2. Traditional Vietnamese SMEs believe they lack the agency needed to resist corruption

The last main finding of this chapter concerns the pattern whereby traditional Vietnamese SME managers engage in corrupt practices because they feel powerless. The managers and owners of traditional SMEs typically believe that they do not have the agency needed to avoid corruption, and that the system leaves them with no other options than to engage in corrupt practices. This section explores the epistemic assumptions underlying these beliefs, including the assumption that traditional Vietnamese SME managers must be corrupt because public officials are corrupt, and building relationships with them is necessary for companies to 'survive' commercially. Ultimately, traditional Vietnamese SMEs regard corruption as inevitable.

3.2.1. Traditional SMEs feel forced to be corrupt because public officials are corrupt

Although the interviewees all recognised widespread corruption among public officials, their responses revealed two quite different understandings of the reasons for this corruption. Some interviewees justified giving bribes to public officials by suggesting that their salaries are very low and that they need the extra money to survive; others regarded public officials as deliberate offenders, seeking to extort bribes from SMEs. In both cases, however, the SMEs own corrupt behaviour is not presented as immoral, because it is justified by the external circumstances and demands.

The idea that bribery is justified because of the need to supplement public officials' low rate of pay was expressed by many interviewees. Mr Le, the director of an NGO, confirmed that many companies do not consider bribery to be immoral for that

reason. Mr Munster stated that public officials who engage in corrupt practices are not doing anything immoral; rather, they are securing a necessary source of income in a system that underpays its public officials. As he put it, 'the civil servants are all corrupt, but they are not bad people; the problem is in the system. They do not earn enough money'. He suggested that paying a bribe is part of the cost of paying for a public service. Similarly, the director of a steel company justified corrupt behaviour by employees in SOEs by pointing to their low salaries, asserting that these employees must themselves pay bribes to get their positions. Thus, public officials were regarded by many interviewees as victims, forced to engage in corrupt practices to make ends meet. In turn, Vietnamese SME managers are not culpable, because they are only responding to a situation not of their making.

A second line of comment offered by interviewees cast the public officials receiving bribes in a very different light. On this account, public officials are regarded as strategic individuals who abuse their power to extort money from small private businesses. From this perspective, public officials are the instigators of corrupt practices, whereas businesses are passive actors who lack sufficient agency to pursue ethical business practices. Researchers have made similar observations. Hoang (2018, p. 667) argues that businesses are vulnerable to 'predatory' public officials who can 'cause undue harm to their business by requiring unnecessary inspections, revoking operating permits, or issuing back taxes if they do not feel properly compensated for their "favors" to investors'.

Turning to the interview data, Mr Gon, the owner of a coffeeshop in Hanoi, characterised public officials as greedy and acting 'with no guilt'. He expressed the strongest feelings against public officials of all the interviewees, describing his relationships with public officials as follows:

We are human; they are dogs. If we want them to do something, we need to feed them. You need to meet them when they are open and they will give you the price to leave you alone for a long time. If you want to open a coffee-shop, they negotiate with you how much you need to pay every month—not in the form of taxes, but in under-the-table money [bribes]. You need to pay for every department in the government: the police, public committee, safety licences, etc. They do nothing, they just take your money. They do not care if

you are good or bad. That is why [...] it is a very harmful environment, because we want to be good but others can be bad [without impunity]. If they have money, they can do what they want. So the law is nothing.

Although other interviewees used more moderate language, they too cast aspersions on the public officials. The director of a transport company stated that public officials try to earn profit from private companies, making it difficult for companies to run a business. Mr Hang, partner and founder of a Vietnamese law firm, asserted that public officials abuse the opacity and complexity of laws to procure bribes from businesses. Mr La, also a lawyer in a Vietnamese law firm, commented that in some industries, such as the food industry, it is impossible for a business to satisfy all the regulations regarding food safety. Mr La's response points to the complexity of Vietnam's legal statutes as one of the reasons why businesses in that industry must rely on relationships with public officials, such that the law provides officials with tools enabling them to solicit bribes from businesses.

In some instances, the labelling of public officials as the instigators of corrupt practices was conditioned by a distinction between high- and low-level public officials. Mr Munster, for example, made this distinction. He believed that low-level public officials are effectively forced to be corrupt because their salaries are too low to survive, whereas high-ranking officials would not want Vietnam's corrupt system to change because they benefit from it.

The director of an IT company also suggested that the mindset of businesses is influenced by the corruption inside the political system and among higher-ranking public officials: 'corruption is very common in the political system; the leaders are corrupt so it affects the practices of the citizens and the businessmen as well'. He suggested that Vietnamese SME managers engage in corrupt practices because public officials, who, according to some interviewees, are regarded as models, are themselves corrupt.

These disparities of access to public officials and institutions mean that groups' capacities to resist or avoid corruption differ. To quote the Vietnam 2015 Justice System report (VLA & UNDP 2016, p. 12):

In particular, those who are poor, who have a low level of education and are not part of the social elite face obstacles in access to information and to local institutions, given their limited personal and social capital.

As a consequence, the small businesses that are run by managers from the lower class of Vietnamese, who have a low level of education and limited social capital, have even less agency to resist corruption than larger businesses with more legal knowledge.

Thus, the prevalence of corruption with Vietnam's public services sector influences traditional Vietnamese SME managers' view that corruption is deeply rooted in the system and that they have no other option than to engage in corrupt practices with public officials. In addition, these managers feel powerless against abuse by corrupt public officials.

3.2.2. Relationships with public officials are seen as necessary to survive

As discussed previously, traditional Vietnamese SME managers believe that they have pragmatic incentives for relying on personal relationships and connections, including those with public officials. However, this emphasis on personal relationships cannot be explained by pragmatic reasons alone. Many traditional managers also share a deeper, cognitive understanding that they have no other choice than to build relationships with public officials if they want to survive and develop. For example, the vice-director of a medium-sized construction investment and development company suggested that it is a 'traditional rule' that businesses have to build relationships with public officials to conduct business in Vietnam. As he put it, 'it is almost impossible to participate in public projects if you do not have relationships with public officials'.

The necessity of building relationships with public officials seems to be more prevalent in some industries, notably those involving state investment. It seems that businesses who transact with SOEs and the public sector, such as construction companies, engage in corrupt practices more readily, because these businesses view this approach as necessary to get contracts. The director of a steel company explained that because doing business with SOEs requires building relationships with the employees of SOEs, which is often difficult, he prefers to work with foreign companies, where personal relationships are less important.

Mr La, an associate in a Vietnamese law firm, pointed out that businesses in industries that involve natural resources—such as mining—or land—such as real estate—must have connections with government officials in order to develop. He explained:

If you need a piece of land to open a factory, you will need to establish some relations with the local government [...]. You will need to negotiate with the government regarding the lease, the rent, etc.

Another interviewee stated that real estate and construction are the most corrupt industries in Vietnam because land is owned and managed by the government. Therefore, to obtain land and build, construction companies need to forge personal relationships with government officials. The interviewees' comments are confirmed by Hun Kim (2017, p. 677), who argues that relationships are required for developing real estate in Vietnam due to 'overlapping legal regimes and decentralized institutional authority'. Expanding on this point, Hoang (2018, p. 667) suggests that Vietnamese businesses believe that it is 'impossible to survive in the real estate market' without paying bribes to state officials. According to Gainsborough (2010, p. 16), relationships are particularly crucial in these sensitive industries because, to be successful, businesses still have to rely on the state for licences, contracts, access to capital, and land, as well as 'protection'.

The need for Vietnamese SMEs to build personal relationships with public officials is not limited to the extractive and construction industries. Ms Huyen Tuan, who works in the education sector, insisted that good relationships with public officials are essential to the running of her business. In particular, she spoke of how she needs to build good relationships with the education department, which introduced her to schools and people in her field that are critical to her business' success. Mr La added that companies in 'sensitive industries' subject to many regulations, such as restaurants, entertainment, and financial services, also need connections with public officials to conduct their business. For example, the owner of a karaoke bar in Hanoi stated that the entertainment industry tends to suffer more from corruption than other industries because the regulations in that sector are more restrictive than in other sectors. He remarked that

Currently, doing business is really hard because laws and regulations try to slow down the business, especially in entertainment and places that provide alcohol. If you want to run a business that sells alcohol, you need to give money to the government.

His comments show again that traditional Vietnamese SME managers regard formal regulations more as a burden than as guidelines serving their business interests.

3.2.3. Corruption is regarded as inevitable

In addition to considering personal relationships with public officials essential for conducting business in Vietnam, traditional Vietnamese SME managers ultimately share the core epistemic assumption that corruption in general is inevitable. Traditional managers think that it is impossible for them to 'survive commercially' without engaging in corrupt practices. Thus, Mr Le, the director of an NGO, commented that

If an SME refuses to pay a bribe, it risks losing a market or an opportunity. That company may be able to do it once but not systematically—otherwise, it goes bankrupt.

The comments of Mr La, an associate in a Vietnamese law firm, are indicative of the interviewees in general. According to him, Vietnamese SME managers believe that they cannot avoid corruption and that they are powerless.

Along the same lines, and illustrating the traditional Vietnamese SMEs' assumption that corruption is inevitable, some interviewees stated that SMEs are less able to resist engaging in corruption than large or foreign companies, on account of the power imbalance between an SME and the government. This means that they have less leverage in their negotiations with the authorities. Thus, Mr Le, the director of an NGO, stated that Vietnamese SMEs often do not have the same means to resist corruption that large companies have.

Existing research bears out this statement. Segon, Booth and Pearce's (2010, p. 13) survey of expatriate managers revealed that smaller companies and also local companies feel more pressure to engage in corrupt practices than large companies. These findings are confirmed by Thang Van Nguyen et al.'s (2020, p. 879) research on firm corruption in Vietnam, in which they identify two categories of bribes. The first

category includes bribes paid by companies for 'survival reasons', or 'survival bribes'. These are bribes that companies must pay to obtain, for example, standard administrative services; they are also called 'extortion' or 'forced bribes'. The second category involves bribes that are paid by companies to obtain unfairly favourable treatment; they are called 'benefit-seeking bribes'. This type of bribe requires connections between the company and public officials. Even as SOEs and large companies have more opportunities than SMEs to engage in benefit-seeking bribes, Vietnamese SMEs are forced to pay survival bribes more frequently than large companies (Thang Van Nguyen et al. 2020, p. 896). Thus, large companies have the capacity to decide whether or not to engage in corrupt practices, whereas Vietnamese SMEs are forced to engage in these practices just to survive. Lien Nguyen and Horowitz (2018, p. 24) also suggest that managers of Vietnamese SMEs feel they are in a vulnerable position when it comes to reporting corruption, and that they lack the resources needed to resist corrupt practices.

The interviews further reveal that because traditional managers regard these corrupt practices as inevitable, they do not consider them to be unethical. For these managers, corruption is acceptable when there are no other options. This finding is supported by other scholars. Vu Anh Dao (2017, p.155) argues that both the beneficiaries and the victims of corruption do not regard corruption as a crime but rather as a 'customary rule', necessary to maintain the stability of the system. Similarly, Tromme (2016, p.289) suggests that Vietnamese companies engage in corrupt practices because 'they follow the existing rules of the game and abide by the existing culture of corruption'. Segon, Booth and Pearce (2010, p.14) likewise believe that there is 'a relative acceptance of bureaucratic corruption by Vietnamese managers and Expatriate managers', who consider these practices as the way to conduct business in Vietnam. Along the same lines, Rand and Tarp's (2017, p.131) survey results suggest that many firms in Vietnam regard informal payments as a 'normal feature of doing business'.

Most of the interviewees appeared to blame the 'system' rather than point to individuals as the cause of endemic corruption in Vietnam. Expanding this point, Vu Anh Dao (2017, p. 105), who interviewed various actors in Vietnam about their perception of corruption, argues that the interviewees who recognise they have engaged in corrupt practices, do not consider themselves as actively contributing to

the system but rather as victims of the system. Similarly, Segon, Booth and Pearce (2010, p.6) suggest that corruption is often rationalised by those engaging in corrupt practices' denial of responsibility and perception that they have no other alternative.

Some interviewees justified traditional Vietnamese SMEs' involvement in corruption by arguing that the Vietnamese Government does not support them enough. One interviewee stated that the government interferes too much in the economy and tends to favour SOEs, which the government provides with public funding, over private companies. This perception is confirmed by Thuy Thu Nguyen and van Dijk's (2012, p. 2935) study, which showed that governments in socialism-oriented and post-socialist countries, including Vietnam, provided more assistance to the state sector and state-owned enterprises than to private companies. For Nawaz (2008, p. 5), SOEs in Vietnam benefit from preferential treatment, whereas other companies, whether foreign or local, face legal restrictions. Adding to this point, Vu Anh Dao (2017, p.100) argues that conflict of interest is very common among the Vietnam political elite, who make decisions according to their personal interest. All of these elements contribute to the traditional Vietnamese SME managers' perception that they have less agency to resist corruption compared to other types of companies.

Thus, findings from the interviews reveal that traditional Vietnamese SME managers share the core epistemic assumption that they cannot resist corruption, and that they need to engage in corrupt practices to open and develop their businesses. This assumption affects their responses to the transfer of global anti-corruption norms into Vietnam. Indeed, traditional managers are unlikely to comply with these norms if they believe that they do not have the means to comply with them. Again, this finding partially explains why the transfer of these norms has not produced the expected reduction in corruption in Vietnam.

4. Conclusion

This chapter finds that compliance with anti-corruption laws is not a primary consideration for traditional Vietnamese SME managers, because these managers rely on informal institutions rather than formal legal institutions in conducting business. That is a key difference distinguishing traditional SMEs from the other epistemic communities identified in this thesis. The informal institutions in question include trust-based personal relationships—developed between SME managers,

their business partners, and public officials—as well as customary practices. This chapter shows that trusting relationships are built through reciprocal obligations and gift-giving, which can lead traditional Vietnamese SME managers to engage in corrupt practices, such as collusion and bribery. Another consequence of traditional SME managers' emphasis on relational business is that they prioritise their own social and familial obligations over formal laws, in a way that again encourages certain corrupt practices, such as nepotism.

This chapter has argued that traditional SMEs' preference for informal institutions is justified by both pragmatic incentives and cultural reasons. Traditional managers' reliance on informal institutions is informed by these managers' pragmatic understanding that relying on personal relationships and corrupt practices is more beneficial for their business than legal and anti-corruption compliance. This attitude is also justified by traditional managers' general distrust of and lack of confidence in formal regulations, which they regard as a burden. This distrust stems, at least in part, from institutional weaknesses, such as the laws' lack of clarity and inadequate enforcement, as well as their being open to interpretation by public officials, who are perceived as abusing their power by means of these laws.

At the same time, traditional Vietnamese SME managers' preference for informal institutions is reinforced by deeper cultural and cognitive epistemic assumptions shared by these managers. These cultural assumptions are based on traditional Confucian values, which promote a reliance on personal relationships, reciprocity, gift-giving, social and familial obligations, and customs over the use of formal rules. Traditional managers also share the cognitive assumption that they do not have the agency needed to resist corruption and that corruption is inevitable. They believe that they have no other alternative than to rely on informal institutions and engage in corrupt practices in order to 'survive' and make a profit. Consequently, they do not think that practices that go against global anti-corruption norms, such as bribery, collusion, and nepotism, are unethical, because they are justified by Vietnam's business environment.

Thus, because of these pragmatic and cognitive epistemic assumptions circulating inside the traditional Vietnamese SME community, members of this community are less inclined than the other epistemic communities identified in this study to comply

with these global anti-corruption norms. The chapter's findings highlight reasons why the transfer into Vietnam of global anti-corruption norms grounded in a rules-based approach has had little influence on traditional SMEs' practices. These findings also reveal fragmentation in the interpretation of and compliance with global anti-corruption norms within Vietnam's business community, with such fragmentation helping to explain why the transfer of these norms into Vietnam has not produced the expected outcomes.

However, the interviews reveal that some industries are more prone to corruption than others, suggesting that, across industries, different Vietnamese SMEs have different attitudes towards corruption. The interview data also show that the traditional Vietnamese SMEs' primarily relational approach to conducting business is evolving, and that more Vietnamese SMEs now adopt a transitional approach, which is more law-oriented. The epistemic community associated with transitional Vietnamese SMEs is analysed in the next chapter.

Chapter Five –Transitional Vietnamese SMEs

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1. Introduction

This chapter is the second part of the analysis of Vietnamese SMEs epistemic assumptions regarding corruption and ethical ways of doing business. This second part focuses on transitional Vietnamese SMEs. The previous chapter argued that traditionally, Vietnamese SMEs rely more on informal institutions, such as personal relationships and corrupt practices than on formal institutions, such as legal and anti-corruption compliance in conducting business. Traditional SME managers' reliance on informal institutions is justified by a set of core epistemic assumptions: namely, that legal and anti-corruption compliance is not beneficial for their business, and that they lack the agency needed to resist corruption and to comply with formal laws.

However, this thesis identifies a trend now emerging among Vietnamese SMEs; this trend leads towards more law-oriented understandings of business and corruption. Analysis of the interviews conducted for this study reveals that there are some SMEs

that have started to rely on legal compliance, international business best practices, and global anti-corruption norms to regulate themselves. Although they still rely on informal institutions, like relational business, and may sometimes engage in corrupt practices in conducting business, this transitional Vietnamese SME community also engages with formal institutions, by means of legal compliance. The adoption of law-oriented understandings of business distinguishes these transitional SMEs from the traditional Vietnamese SME community, which relies almost exclusively on informal institutions. The transitional community also differs from members of the TEC, who, always adopt a law-oriented approach within their companies, as will be discussed in Chapter Six.

Thus, this chapter examines the core epistemic assumptions circulating in the transitional epistemic community regarding ethical ways to conduct business. This analysis adds to the discussion on how Vietnam's businesses interpret and respond to global anti-corruption norms. Ultimately, the analysis helps to explain why the transfer of global anti-corruption norms into Vietnam has not produced the expected reduction in corruption within the country's business environment. In addition, the analysis also provides some insights into what elements can encourage Vietnamese businesses to rely more on formal institutions, including compliance with anti-corruption laws, rather than on corrupt practices.

As in Chapter Four, the analysis is primarily based on semi-structured interviews conducted with 25 managers of Vietnamese SMEs. Information about the interviewees is summarised in a table at the end of the thesis (see Appendix One and Two¹⁸). The interviewees were asked to reflect on Vietnam's business environment; their opinions regarding ethical, unethical, and corrupt practices; and their interpretation of anti-corruption norms and rules. The information collected from the interviews was cross-checked against supplementary interviews with business experts (see Appendix One). Findings from these interviews are interwoven with discussion of the interviews with managers of transitional SMEs. In addition, the interview data are also corroborated by articles and reports on Vietnam's private sector, political economy, legal system, and social characteristics, as well as studies on corruption in Vietnam.

¹⁸ The names of all the interviewees have been modified to ensure their anonymity.

Before proceeding to discuss the epistemic assumptions of the transitional SME community, the next section explains how this community has been identified and the ways in which it differs from the traditional Vietnamese SME community already discussed. The following section then describes the characteristics of members of this transitional Vietnamese SME community.

1.1. Delineating the transitional Vietnamese SME epistemic community

One way to delineate the understandings prevalent in the transitional epistemic community is to describe how they involve a mix of the business practices and assumptions of both the traditional SME community and the transnational community. For example, when the SME managers interviewed were asked to name the most important values for them and their company, the majority mentioned values such as ‘trust’, ‘honesty’, and ‘maintaining a good reputation’. As discussed in Chapter Four, the interviewees did not situate these values within the formal legal system, but rather within the relational system and the system of customs in which they operate. These values reflect Vietnam’s traditional approach to doing business—an approach that relies on trust-based personal relationships and, conversely, the distrust of formal institutions. However, some of the Vietnamese SME managers interviewed also cited ‘transparency’ and ‘compliance with law’ as key values. These statements show that some Vietnamese SMEs appear to be more law-oriented, more aware of their rights, the law, and legal processes, than traditional managers.

These transitional Vietnamese SME managers’ recognition of the law accords with research findings reported in the Vietnam 2015 Justice Index (VLA & UNDP 2016, p. 12), which indicate that Vietnamese citizens’ access to legal information and legal knowledge has improved in recent years. The index was able to show clearly that more citizens are now accessing legal information, from a more diverse range of formal information sources, compared to previously. These data corroborate the findings from the interviews conducted for this thesis. One indicator of this trend came from the interview with Mr Du, an official from the VCCI, who argued that before 2000, only foreign companies would seek legal advice, but that since that time, an increasing number of Vietnamese business owners have been seeking legal advice.

In addition to the transitional managers' greater awareness of law and legal processes, the interview data also suggest that these transitional managers, across a broad range of industries, increasingly comply with the laws because they believe that both the quality of the laws and also administrative processes have improved. Notably, Mr Cang, a partner and founder of a Vietnamese law firm, suggested that transitional SME managers find the laws to be 'clearer and easier to understand [such that they] provide useful guidelines for ordering business transactions'.

Mr Buc, the director of an IT company, also commented on improving legal processes. In particular, he suggested that the administrative procedures for business licences and authorisations had improved significantly in the last five years. He found that these administrative documents are now easier to obtain, and that they are processed more quickly. He associated these improvements with what he perceived as an attempt by the government to encourage people to start their own businesses. Adding to this point, Mr Lee, the Taiwanese director of a steel manufacturing company, talked about how the improved quality of regulations—in terms of clarity, accessibility, and administration—has positively changed business practices in Vietnam. According to him, there is a trend among Vietnamese SMEs towards increasing compliance with formal laws, as opposed to reliance on corrupt practices.

Mr Lee's perceptions correspond to arguments made by Nadler (2017, p. 63). She suggests that 'qualities of the law itself, including the extent to which it is perceived as furthering justice or reflecting community values, influence the extent to which people feel bound by law in general' (Nadler 2017, p. 63). She adds that individuals' attitudes towards the law is influenced by sanctions, legitimacy, and related perceptions of the law's credibility and 'propensity to do justice' (Nadler 2017, p. 63). Thus, the enhanced quality, enforcement, and reliability of Vietnam's formal laws increasingly encourage Vietnamese SMEs to use them instead of relying on informal institutions in conducting business. This finding is supported by McMillan and Woodruff's study (2000, p. 2445), which suggests that legal improvements decrease the use of informal institutions as substitutes for formal institutions.

1.2. Characteristics of members of the transitional Vietnamese SME community

Data from the interviews reveal several characteristics shared by members of the transitional Vietnamese SME community. This community's members tend to be from the younger generation of SME managers, they work in industries and locations that are less prone to corruption than others, and they usually have a higher level of education and more legal knowledge than traditional SME managers. However, the most critical characteristic of transitional managers seems to be their international exposure, whether it is in the form of studying abroad, overseas training, or working with international firms.

Not only were transitional managers generally younger than the members of the traditional community; what is more, younger managers of Vietnamese SMEs are more law-oriented than older members. For example, Ms Quang, who is less than 30 years old, and who holds a university degree, insisted that she puts considerable effort into and spends a lot of money on legal advice, to ensure that her business acts in accordance with the law, because doing so is important to her. Mr Ca also pointed to the existence of 'generational' differences in attitudes towards the law. He stated that whether small companies decide to adopt a law-oriented approach or not depends on whether their managers are from the older or younger generation. He stated: 'I'm under 40 years old. The younger generation is aware that legal departments are important to conducting business, but the older generation may not find the law to be as important'.

Various interviewees characterised the older generation as tending to do things 'the traditional way' and to accept corrupt practices such as bribery, collusion, or nepotism more easily—because they consider those practices to be normal, a 'habit'. In contrast, the interviewees described the younger generation of Vietnamese managers as less inclined to engage in corrupt practices, because they are more influenced by Western culture and international standards, as a result either of overseas training or working with Western firms. According to some interviewees, the younger generation of Vietnamese private businesses prefer to conduct business the 'Western way', which entails caring about and complying with the law. This line of comment shows that there is a generational shift towards 'Western' business

practices—a shift brought about, in part, by the new generation’s exposure to international business standards.

This shift, and its origins in generational differences in education and international exposure especially, were explicitly acknowledged in the interviews with transitional managers as well as business experts. The director of a trading company, for example, suggested that in the last two decades, people belonging to ‘the old system’ have started retiring and have been replaced by the new generation of Vietnamese business owners and managers. He perceived the new generation as better educated, with opportunities for studying overseas and also working for foreign companies in Vietnam. Consequently, as he saw it, Vietnamese businesses have started realising that Vietnam’s traditional system needs to change—that their way of doing business needs to change.

Supporting the argument that international exposure is key to Vietnamese managers’ shift towards more law-oriented understandings, Mr Le, the director of an NGO, stated that the new generation of Vietnamese business owners is much more influenced by global anti-corruption norms than the previous generation, principally as a consequence of studying overseas. Similarly, Mr La, an associate in a Vietnamese law firm, asserted that business managers who have been trained locally are more likely to engage in corrupt practices than those who have been trained overseas.

Bolstering this point, the director of a small coal and mining equipment company opined that the younger generation in Vietnam, especially young lawyers, is better trained and educated, such that they are more sensitive to international standards. Indeed, most interviewees identified the younger generation of Vietnamese businesses managers as less inclined to engage in corrupt practices because of their superior legal knowledge. Their comments show again that education and exposure to Western understandings of international standards and norms (mainly through education) has prompted a change in this group’s attitude towards the law. Supporting this view, Mr Lee, the Taiwanese director of a local medium-sized steel manufacturing company, asserted that improved legal education can change the traditional Vietnamese business mentality.

Vietnamese SMEs' degree of reliance on formal laws also seems to vary depending on whether these SMEs are located in the North or South of Vietnam and whether they are conducting business in urban centres or rural areas. According to some interviewees, Vietnamese SMEs conducting business in the South and in urban centres tend to rely more on formal institutions than Vietnamese SMEs conducting business in the North or in rural areas. These distinctions were made clear by Mr La, an associate in a Vietnamese law firm in Hanoi who stressed the role of regional differences vis-à-vis SMEs' attitudes towards the law. He suggested that in Ho Chi Minh City, the majority of business owners, when they start their business, first ask for legal advice from a lawyer, and then possibly try to build connections with public officials afterwards. By contrast, in Hanoi, the majority of business owners first try to build connections with public officials, with only a minority of them asking for legal advice from a lawyer. Mr Mo, a freelance consultant in economics, likewise stated that reliance on personal relationships is more prevalent in the North of Vietnam than in the South, where the culture is more 'meritocratic'.

Some interviewees also suggested that Vietnamese SMEs' reliance on formal laws varies depending on what type of company is involved or what industry they operate in. As discussed in Chapter Four, some sensitive areas, such as extractive industries, entertainment, real estate, education, hospitality, and the food sector are seen as more prone to corruption than others. For example, Mr La, an associate in a Vietnamese law firm, stated that it is impossible for restaurants to comply with all the food safety regulations, creating a situation rife with abuse by corrupt public officials. Consequently, offering gifts or payments to officials is necessary for companies seeking to operate in the hospitality sector.

However, outside these sensitive industries, it can be easier for business owners to comply with formal laws, because these less sensitive industries are less overregulated and less prone to abuse from corrupt public officials. This pattern provides a good explanation of why the managers identified here as part of the transitional Vietnamese SME epistemic community tend to operate in less sensitive industries. Furthermore, some industries involving professional services or complex manufacturing processes might need more formal legal protection than other industries, such as the hospitality sector. Therefore, Vietnamese SMEs operating in these industries are more inclined to hold transitional views.

The interviews also reveal that transitional Vietnamese SMEs may rely on either formal or informal institutions depending on the type of companies with which they do business. The key variables, in this connection, are whether they are interacting with private or state-owned enterprises, and also whether these enterprises are local or international. Ms Chi, the director of a small tourism and events company, admitted that her company approaches its transactions with SOEs and private companies differently. She explained these differences as follows:

It is very different when we sign a contract with SOEs versus private companies. When we have a contract with a SOE, the people work for the government, so sometimes we need to have some oral agreements, especially after signing the contract. We may also have to give them some money, as a commission. [...] But when we work with private companies, everything is clearer and has been written down.

By 'oral agreements' and 'commissions', Ms Chi implies bribes, the amounts of which have been agreed beforehand orally with public officials. Many interviewees echoed Ms Huyen Chen's arguments. These interviewees suggested that Vietnamese SMEs that do business with SOEs have no other choice than to rely on informal institutions and corrupt practices, because SOEs are more corrupt than other types of companies registered in Vietnam. This finding shows that corruption in SOEs and the intermingling between the public and private sectors discussed in Chapter Three influences Vietnamese SMEs' interpretation of global anti-corruption norms and affects these SMEs' response to these norms: namely, hindering the effectiveness of these norms.

In contrast, when transitional SMEs conduct business with foreign companies, they tend to rely more on formal institutions and laws. Many interviewees suggested that Vietnamese companies that work with foreign companies tend to be less corrupt and more influenced by global anti-corruption norms than other Vietnamese companies. Representing this position, Mr Hang, partner and founder of a Vietnamese law firm, said he found that business owners who have studied overseas or who work with Western companies are more influenced by Western business practices. Because these business owners know more about legal services and what they offer than other, more traditional Vietnamese businesses, they are more inclined to use them.

Similarly, Mr Thuong, who exports his products overseas, gave a strong endorsement of international standards. He asserted that Vietnam should base its business policies and laws on APEC members' policies and best business practices. Thus, the evidence from these interviews shows again that exposure to international business standards through working with foreign or international companies is a core commonality shared by members of the transitional epistemic community.

Confirming the growing international exposure of Vietnamese businesses, one interviewee stated that Vietnam's participation in the global economy encourages Vietnamese companies to respect international standards, especially in the area of public procurement. Adding to this point, Dr Banh, a senior official from the VCCI, asserted that foreign companies are exerting pressure on Vietnamese companies to change their practices and be more transparent. Thus, Mr Do, the director of a medium-sized garment company who supplies customers in Germany, insisted that he strictly respects the law and German business standards, and does not engage in illegal practices.

Published research supports the argument that businesses' practices, values, and attitudes towards the law depend on the environment these businesses operate in, and their resulting needs. For instance, Nadler (2017, p. 70) suggests that embedded, cultural values 'develop and change along with the needs of the relevant group in which they are embedded' and that these changes influence the group's attitudes towards the law. In the case of Vietnamese SMEs, traditional values promoting relational business are evolving towards a greater reliance on formal laws, due to the requirement that they comply with international business standards as they engage more frequently with foreign businesses in the context of international trade.

Supporting this view, Nguyen and Horowitz's (2018, pp.13–14) recent research report points to international sources of anti-corruption rule, and also to international sources of pressure on Vietnamese companies to act in accordance with these rules. Notably, they argue that multinational companies effectively disseminate 'anti-bribery compliance knowledge and good practice to Vietnamese companies' (Lien Nguyen & Horowitz 2018, p. 23). The report suggests further that

The widespread introduction into national laws of international anti-corruption legislation such as the OECD Convention on Combating Bribery of Foreign Public Officials, and the stronger enforcement of the US Foreign Corrupt Practices Act, UK Bribery Act and similar legislation in other countries, has created real pressure on foreign investors or those doing business with local companies in Vietnam, to rigorously implement their compliance programs. This, in turn, has put pressure on Vietnamese companies that are in the supply chains of global multinationals to raise their standards to the levels required under international practice.

The report also finds that larger Vietnamese companies—i.e., those that invest abroad or attract foreign investment—have developed their corporate governance and related compliance policies in accordance with global anti-corruption norms and good international practices. This argument supports the thesis finding that international exposure plays a key role in transitional Vietnamese SMEs' changing attitudes towards formal institutions. However, Lien Nguyen and Horowitz (2018, pp.23–24) also noted that there is little evidence indicating how widely used or effective these internal compliance policies are. The increasing number of prosecutions demonstrates that corruption remains common among Vietnamese companies. This pattern supports the thesis finding that transitional companies, although they increasingly rely on formal institutions, still rely on informal institutions, such as corrupt practices, as well.

Transitional Vietnamese SMEs' attitudes towards formal and informal institutions can also be illuminated by Gainsborough's (2010) political analysis of Vietnam. According to Gainsborough (2010, p.17), because middle-class Vietnamese travel abroad and are exposed to different ways of doing business, they tend to be less tolerant towards corrupt practices, meaning that there is a 'growing exasperation on the part of some professional Vietnamese with official corruption'. Consequently, as Gainsborough notes, there is an increasing divide between the bourgeoisie, on the one hand, and the state, which benefits from corruption within the status quo, on the other hand. However, Gainsborough (2010, p.17) acknowledges that most companies still accept the rules of the game by engaging in corrupt arrangements with the state 'out of necessity'.

Therefore, although the transitional Vietnamese SME community still shares traditional assumptions about the ethics of business operations based on personal relationships, unlike traditional Vietnamese SMEs they also increasingly use formal institutions. The key characteristic distinguishing members of the transitional community from members of the traditional community is that transitional managers have greater exposure to international business standards and global anti-corruption norms. This international exposure is most often a result of overseas schooling or higher education in Vietnam, or else training or working with foreign and international companies. However, the transitional epistemic community also differs from the transnational epistemic community insofar as transitional managers may still rely on informal institutions and traditional Vietnamese business practices, depending on the circumstances.

The sections that follow explore the epistemic assumptions underlying transitional managers' attitudes towards formal versus informal institutions. The first set of epistemic assumptions shared by transitional managers is based on pragmatic assessments of the benefits of formal and informal institutions; these assessments aim to determine which of these institutions are more useful to transitional SMEs in terms of business survival and profitability. Alongside these pragmatic concerns that encourage transitional managers to rely on both formal and informal institutions, there is a second set of epistemic assumptions; this second set of assumptions underlies ethical concerns regarding relational business and corruption. Transitional managers recognise the ethical problems caused by informal institutions, and consider formal institutions to be ethically superior to informal institutions. Overall, this chapter finds evidence suggesting that transitional SME managers share the same core epistemic assumptions that underlie global anti-corruption norms.

2. Pragmatic assumptions underlying transitional SMEs' attitudes towards formal and informal institutions

This set of pragmatic assumptions coalesces around transitional managers' understanding that both legal compliance and corruption offer benefits to their businesses, an understanding that justifies their selective compliance with anti-corruption laws. The benefits that legal compliance offers has to do with their value vis-à-vis risk avoidance and the protection of companies. In addition, transitional

managers believe that such compliance is necessary if they wish to export their product overseas or work with foreign companies. The pragmatic assumptions underlying the value that transitional managers attach to both legal compliance and corrupt practices are elaborated in the following sections.

2.1. Both legal compliance and corruption are beneficial

The interviews reveal that transitional Vietnamese SMEs use both formal and informal institutions in conducting business according to a cost-benefit calculus. In other words, they use the law strategically depending on the circumstances, and selectively comply with anti-corruption rules or not—depending on the option that conveys the most benefit.

This selective approach to the use of formal or informal institutions was a strong theme in the interviews with both academic and professional interviewees. For example, Prof Tong asserted that transnational Vietnamese SMEs use formal laws and international standards as a reference or model when they develop contracts, but still rely on traditional business customs to regulate their behaviour. Adding to this point, Mr La, an associate in a Vietnamese law firm, suggested that around 30 to 40 percent of Vietnamese SME managers prefer to avoid engaging in corrupt practices when they have the option. However, he acknowledged that corrupt behaviour is considered unavoidable in some circumstances—for example, when a company has not complied with the laws because it is impossible to do so. As discussed previously, many interviewees stated that it is impossible to comply with all the regulations in some industries, such as hospitality or real estate.

Mr La's comments strongly indicate that some managers make a cost-benefit decision regarding what is in their businesses' best interest when it comes to complying with formal laws or, alternatively, engaging in corrupt practices. To illustrate this point, Mr La proposed the example of a company that refuses to comply with a public official's demand for money, because the company knows it has done nothing wrong. In these circumstances, the company is likely to ask for legal advice. However, if the company knows that it has breached the law, then it is likely to pay the bribe to the public official to avoid problems. The example provided by Mr La qualifies his belief that Vietnamese SMEs will avoid corruption when they can. Clearly, the payment of a bribe is still an option where the company is not complying

with formal laws and the company wants to avoid the formal consequences of such non-compliance.

The selective approach to legal compliance, and the alternative route of corrupt practices embedded in transitional managers' thinking, can be explained via Quan Hien Nguyen's (2006, p. 3) analysis of how social structures affect contractual arrangements in Vietnam. Quan Hien Nguyen argues that for businesses in Vietnam, the 'law is just one instrument among many instruments', such that the legal system is 'just one of several processes available to settle commercial disputes'. The pluralism within Vietnam's legal systems, which can also explain the transitional community's selective approach, finds an echo in Benton's (2012, pp.29–30) analysis of the history of legal pluralism. As Benton puts it,

Even if they express preferences for non-state legal forums and processes, legal actors continue to depend in various ways on their knowledge, however imperfect, of the legal procedures, penalties, and principles operating in state legal forums.

Although they maintain their recourse to state law, transitional managers are like the legal actors identified by Benton who 'suspend that recourse under certain conditions, sometimes by choice but often through necessity or coercion' (Benton 2012, pp. 29–30). Overall, transitional Vietnamese SMEs share the epistemic assumption that both legal compliance and corruption are beneficial and choose to use one or the other depending on the circumstances.

2.2. Legal compliance is beneficial for risk avoidance and protection

The interviews indicate that transitional SMEs sometimes prioritise legal compliance over corrupt practices because they believe that laws offer their companies protection when a problem arises, and also against potential prosecution, fines, or the abuse of power by public officials. The argument that transitional Vietnamese SMEs comply with the law for purposes of risk avoidance does not undercut the compatibility of legal compliance with corruption—as long as engaging in corrupt practices does not hold any risk.

2.2.1. Legal compliance is beneficial when a problem arises

The interviews suggest that transitional managers do not use formal laws on a regular basis, but rather are likely to use them when a problem arises. Thus, one interviewee suggested that although transitional managers do not seek legal advice on a regular basis because legal services are too expensive for them, they nevertheless seek legal assistance when they have a serious business problem. Mr Hang, a partner and founder of a Vietnamese law firm, stated that most of his clients used his services when they have 'troubles', whereas they do not generally seek legal advice when they start their businesses.

This attitude towards the law mirrors Chua and Engel's (2019, p. 337) work on legal consciousness. They argue that some individuals might find the law useless during 'unexceptional' events. Conversely, when they perceive the same events as 'violative of their interests or rights', the law may then seem significant to them. This argument reflects transitional Vietnamese SME managers' attitudes towards formal laws. Indeed, transitional managers tend not to use formal laws when they start their businesses because they do not see the benefit of using them at that stage. However, when an exceptional event happens to their business, such as a dispute with a partner or a client, for example, then, they recognise the benefits of using legal services.

The general attitude of transitional managers towards the law as offering protection in the event of disputes or potential problems was also evident in the interviewees' responses. The director of a small coal and mining equipment company, for example, stated that he complies with the law and uses detailed written contracts with his partners and clients, because he believes that the law offers some protection to companies when a dispute occurs. Similarly, Ms Chi, the director of a small tourism and event company, mentioned that her motivation for obtaining legal advice from a consulting company when she started her business was to make sure that she did not encounter legal issues later. Likewise, although he is not a manager, Prof Tong, professor of economics in a Vietnamese national university, expressed his belief that transitional Vietnamese SMEs use formal laws to protect themselves in case of a dispute.

That said, it seems that managers recognise the protective value of law when negotiating more important contracts, i.e., those with a higher economic value. Representing this position, Mr Vinh, the director of a cosmetics company, argued that while many Vietnamese SMEs find formal regulations and procedures complicated, unclear, and unpredictable, some Vietnamese SMEs still rely on them for important contracts. In instances where there is more money involved, Mr Vinh said, managers will tend to follow some formal procedures (such as putting an agreement in writing) because they believe that doing so can protect their companies.

Making a similar argument, Mr Du, an official from the VCCI, suggested that even though Vietnamese SMEs still rely on personal relationships in conducting business, SMEs increasingly rely on formal business practices, such as contracts, to develop their businesses. He noted that these companies are usually larger or medium-sized companies, which are more likely to negotiate larger contracts with other larger or medium-sized enterprises, with more money involved. This argument implies that there is a mutual recognition among these like-minded transitional SMEs that the law can be helpful in offering their businesses protection when a problem arises.

2.2.2. Legal compliance is beneficial against prosecution, fines, and abuse by public officials

The interviews reveal that transitional managers view the law as offering a shield they can use to protect themselves against corrupt or zealous officials. For example, Ms Quang, the co-director of a cosmetics company, stated that transitional Vietnamese SMEs will recognise the protective value of law only after their businesses are successful and they become targets for public officials. She explained:

Most companies do not follow the rules. In Vietnam, they have this mentality whereby they think that they first need to sell the product, become bigger, develop their business, get more money. It is their priority. They do not care about the law. After their business is launched, and they become bigger, have money, and become famous, the public officials will know them and try to threaten them. Then they will start to care about the law.

Ms Quang's argument is that transitional Vietnamese SMEs do not need to get involved in the legal system until they have reached a certain point of maturity or success, but that once that point is reached, laws become indispensable. These SMEs need the law to protect them in future disputes and to avoid issues with public authorities.

The perceived need for this protection against public authorities may be increasing. Interviewees stressed that Vietnamese SMEs are more afraid of being prosecuted than previously. One interviewee stated that there are more controls from the authorities regarding fraud, and that Vietnamese SMEs must increasingly rely on laws to avoid fines. This fear of prosecution is also encouraging some Vietnamese SMEs to shift to a more law-oriented mindset. Mr La, an associate in a Vietnamese law firm in Hanoi, argued that Vietnam's anti-corruption laws increasingly shape business practices as well as the behaviour of public officials, who are now more cautious in their relationships with business managers. He suggested that public officials are also increasingly reluctant to ask for bribes from businesses because they, too, are more afraid of prosecutions than before.

The transitional managers' desire to avoid the costly outcomes associated with prosecutions and corrupt practices, as revealed in the interviews, resonates with Nadler's (2017, p. 64) argument that the law creates certain expectations, providing reasons for people to obey the law and to fear the consequences of not obeying. Individuals do not necessarily follow the law out of a fear of legal sanctions that might result from non-compliance, 'but because of the desire to maximize one's own outcome in light of information about what others are likely to do'. Indeed, Nadler suggests that avoiding costly outcomes is one of the principal motivations for individuals' compliance with the law (Nadler 2017, pp. 63, 66). Her argument supports this chapter's finding that transitional Vietnamese SMEs comply with formal laws to avoid a 'costly outcome', such as a fine.

2.3. Legal compliance is necessary to export products and to work with foreign companies

As discussed in the introduction, transitional Vietnamese SMEs that export their products overseas or work with foreign companies seem to take legal compliance more seriously than traditional SMEs. Underlying this pattern is an assumption held

by transitional managers that exporting their products or working with foreign companies means that they must comply with international business standards, including global anti-corruption norms. Exporters, as well as foreign companies conducting business in Vietnam, understand compliance with the laws of overseas importers as a condition of exporting.

For example, Mr Thuong, whose company exports products throughout Asia and also in Western countries, said that his company has to comply with regulations of the countries his company exports to, as well as with Vietnam's own regulations. Mr Thuong's understanding is widely shared among transitional SMEs; it is confirmed by Dr Banh, a senior official from the VCCI, who asserted that the ability of Vietnamese companies to export their products overseas, especially to Western countries, depends on them following those countries' best practices. Prof Tong also argued that Vietnamese companies wanting to work with foreign companies might be required by those foreign companies to be transparent, because the foreign companies will want to avoid problems.

In this connection, some transitional SME managers viewed the pressure from foreign companies to comply with the law as beneficial. Mr Tuc, the director of an IT company, expressed a preference for working with foreign companies over Vietnamese companies for the reason that he thereby avoids the costs of corruption. He explained that, at least in some cases, if his company wants to obtain a contract with another Vietnamese company, whether state-owned or private, he will have to give a 'commission' to the person in charge of tendering the contract. If the commission is very high, he explained, it is an extra cost for his company, which reduces its competitiveness. He said that this kind of situation does not arise when he works with foreign companies, and that this is one reason why he prefers working with them over domestic, Vietnamese companies.

3. Transitional SMEs regard informal institutions as unfair

Notwithstanding the pragmatic concerns identified earlier in this chapter—concerns that encourage transitional managers to rely on both formal and informal institutions—the interviews reveal that transitional managers also share ethical concerns regarding corrupt practices. Although transitional managers accept that corrupt behaviours may sometimes be necessary, they reject the understandings of

the traditional community, according to which corruption as a way of doing business is not only acceptable but also inevitable. Instead, transitional Vietnamese SMEs increasingly see corrupt practices as unethical and unfair. Contradicting the traditional managers' understandings, which elevate business practices involving trust-based personal relationships, transitional managers regard legal compliance, international business standards, and anti-corruption rules as ethically superior to traditional Vietnamese practices.

In contrast with the traditional managers who regard corruption as inevitable and simply part of Vietnam's business culture, transitional managers view traditional business values as diminishing in relevance. As noted by Mr Munster, people are starting to recognise the problems caused by endemic corruption. In particular, a recurrent theme in the interviews is the declining relevance of nepotistic practices, which for traditional managers fulfil the all-important duty to family as well as providing a stronger basis for the trust and loyalty needed to ensure business success. The sense of duty to family and preference for family employees have started losing traction among transitional managers. As the director of a steel company put it,

If you are a manager in a company, you have a responsibility to help your relatives—your nephew and nieces, for example. However, the culture is changing, and companies often publish an advertisement when they need new staff. Fair recruitment is also very common in Vietnam nowadays.

Some interviewees suggested that workplaces and businesses are evolving, and that managers recognise that their businesses might need certain skills (marketing, IT skills, etc.) that their relatives cannot provide. A competent employee must be hired to perform these skills if the businesses are to operate properly. This argument shows that transitional managers are beginning to prioritise professionalism, skills, and competence over family duty.

However, the shift away from the 'traditional Vietnamese way' of prioritising personal relationships and networks above legal compliance involves more than just the recognition that relatives might not be best qualified for a position. As already noted, ideas of 'fairness' and what is ethical are also playing a role in the declining reliance on nepotistic practices. In support of this position, one interviewee declared, 'you

need to help your family members; that is natural. Recently, however, it is becoming less common, because the new generation does not see that as ethical anymore'. Statements of this sort indicate that the emphasis on 'family duty' and trust bonds between family members is giving way to understandings that question the ethics and fairness of the traditional approach.

Key to the permeation of these ideas into transitional managers' understandings is their exposure to international business standards. Indeed, the interviews suggest that for this new generation of managers, exposure to overseas influences and Western ideas changed their attitudes towards laws and corrupt practices. Because they are more exposed to international business standards, the new generation of SME managers now regards the traditional business practices that contradict these global standards as unfair and unethical. Thus, Ms Chi, the director of a small tourism and event company, who is less than 30 years old and who studied business at a Vietnamese university, stated that laws can help deter businesses from engaging in unethical practices such as fraud.

Aside from commenting on the diminishing relevance of corrupt business practices, many transitional managers also expressed the view that corrupt behaviour causes unfairness, in contrast with a legal system that provides fairness and order. For example, Ms Huong, a former manager of several restaurants, asserted that the lack of effective regulations, controls, and inspections on the part of the authorities leads to businesses' reliance on unfair practices such as bribery. Although some business operators break the law, they can still run their firms without problems if they pay bribes to public officials. From her perspective, this situation is unethical and unfair:

For example, if we open a restaurant, we have to rent a place, spend a lot of money each month, [...] we have many things we have to deal with. But outside someone can just put a small table in a lane; they also sell food like us but at a cheaper price. It is unfair—no one prohibits that person from doing that. That person just pays money to the police every month. [...] It is unfair that, despite our having to pay a lot of money, because the street restaurant is cheaper than we are, many customers go there even though the ingredients are very dirty, and no one controls that.

Making similar arguments, many of the interviewees linked the traditional 'relational' model of business to unfairness. For example, one interviewee suggested that the reliance on personal relationships in the traditional Vietnamese business environment is unfair to those who have fewer connections. Similarly, the director of an IT company said that Vietnamese SMEs' emphasis on personal relationships is unethical because it encourages them to bribe public officials to build such relationships with them. He also explained the prevalence of relational business in Vietnam by asserting that businesses want to earn profits quickly without having to show their real capacity and performance.

Ms Thuan, the director of an HR development and training company, also linked the relational aspects and informality of traditional ways of doing business to unfairness. While she admitted that she tries to maintain good personal relationships with the government in order to ensure that she can run her business, she also expressed the wish that business competition in Vietnam were fairer. She suggested that some companies are able to operate on the basis of the strength of their relationships, rather than the quality of their products or services. As she put it,

For example, if my company is in competition with another company, even if my company does a good job and the other company is not doing a good job but has good relationships, the other company will get the contract. I do not like that, and I think this should change. I think the environment should be fairer.

Mr Gon, owner of a coffee shop in Hanoi, complained that relational business creates unfair competition and monopolies. He went so far as to describe some relationships between companies and public officials as 'toxic'. He explained:

Vietnamese people can be very successful, very hardworking and smart, but when they are in Vietnam, they do not succeed because if you want to invest in Vietnam, you need some connections. In my case, I raised some money to open a coffee shop, but I cannot compete with someone who has relationships with the government. They can take the most beautiful places in the street, the golden places with a very low rental fee. This makes you think that even if you really try your best, you cannot compete with those who have connections.

Other interviewees likewise remarked that negotiating and winning contracts with other companies can be more dependent on developing relationships than on the quality of the products involved. They, too, found it unfair that competent companies are not able to thrive unless they develop relationships with the authorities. One interviewee indicated that he preferred for competence to be prioritised over relationships and connections. Another interviewee stated that rampant corruption in the business sector in Vietnam creates 'harmful' business environment. Some interviewees even suggested that they would not engage in corrupt practices any longer, because corruption benefits those who have power more than others. For example, Ms Quang, who owns a cosmetic company with her family, said she would not engage in corrupt practices, such as bribery, because she thinks that it is unfair for other companies.

Transitional managers' growing perception that corruption is creating an unfair business environment is justified by studies analysing the negative effects of corruption and reliance on informal institutions, such as McMillan and Woodruff's research (2000, p.2454). They suggest that while relational business helps Vietnamese companies to develop their business, it also creates 'economic inefficiencies'—namely, the exclusion of some businesses and collusion among others. They add that in countries where businesses mostly rely on personal relationships, companies cannot thrive without connections even if they are efficient. Making a similar argument, Thang Van Nguyen et al.'s (2020) study suggests that, despite businesses' perception that corruption can be beneficial, corruption in fact hinders the development of Vietnamese SMEs. These smaller businesses are disproportionately burdened by the cost of bribes as compared with larger companies. The traditional reliance on relational business also seems to hinder the development of Vietnamese SMEs in other ways, as noted by Thang Van Nguyen and Rose (2009, pp. 166, 169, 171). They point out that in Confucian culture, trust is built by developing personal relationships 'that are difficult to extend beyond a fairly strict circle of kinship or tight social networks'. However, this practice prevents or at least impedes the development of competent businesses that lack social connections. The negative effects of corruption and relational business on Vietnamese SMEs that have been documented in academic research help explain

why many of the managers interviewed in this thesis perceive these practices as unfair.

The interviews also reveal that, although they do sometimes engage in corrupt practices, transitional managers would prefer not to engage in them at all if they had the choice. Whereas most traditional Vietnamese SME managers blame endemic corruption in Vietnam on 'the system', transitional managers seem to want less corruption and express the hope that Vietnam's corrupt system will change. Thus, Mr Munster asserted that Vietnamese citizens and businesses alike eventually suffer from corruption. Another interviewee suggested that Vietnamese businesses are happy to complete administrative procedures online because doing so reduces opportunities for corruption. Ms Huong declared that she would be 'the first to obey the laws' if the business environment were fairer and the regulations more effective. Similarly, the director of an IT company stated that he would rather work with foreign companies than with Vietnamese companies because he believes that Vietnam's business competition is 'unhealthy'. These comments demonstrate that when they have the ability to do so, transitional Vietnamese SMEs prefer to use formal institutions instead of informal institutions in conducting business. These statements also demonstrate that transitional managers view the law as providing a framework for 'fair and orderly' business, whereas corruption creates unfair situations. Unlike traditional managers, transitional Vietnamese SME managers increasingly rely on legal and anti-corruption compliance in conducting business because they believe that doing so is more ethical than following traditional Vietnamese business practices.

4. Transitional SMEs share the core epistemic assumptions underlying global anti-corruption norms

Analysis of the interviews suggests that members of the transitional Vietnamese SME community share the same core epistemic assumptions that underlie global anti-corruption norms. As discussed in Chapter One, these norms follow a rules-based approach to corruption, which assumes that corruption is based on individual choices; that formal rules are the most effective way to regulate public officials and businesses' behaviour; and that transparency and legal accountability reduce corruption. These norms also posit that it is morally wrong to take advantage of

positions of power for personal gain. Finally, the norms are based on a neoliberal ideology, which assumes that deregulation and increased business competition reduce corruption.

Members of the transitional community share the assumption that it is morally wrong to take advantage of positions of power for personal gain. Unlike traditional managers who regard corruption and relational business as a way of doing business, transitional managers seem to question the ethics of this relational business model and the corrupt practices that underpin it. The interviews indicate an important shift in thinking among Vietnamese SME managers, and reveal that transitional managers consider relational business in general, and corrupt practices in particular, to be ethically wrong. Beyond pragmatic and personal grievances, these transitional managers believe that business success should now rest on the quality of their work, rather than their personal relationships with other businesses and/or public officials. In other words, they regard corrupt practices that allow businesses to thrive based solely on their personal relationships as morally wrong.

The interviewees' comments suggest that there is a widespread recognition among transitional SMEs that corrupt practices are wrong. For Mr Munster, for example, although everyone in Vietnam engages in corrupt practices, no one talks about it because it is considered the wrong thing to do. He explained:

Corruption has existed in Vietnam for hundreds of years, since the time of mandarins. It belongs to Vietnam's daily life, but is still considered as something you should not do. People know it is not correct, and nobody wants to admit they are doing it.

Making a similar argument, Mr Mo, a freelance consultant in economics, stated that 'everybody knows about corruption, but nobody talks about it'. These statements demonstrate that there is still a taboo surrounding corrupt practices. Another example indicating that transitional managers regard corruption as morally wrong is the statement by the director of a cosmetics company. He suggested that public officials should act as models for the citizens, and show good leadership by not engaging in corrupt practices.

These members of the transitional epistemic community hold the orthodox rules-based approach to corruption and the view that better public governance and

transparency, clearer regulations, higher salaries and improved training for public officials, better enforcement of anti-corruption laws, and less physical contacts between public officials and businesses can reduce corruption. As an illustration, a number of the interviewees stated that public officials risk damaging their reputation by engaging in corrupt practices and that more transparency would force them to avoid corruption and maintain ethical practices. Regarding relationships between businesses and public officials, some interviewees expressed the view that the Vietnamese Government should adopt more business-friendly regulations and make administrative procedures faster and clearer for businesses. Along these same lines, one interviewee called for more public accountability, more transparency, more publicly available information, and less direct contact between businesses and public officials through the digitalisation of administrative procedures. This statement is supported by Nguyen and Horowitz's (2018, p.27) research report. The report notes that the companies in Vietnam that they interviewed, 'while supporting [a greater] focus on private sector integrity', also called for more integrity among public officials—particularly when companies come into direct contact with public officials, such as in applications for permits, licences, customs clearance, and public tenders.

Other interviewees included in the present study seem to share the neoliberal ideology underlying global anti-corruption norms. They stated that more competition leads to less corruption, and that there is now less collusion between companies in Vietnam because of a more strongly competitive environment. Many interviewees asserted that there would be less business corruption if the government supported private companies instead of SOEs. For example, one interviewee remarked that business laws should offer more protection for private companies, in the case of disputes, bankruptcy proceedings, and so on. Likewise, confirming the neoliberal ideology embraced by transitional Vietnamese SMEs, the owner of a coffee shop in Hanoi stated that Vietnam's communist system is the cause of endemic corruption and hinders Vietnam's economic development. Other interviewees expressed this same view—namely, the view that capitalism and competition reduce corruption, and that the more developed a market economy is, the less power public officials have to extract money from companies.

Thus, these arguments show that transitional managers share the core epistemic assumptions underlying global anti-corruption norms. Because they share the

epistemic assumptions underlying global anti-corruption norms, transitional managers are potentially more inclined to comply with them than traditional managers, whose epistemic assumptions conflicts with these norms.

5. Conclusion

This chapter and the previous chapter have demonstrated that Vietnamese SMEs can be divided into two distinct epistemic communities: namely, traditional and transitional SMEs. The main difference identified between these communities is that whereas the traditional community, in conducting business, mostly relies on informal institutions such as relational business and corrupt practices, the transitional community relies on both formal and informal institutions.

The epistemic assumptions circulating in the transitional epistemic community can, like those circulating in the traditional community, be divided between pragmatic concerns and ethical concerns. From a pragmatic point of view, unlike traditional managers, transitional managers increasingly see the benefits of relying on compliance with anti-corruption laws in conducting business, notably with foreign companies. Yet they believe that both formal and informal institutions can be beneficial for their business. From an ethical point of view, unlike traditional managers, these transitional managers increasingly perceive ethical problems stemming from Vietnamese businesses' reliance on informal institutions, such as corruption and relational business. They also perceive how Vietnamese businesses' preference for relational business and corruption hinder the development of markets based on price and quality competition, which need formal rules to function efficiently.

This chapter also suggests that the catalyst of this transitional attitude towards formal institutions is a growing exposure to best practices for international business. Nevertheless, despite the diffusion of these international practices among Vietnamese SMEs, traditional business practices are still used by transitional SMEs in their daily business operations. More precisely, transitional managers use a selective approach to anti-corruption laws. Like other businesses, transitional Vietnamese SMEs use a cost-benefit calculus when making decisions. Even if they understand the negative effects of relying on informal institutions, transitional managers decide between these types of institutions depending on the

circumstances, and depending on which option is the most profitable for their business.

Transitional managers thus seem to be in a contradictory position when their pragmatic reasoning comes up against their ethical concerns. Even if they find corrupt practices morally wrong, they still engage in these practices when they need to. This contradictory position hinders transitional Vietnamese SMEs' compliance with global anti-corruption norms. It also explains why the response to the transfer of these norms into Vietnam has been uneven among Vietnam's businesses, and why this transfer has not produced the expected reduction in corruption.

However, this analysis of the transitional epistemic community suggests how to encourage Vietnamese businesses to comply more fully with anti-corruption laws in the future. For example, the analysis showed that exposure to international business practices through working with foreign companies or by training or studying overseas can change businesses' traditional practices and values, shifting them towards a greater reliance on global anti-corruption norms. The next chapter show that such exposure plays a central role vis-à-vis the epistemic assumptions of Vietnamese managers working in transnational companies operating in Vietnam.

Chapter Six – Vietnamese managers working in transnational companies operating in Vietnam (TEC)

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1. Introduction

This chapter analyses the third epistemic community examined in the present study: namely, the transnational epistemic community (TEC), which comprises Vietnamese managers working in transnational companies operating in Vietnam. Here, the term 'transnational companies' refers to companies that operate overseas sites of production and have experience with international production¹⁹. Like chapters Four and Five, this chapter uses the concept of epistemic communities as a method of understanding how members of the TEC draw upon common sets of norms and assumptions to interpret global anti-corruption norms.

The working hypothesis guiding this thesis is that companies are more likely to comply with global anti-corruption norms if they share the same epistemic assumptions that underlie these norms. Therefore, the present chapter examines the norms and tacit assumptions shared by members of the TEC, and explores how those norms and tacit assumptions shape their interpretation of global anti-corruption norms. The findings from this chapter illuminate what elements influence businesses' attitudes towards corruption and their interpretation of global anti-corruption norms. The findings also partially explain why the response to the transfer of global anti-corruption norms has been uneven among businesses in Vietnam.

As in the previous chapters, the analysis in this chapter is primarily based on semi-structured interviews with the managers of firms doing business in Vietnam. In this case, the interviews were conducted with seven Vietnamese managers working in different transnational companies operating in Vietnam (see Appendix One). As mentioned previously, the information collected from these interviews was cross-checked against interviews with business experts, such as lawyers, staff from the Vietnam Chamber of Commerce and Industry, managers of NGOs, business consultants, diplomats, and academics (see Appendix One). Findings from the interviews were also corroborated by a review of published research taking the form of journal articles as well as research reports from various organisations (IOs, NGOs, and government agencies).

¹⁹ For the purpose of the discussion, the terms 'transnational companies' is used in this thesis to describe any company that has overseas sites of production, irrespective of their turnover or size. The term 'transnational companies' includes both transnational companies and multinational companies.

This chapter finds that unlike the two other epistemic communities identified, transnational companies mostly rely on formal legal institutions, such as international business best practices and local formal laws, in conducting their own business. Analysis of the interview data suggests that TEC members are exposed to global anti-corruption norms through their work in transnational companies, which promote these norms. In other words, the norms in question are being diffused inside their companies. At the same time, however, TEC members engage in what this chapter goes on to describe as ‘cross-cultural code-switching’, whereby they alternate between their companies’ culture, which promotes global anti-corruption norms, and their traditional Vietnamese values, which in some instances contradict these norms. Overall, though, the chapter finds that members of this epistemic community support global anti-corruption norms for both pragmatic and normative reasons, and that they view these norms as ethically superior to traditional Vietnamese business practices.

Before proceeding to discuss the epistemic assumptions shared by members of the TEC, it is necessary to explain how this transnational epistemic community has been identified, and how it differs from the traditional and transitional Vietnamese SME communities already discussed.

2. Delineating the transnational epistemic community

This section first examines the characteristics distinguishing members of the TEC from members of the traditional and transitional epistemic communities. Due to the small number of transnational managers interviewed, it is possible to offer brief profiles of the interviewees, highlighting personal information relevant for the analysis. Thus, Mr Hong²⁰, a junior manager who works in a large American IT company, was born in Vietnam but has lived overseas most of his life, returning to Vietnam in 2016. Mr Tung, a senior manager in a large Japanese trading and investment company, has lived in Vietnam his entire life. Ms Ba, a senior partner in a large British auditing company, has lived in Vietnam her entire life. Mr Huyen, a senior legal counsel in a transnational financial institution, studied and worked for several years overseas before returning to Vietnam approximately 10 years ago. Mr Tuy, a senior legal counsel in a Korean mobile phone manufacturing company, studied in Vietnam and then in France before coming back to Vietnam to work. Mr

²⁰ The names of all the interviewees have been modified to ensure their anonymity.

Mi, a senior manager in a New Zealander dairy company lived overseas (in Myanmar and Thailand) for only a short period of time. Finally, Mr Phun studied in the U.S.A. before coming back to Vietnam to work. Information about the interviewees is summarised in a table at the end of the thesis (see Appendix Three).

After reviewing the characteristics of members of the TEC, the section justifies treating Vietnamese managers working in transnational companies operating in Vietnam as a distinct epistemic community. It does so by looking at the narratives circulating in the TEC.

2.1. Characteristics of members of the TEC

The main defining characteristic of members of the TEC is that, unlike traditional Vietnamese SMEs, they have been exposed to global anti-corruption norms through their personal experience as well as their work as employees in transnational companies. While transitional SMEs have also been exposed to these norms through their business activities, at least to some extent, what distinguishes them from members of the TEC is that they comply with these norms only when it is beneficial for them to do so. As discussed in Chapter Five, they still sometimes rely on corrupt practices in their daily operations. By contrast, members of the TEC do not have the choice either to comply or not comply with these norms. Rather, these norms are diffused inside their companies and, as employees, they must adhere to them. At the same time, however, even if they are more exposed to global anti-corruption norms than the other two epistemic communities, members of the TEC are still embedded in traditional Vietnamese values through their personal life. They thus have to engage in 'cross-cultural code-switching' (Molinsky 2007) by alternating between these global norms and traditional Vietnamese values.

2.1.1. Exposure to global anti-corruption norms through personal background and work

The interviews indicate that the personal background of members of the TEC, such as their level of education, where they studied, and their personal and professional experiences, helps shape their interpretation of anti-corruption norms and their attitudes towards corrupt practices. All of the transnational managers interviewed hold a post-graduate degree, and most of them have studied or worked overseas. Consequently, through their studies and personal experiences, they are more

exposed to formal institutions and laws, and more specifically to international standards, than the managers of traditional Vietnamese SMEs. Similar to transitional managers, the main characteristic of members of the TEC is their international exposure, whether it is in the form of studying abroad or working with transnational companies.

This chapter finds that transnational companies, as employers of members of the TEC, influence these members' attitudes towards corruption and their interpretation of global anti-corruption norms. Transnational companies operating in Vietnam disseminate international business best practices and global anti-corruption norms to their local employees. They are held accountable to these global norms through the domestic laws of the country where their headquarters are based. Therefore, they must encourage their employees to comply with these norms by developing an appropriate corporate culture, and inculcating this culture in all employees. In the present study, the term 'corporate culture' refers to the principles and values that guide the behaviour of all the employees of a company (Guiso, Sapienza & Zingales 2015, p. 61).

Transnational companies use various methods to develop their corporate culture and shape their employees' principles, values, and behaviour. For example, they implement internal regulations and codes of conduct, and organise training programmes to encourage their employees to comply with international best practices and global anti-corruption norms. Many interviewees stated that these methods are effective in disseminating international business practices and global anti-corruption norms among employees and, in turn, changing employees' attitudes towards corruption. For example, Ms Hoan stated that a company's enforcement of internal regulations—e.g., through codes of conduct—can influence employees' mindset regarding what constitutes appropriate/ethical business practices. She also asserted that transnational companies' internal regulations, codes of conduct, and training programmes can all encourage local employees to avoid engaging in corrupt practices.

However, as discussed in Chapter One, global anti-corruption norms are based on Western ideas. Thus, there was clear evidence from interviewees that transnational companies' corporate culture differs depending on the country where these

companies' headquarters are based. In their interviews, transnational managers suggested that employees' perceptions of corruption might differ depending on whether they worked for a Western-based or an Asian-based transnational company. For example, Mr Hang stated that Western transnational companies operating in Vietnam are more concerned about preventing their local employees from engaging in corrupt practices, than are Asian transnational companies. He asserted that Western transnational companies have much clearer and more comprehensive internal anti-corruption regulations than transnational firms based in Asian countries, such as China or South Korea.

However, even if the degree of compliance with global anti-corruption norms might vary in Western versus Asian transnational companies, their internal policies seem to be similar. Both Western and Asian companies have internal policies that follow international business standards and include global anti-corruption norms. Consequently, the TEC's attitudes towards corruption as well as their interpretation of global anti-corruption norms are influenced in a similar way by their companies' corporate culture, whether they work for an Asian or a Western transnational company. Even if they engage in corruption in practice, both Asian and Western transnational companies include global anti-corruption norms in their corporate culture. Consequently, transnational companies, by creating a business regulatory climate based on global anti-corruption norms, which shapes their managers' regulatory culture and mindset, influence employees' attitudes towards corruption as well as their response to global anti-corruption norms.

While transitional Vietnamese SMEs are also exposed to these norms through their business activities, the main difference between this transitional community and the TEC is the way in which these norms are learned and internalised by each group. In some ways, the precipitating factors are similar, insofar as they are both dependent on 'international' exposure; but the situation of members of the TEC is quite different from that of transitional Vietnamese SME managers. Members of the TEC are situated within companies where global anti-corruption norms and the assumptions that underpin them are more thoroughly integrated into everyday practices. The norms and assumptions are built into their workplace structure, the internal processes they use, and even the reward systems overseen by their companies. To some extent, the rules are imposed on them. By contrast, even if Vietnamese

transitional SMEs are also exposed to these norms through their business activities, and even if these norms are in some contexts imposed on them (such as when they want to export their products overseas), the members of the transitional community are situated differently. In other words, what distinguishes the TEC from the transitional community is that TEC members are more wholly sited in a work environment that is informed by global anti-corruption norms and by the assumptions that underpin them—and Western business practices more generally.

2.1.2. Cross-cultural code-switching

Another characteristic of the TEC is that its members operate a 'cross-cultural code switching' (Molinsky 2007) to alternate between their companies' culture and traditional Vietnamese culture. Molinsky (2007, p. 624) defines 'cross-cultural code-switching' as 'the act of purposefully modifying one's behavior [...] in a foreign setting in order to accommodate different cultural norms for appropriate behavior'. He adds that such 'cross-cultural code-switching must have norms that are either unfamiliar to the switcher or in conflict with values central to the switcher's identity' (Molinsky 2007, p. 625). 'Cross-cultural code-switching' is useful for describing the contradictory position of local employees of transnational companies whose internal rules conflict with these employees' traditional values. While Vietnamese managers working in transnational companies in Vietnam are exposed to global anti-corruption norms through their work, these norms still contradict some of the traditional Vietnamese values in which the managers are embedded through their personal life. However, when it comes to their attitudes towards corruption, members of the TEC have hierarchised the two business models (transnational and local), and found transnational business practices to be ethically superior to traditional Vietnamese business practices. In this respect, too, the TEC's interpretation of global anti-corruption norms is shaped by transnational managers' international exposure through their work.

Cross-cultural code-switching can be further explained in terms of Barth's (1989, p. 130) argument that people's construction of reality comes from various sources, and that therefore 'they construct different, partial and simultaneous worlds in which they move'. In line with this view, Molinsky (2007, p.626) suggests that national culture, one's parents, peer groups, and professional environment all influence one's personal values. He further suggests that in situations of 'cross-cultural code-

switching', professionals can experience guilt from 'acting in a way that conflicts with' their 'internalized values'. This duality resonates with Chua and Engel's (2019, p. 347) study of legal consciousness, which argues that individuals' relationship with the law or legal consciousness is constituted by their relationships within groups, families, and communities. Because individuals participate in multiple relationships of this sort, they develop multiple forms of legal consciousness.

These research studies support the present chapter's finding that the TEC's understanding of business ethics is informed by multiple sources of information. Members of the TEC operate a cross-cultural code switching when they alternate between international business practices promoted in their workplace and their traditional Vietnamese cultural values. They are required to do things at work that contradict their basic cultural instincts. Accordingly, they follow international business practices when at work and revert to more Vietnamese sensibilities outside work. The way TEC members are caught between these two 'sources' was explicitly commented on by some of the interviewees, including Ms Hoan, an associate in an international law firm who was interviewed as a business expert. She pointed out that some of the regulations included in transnational companies' codes of conduct conflict with the culture of their Vietnamese employees, and also with common Vietnamese business practices. She also stated that this contradiction can make it hard for Vietnamese employees to follow these internal regulations. For example, whereas transnational companies encourage their employees to report misbehaviour by other employees, 'in Vietnam, when people see something wrong they are reluctant to report it because they are afraid of retaliation'. Ms Hoan added that even if local employees attend anti-corruption or business ethics training programmes, they may still consider some of the unethical or corrupt practices discussed in the trainings as normal practice. She pointed out that many people in Vietnam still think it is normal to give bribes to public officials, and that it can therefore be hard for Vietnamese employees to follow their company's recommendations.

The potential for conflict between transnational companies' codes of conduct and their employees' personal culture is supported by Bierstaker's (2009) study on the differences in managers' and employees' attitudes towards fraud across different cultures. He suggests that many managerial principles are impacted by the cultural context in which they are applied, and that 'the effectiveness of a code of conduct

may be influenced by cross-cultural differences that shape perceptions about ethical dilemmas'. In other words, although the corporate culture instructs employees to behave in a certain way, employees' values might lead them to act in a way that is inconsistent with this corporate culture in certain circumstances. Ethical dilemmas can arise when employees' tendency to behave in accordance with local customs, for instance, is very strong. Bierstaker (2009) adds that simply providing employees with a code of conduct may not influence their behaviour in such circumstances, and that companies must place more emphasis on establishing their own corporate culture so that local cultures do not fill the void. Situations in which local culture fills the void for TEC members activate their use of cross-cultural code-switching.

Examples of such cross-cultural code-switching include those described by Mr Mi, who discussed the conflict he faces as a Vietnamese citizen working for a transnational company. He reflected on practices that are considered unethical inside the TEC, but viewed as ethical within the traditional Vietnamese community, such as the reliance on personal relationships over legal compliance:

Because we are Vietnamese, we know it is part of the culture, the traditions, and we accept it quite easily. But from the point of view of managers working for global companies with transparent policies, we see it as something negative that prevents [Vietnam's] economic development, even though we might have to accept it.

Mr Mi noted that while his company has strict policies that prohibit corrupt practices, the company occasionally has to break with these policies in Vietnam in order to do business. He explained:

As a large company, we have global policies, but we also need to follow the local rules [even if] it is against our compliance policies. We try to maintain respect for our policies, but also to make things happen [create business opportunities] by dealing with under-the-table law [engaging in bribery].

He confessed that he is sometimes in a contradictory position, caught between complying with his company's policies and Vietnam's local rules. In such situations, as he put it, 'I struggle to do the right thing'. However, he also made a distinction between local business practices and his personal values, asserting that his

company's practices were more ethical than Vietnamese companies' practices, and underscoring that his company's values fit with his personal values.

TEC members also make a distinction between their companies' practices and Vietnamese SMEs' business practices, about which they are somewhat defensive. Thus, some interviewees stated that even if Vietnamese SMEs engage in corrupt practices, these practices are not immoral or unethical because they are inevitable within the SMEs' environment. For example, Ms Ba suggested that Vietnamese companies are corrupt because their professional standards are not sufficiently developed compared to those of transnational companies. She added that Vietnamese SMEs are not unethical when they violate anti-corruption laws, because they are acting in accordance with the local business culture.²¹ She did not regard traditional Vietnamese business practices as unethical or immoral, because Vietnamese SMEs view those practices as inevitable—as an inherent part of the Vietnamese business environment.

Other interviewees justified certain corrupt practices by alluding to institutional factors or cultural reasons. Mr Hong stated that in countries like Vietnam, where bribery is necessary because the taxation system does not adequately fund public officials' salaries, bribery amounts to a payment for a public service. Adding to this point, although Mr Tung described nepotism as a corrupt practice, he did not regard it as immoral, because favouring relatives is part of Vietnamese culture. Similarly, Mr Tuy had no problem with a domestic company's manager breaking the company's internal rules to favour a relative during a recruitment process.

Nevertheless, although the managers stressed that Vietnamese SMEs were not being unethical when they engaged in such corrupt practices, they still insisted that it would be wrong for their own companies to engage in those practices. In insisting that corrupt practices are unacceptable and not tolerated in their companies, the interviewees in effect oscillated between two distinct epistemic positions. The first position encompasses epistemic assumptions that support the key objectives of global anti-corruption norms. The second position remains defensive about the views held by the Vietnamese SME community. Therefore, TEC members switch between

²¹ In this thesis, the term 'business culture' refers to the common practices among businesses embedded in particular cultural settings within a society (Lipartito 2008, p. 619).

two sets of tacit assumptions, one that they apply to the Vietnamese SME community, and the other that they apply to transnational companies operating in Vietnam. Further, the interviewees associated different ethical standards with the two business groups. They can see that the local system requires SMEs to engage in practices that might otherwise be considered corrupt, but they are not willing to hold those SMEs to the standards of global anti-corruption norms because they are operating in a system where they have no other options—and where their behaviour is not considered unethical. At the same time, they also see the system their workplace embodies as an ethically superior system. They explicitly recognise that traditional Vietnamese business practices are different from the corporate culture that they have learned and internalised through their work in transnational companies.

2.2. A coherent epistemic community

As discussed in Chapter Four, what defines an epistemic community is a degree of cohesion around a set of core beliefs—in this case, core beliefs regarding corruption and anti-corruption norms. In the present study, this set of core beliefs is identified through discourse analysis of interview data. This method is especially appropriate for the TEC given that, according to Brown (2006, p.743), business communities exist as discursive constructs through ‘continuing conversation, e-mails, websites, internal reports and videos etc. in which narratives of the organization are swapped and embellished, resisted and accepted’. Brown (2006, p. 744) adds that ‘some stories of an organization’s identity might be systematically re-told to new recruits during processes of socialization’.

In the case of the TEC, membership is developed through shared experiences within the company, such as training programmes, reward and award systems, codes of conduct, and other socialisation processes members are exposed to at work. The interviews show that members of the TEC interpret global anti-corruption norms in a similar way because the globally promoted version of the norms is being diffused inside their companies via the sorts of processes just mentioned. In other words, these processes both disseminate global anti-corruption norms and form the transnational epistemic community.

However, as discussed in Chapter Two, heterogenous views still circulate inside epistemic communities. These contradictions do not prevent members from sharing

similar interpretations of global anti-corruption norms; that is, diversity inside a community does not undermine its coherence if members share a common purpose (Wry, Lounsbury & Glynn 2011, p. 459). In the case of the TEC, members share a similar purpose, as reflected in their companies' intention to comply with international business standards and global anti-corruption norms. The fact that business practices might differ between Asian and Western transnational companies does not detract from the TEC's coherence because, as Wry, Lounsbury, and Glynn (2011, p. 460) suggest, a group's purpose remains constant even if its practices vary. Therefore, while practices might vary between Asian and Western transnational companies, these companies use similar methods to disseminate global anti-corruption norms among their employees. As a result, members of the TEC, whether they work for an Asian or a Western transnational company, share the same core epistemic assumptions underlying global anti-corruption norms. According to these assumptions, transnational companies' business practices are ethically superior to Vietnamese SMEs' practices.

2.3. Narratives circulating inside the TEC

This section explores the narratives circulating in the TEC, which sets this community apart from the other two epistemic communities examined in this thesis. The interviews reveal two main narratives that shape TEC membership and distinguish the TEC from the traditional and transitional Vietnamese SME communities. First, TEC members share the assumption that transnational companies have more agency to resist corruption than Vietnamese SMEs. Second, members of TEC believe that, unlike their community, Vietnamese SMEs are incapable of complying with global anti-corruption norms.

2.3.1. Transnational companies have more agency to resist corruption than Vietnamese SMEs

Many of the interviewees asserted that, for various reasons, transnational companies were better placed to resist engaging in corrupt behaviour, compared to local SMEs. The interviewees pointed to the superior resources of transnational companies as one explanation for transnational companies' greater ability—and inclination—to comply with global anti-corruption norms. Mr Hong, for example, stated that it is easier for transnational companies to develop and require internal transparency because they have more power and funds, and better access to networks and

resources than Vietnamese SMEs. Making similar arguments, Ms Ba pointed out that the Vietnamese private sector is not able to access the same level of legal services as SOEs and transnational companies. Mr Mi likewise asserted that large transnational companies have more resources, which enable them to prioritise business ethics and to respect human rights to a greater extent than Vietnamese SMEs. Conversely, Vietnamese SMEs are more focused on profits than human rights and business ethics, because they have fewer resources. Supporting the view that transnational companies have more agency to resist corruption than Vietnamese SMEs, Mr Mo, interviewed as a business expert, suggested that transnational companies are less exposed to corruption than Vietnamese SMEs.

Some studies suggest that the specific ‘resources’ that transnational companies possess help explain why they have more agency to resist corruption than local companies. For example, the 2017 PCI Survey Final Report (Malesky et al. 2018, p. 13) indicates that ‘good managers’ and companies with higher management quality²² are less corrupt than other companies, because they have less need for corruption to succeed in Vietnam’s market. This report indicates that companies with higher quality management can ‘spend significantly less money on bribery or informal payments’, and are ‘far less likely to see corruption as a social norm in the Vietnamese business environment and as a constraint on their success’. The report adds that ‘good managers’ and companies with higher management quality, such as transnational companies, are more willing to seek out information on policy changes and take advantage of those changes in their business operations than Vietnamese companies. Thus, transnational companies, which usually have more funds, more experience and a higher quality of management training and skills than Vietnamese SMEs, are less likely to be corrupt than their local counterparts.

2.3.2. Vietnamese SMEs are incapable of complying with global anti-corruption norms

Another narrative circulating inside the TEC is one based on the assumption that, unlike transnational companies, Vietnamese SMEs are incapable of complying with global anti-corruption norms. This narrative is sustained by the idea that, besides

²² In the interviews and supporting literature drawn on here, ‘higher management quality’ implies that employees are trained to comply with global anti-corruption norms.

having fewer resources than transnational companies to resist corruption, Vietnamese SMEs are the victims of corruption, and that corruption is part of Vietnam's business culture.

Illustrating this view, some interviewees seemed to regard Vietnamese SMEs as the victims rather than the instigators of corruption. These interviewees suggested that Vietnamese SMEs often feel somehow 'forced' or 'coerced' into providing a bribe, putting them in the position of victim. Representing this position, Ms Ba remarked:

When I am talking with clients who work in SMEs, none of them wants to bribe, none of them is pleased with corruption. It is just the way they have to do business; they cannot resist those practices.

For Mr Hong and Ms Ha, Vietnamese SMEs often do not have a choice other than to violate anti-corruption laws. In their opinion, Vietnamese businesses want the system to change and want less corruption, but, unlike transnational companies, Vietnamese SMEs do not have the resources to resist corruption. Similarly, Ms Hoan suggested that Vietnamese companies are in a less advantageous position to comply with anti-corruption laws compared to transnational companies. Adding to this point, some interviewees argued that the law is too complicated and unclear for most Vietnamese SMEs, and that there is a lack of legal education among Vietnamese businesses. They implied that Vietnamese SMEs may sometimes violate formal laws because they do not have the knowledge or the means to comply with them.

Transnational managers also stated that Vietnamese SMEs prioritise profit maximisation above legal compliance because the system leaves them with no other option. For Ms Ba, Vietnamese SMEs do not prioritise legal compliance because they struggle to earn revenue and make profits. She declared: 'the main priority for Vietnamese SMEs is, above all, revenues, profit maximisation, rather than maintaining very high standards with respect to corruption and high professional behaviour standards'. She suggested that Vietnamese SMEs avoid engaging in corrupt practices only if those practices bring additional costs and a loss of revenue; but even in those cases, very often, Vietnamese SMEs do not have the proper resources to resist corruption.

In addition, members of the TEC believe that Vietnamese SMEs lack the agency to resist corruption because of a constraining business culture and because social

factors such as organisational structures, customs, or laws limit their capacity to make independent decisions. At the same time, the transnational managers interviewed sought to distance themselves from what they defined as traditional Vietnamese culture. They put themselves and their companies outside of Vietnam's corrupt system. They suggested that transnational companies have more capacity to comply with anti-corruption laws because the corporate culture in which they are embedded gives them the agency to comply.

Representing this position, Ms Hoan indicated that Vietnamese companies, even if they are large, do not take anti-corruption laws as seriously as transnational companies for cultural reasons. For example, she pointed out that Vietnamese companies, on some occasions, will offer gifts to customers, whereas transnational companies are more cautious when it comes to this kind of practice. Similarly, Mr Huyen declared: 'under-the-table money can be part of a company's culture; it can be quite popular and common for companies doing business in Vietnam. But it is not part of our corporate culture'. For members of the TEC, Vietnam's business environment is divided into two major groups: transnational companies, which are transparent and compliant with anti-corruption laws; and Vietnamese companies, which mostly rely on informal institutions and which are corrupt.

Thus, members of the TEC share a clear set of assumptions about corruption that apply to their workplace, even as those members remain sympathetic to the views circulating within the traditional SME community. Because they work in an international environment, they are more influenced by a Westernised business culture, international business best practices, and global anti-corruption norms compared to Vietnamese SME managers. Unlike traditional Vietnamese SME managers, members of the TEC are able to reflect on Vietnam's traditional business practices and take cognisance of their negative aspects. Ultimately, members of the TEC form a cohesive epistemic community shaped by similar assumptions regarding corruption and global anti-corruption norms, which are analysed in the next section.

3. Pragmatic arguments for anti-corruption compliance among members of the TEC

A set of pragmatic assumptions coalesce around TEC members' understanding that anti-corruption compliance helps their companies to maintain a good reputation, and

that it is the best way to avoid risk. These pragmatic assumptions, elaborated in what follows, ultimately encourage members of the TEC to comply with global anti-corruption norms.

3.1. Anti-corruption compliance helps companies maintain a good reputation

A central finding from this study is that members of the TEC share the assumption that anti-corruption compliance is necessary for transnational companies to maintain a good reputation. In contrast, Vietnamese SMEs do not perceive engaging in corrupt practices as carrying any reputational risk. The general notion of 'reputation' encompasses individuals' common moral values and judgements of what is right or wrong. Regarding reputation in business, Gotsi and Wilson (2001, p. 29) define 'corporate reputation' as 'a stakeholder's overall evaluation of a company over time'. They add:

This evaluation is based on the stakeholder's direct experiences with the company, any other form of communication and symbolism that provides information about the firm's actions and/or a comparison with the actions of other leading rivals.

Thus, transnational companies operating in Vietnam are concerned about the common moral values and judgements of their customers and business partners—not only those who are locally based, but also those based in other parts of the world.

Some of the transnational managers who were interviewed stressed the importance for their companies of maintaining a good reputation. Mr Huyen identified 'reputation' as one of the three key elements that companies must take into account when they conduct business, along with the risk of prosecution, which can damage their reputation, and their corporate culture. He acknowledged that reputation is even more important for larger transnational companies. Similarly, Ms Ba disclosed that reputation is one of the most important values for her company, in addition to integrity. She went so far as to declare that her company's reputation is its 'main asset'.

Every company in the world cares about what their customers and business partners think about them. However, what these customers and business partners perceive

as the right or wrong thing to do varies across countries and cultures. Thus, Gotsi and Wilson (2001, p. 29) suggest that different stakeholders may associate different reputations with the same company based on their own economic, social and personal background. Although reputation is important for both Vietnamese and transnational companies operating in Vietnam, conduct that enhances the good reputation of a Vietnamese company with its local business partners could tarnish a transnational company's reputation, both inside Vietnam's business environment and internationally. For example, a litigious Vietnamese company would damage its reputation, because formal court action results in a loss of face in Vietnam. Conversely, a transnational company might suffer damage to its reputation by not enforcing its rights under the law. This example illustrates the different expectations placed on Vietnamese and transnational companies, which operate under different rules. While Vietnamese companies' reputation is based on traditional Vietnamese business practices, transnational companies' reputation is based on compliance with formal laws and international business best practices, including global anti-corruption norms.

This finding is reflected in the interviewees' responses. For instance, Mr Huyen stated that legal compliance is essential to keeping a good reputation. Mr Mi also suggested that he and his companies' employees make sure that they respect the company's code of conduct, so that they do not harm his company's reputation. He asserted that, if faced with a choice between complying with anti-corruption rules and earning more profits, his company would choose the first option. Indeed, other interviewees also suggested that transnational companies prioritise anti-corruption compliance over profits because they view such compliance as necessary to safeguard their reputation. Thus, Mr Mo, interviewed as a business expert, explained that he used to work for a transnational company in Vietnam that had zero tolerance for corruption. He suggested that while this zero-tolerance policy prevented his company from getting some contracts, the company was more afraid of losing its reputation in relation to compliance with international values—and of the potential economic repercussions of such reputational damage.

Mr Du, an official from the VCCI, stated that transnational companies tend to rely on internal rules and codes of conduct to maintain their reputations. His comment, like the other interviewees' remarks, suggests that business ethics and corporate

reputation are interrelated for transnational companies, because their reputation is partly assessed in terms of their compliance with specific ethical standards.

Therefore, unlike Vietnamese SMEs, transnational companies base their ethical standards on formal laws and international business standards rather than on the principles and practices of informal institutions.

3.2. Anti-corruption compliance is the best way to avoid risks

A second pragmatic assessment shared by members of the TEC involves a recognition of the value of anti-corruption compliance for risk avoidance—and hence for the protection of their companies against prosecution, legal disputes, or abuse by public officials. The interviewees' responses suggest that transnational companies in Vietnam prioritise compliance with anti-corruption laws over informal institutions because they assume that compliance offers them protection. Thus, Mr Tung stated that unlike traditional Vietnamese companies, which do not usually comply with rules because they consider them a burden, he and his company viewed regulations as a means of protection. Similarly, Ms Hoan, a senior associate working in an international law firm in Ho Chi Minh City, asserted that transnational companies thoroughly comply with Vietnamese and international laws because they believe anti-corruption compliance offers them protection.

Adding to this point, Mr Huyen suggested that companies should rely on legal compliance to conduct business rather than using personal relationships with public officials, a practice that he considered 'dangerous'. Explaining why he thinks it is necessary for companies to rely on legal compliance rather than relationships, he pointed out that the amount of turnover within Vietnam's public service makes personal relationships with officials unstable. As he put it, 'the officials you are in good relationships with might not work at the same positions in the future, and the officials who replace them might want to favour other people'. Mr Huyen also suggested that while transnational companies might lose business opportunities and revenue in the short term on account of not engaging in corrupt practices, in the longer term, these companies prevent substantial losses by avoiding the risk of being prosecuted or becoming involved in disputes. Making a similar argument, Mr Hang, a partner and founder of a Vietnamese law firm, asserted that transnational companies try to comply with both global and local anti-corruption rules because they are afraid of being prosecuted in Vietnam and in their home countries.

Reflecting on transnational companies' reliance on anti-corruption compliance for purposes of risk avoidance, Ms Hoan, senior associate in an international law firm, acknowledged that transnational companies are now paying more attention to their employees' behaviour, because the companies are being held legally responsible for that behaviour. In other words, transnational companies can be prosecuted if one of their employees engages in corrupt practices. She also stated that if the government began prosecuting companies for corruption, it would first target transnational companies rather than local companies. Consequently, transnational companies make a concerted effort to ensure that their employees are aware of and comply with anti-corruption laws.

Ms Hoan also pointed out that transnational companies are more concerned with corruption issues than Vietnamese companies because they are subject to international anti-corruption laws, such as the United States' Foreign Practice Act, and other international treaties. Her argument is supported by a number of research studies. For example, Hoang (2018) and the 2017 Vietnam Provincial Competitiveness Index (PCI) Final Report (Malesky et al. 2018, p. 86) indicate that foreign companies that are bound by laws prohibiting the bribery of foreign officials, including the U.S. Foreign Corrupt Practices Act, the U.K. 1999 Foreign Bribery Prevention Act, and the OECD anti-bribery convention, are less inclined to engage in corrupt practices while doing business in Vietnam—compared to foreign companies that are not bound by such laws or, for that matter, Vietnamese companies. Ultimately, these pragmatic assessments shared by members of the TEC suggest that, unlike traditional managers, managers in this community believe that compliance with anti-corruption laws is beneficial and profitable for their businesses.

4. Normative support of global anti-corruption norms among members of the TEC

This section explores the TEC's normative support for global anti-corruption norms. In the interviews, the transnational managers expressed their opinions about the causes of the corruption endemic to Vietnam's business environment. Their responses not only offer explanations as to why there is corruption in Vietnam, but also shed light on the assumptions underlying the transnational managers' normative beliefs. The managers' explanations of corrupt practices relate to weaknesses or

characteristics of the formal structures of governance and the laws instituted by the state, Vietnamese companies' financial concerns, Vietnam's regulatory culture, and Vietnam's business culture and practices. In illuminating the TEC's normative assumptions about global anti-corruption norms, the managers' responses suggest that members of this community share the core epistemic assumptions that also underlie global anti-corruption norms.

As discussed in Chapter One, global anti-corruption norms follow a rules-based approach to corruption grounded in recognised Western assumptions about law and society. These include the assumptions that corruption is a result of individual behaviour led by a cost-benefit calculus, that requirements of transparency and legal accountability will reduce corruption, and more generally that formal rules are the most effective way to regulate public officials' and businesses' behaviour. In addition, contemporary rules-based approaches are underpinned by neoliberal understandings of governance, which assume that 'deregulation' of markets and increased competition also reduce corruption. Finally, global anti-corruption norms rely on the understanding that it is morally wrong to take advantage of positions of power for personal gain. The sections that follow, showing how the TEC shares these assumptions, also argue that members of this community regard transnational companies as the model for anti-corruption behaviour. Ultimately, these findings demonstrate that members of the TEC share a normative support for global anti-corruption norms, and that this support, in turn, encourages them to comply with the norms in question.

4.1. Members of the TEC share the core epistemic assumptions underlying global anti-corruption norms

In a way that mirrors the epistemic assumptions underlying global anti-corruption norms, the interview data reveal that the TEC members attribute corruption to a cost-benefit calculus used by individuals. These members also share the neoliberal ideology conveyed by global anti-corruption norms, and believe in the effectiveness of a rules-based approach to corruption. They also think that codes of conduct/ethics are effective tools for regulating employees' behaviour, and preventing them from engaging in corrupt practices. This view corresponds to the assumptions underlying global anti-corruption norms, which promote the use of ethical codes of this sort.

4.1.1. Corruption is due to a cost-benefit calculus

The financial concerns mentioned in the interviewees' responses support the view that corruption is due to a cost-benefit calculus by strategic public officials or by businesses. Mr Hong declared that 'businesses do not want to be corrupt but they want to avoid wasting time with bureaucracy. It is a cost-benefit calculation'.

Similarly, Mr Tung stated that in cases of corruption in tenders, companies operate a cost-benefit calculus and engage in corrupt practices because they get a benefit from doing so.

Adding to this point, TEC members asserted that businesses in Vietnam have the choice between engaging in or resisting corrupt practices, and that they choose to do one or the other depending on which option gives them the most benefits. Illustrating this argument, Mr Huyen suggests that companies in Vietnam have the choice between engaging in corrupt practices or not:

It is a question of mentality and culture, not Vietnamese culture but the corporate culture. If you are a very ethical company from overseas and you want to do business here and find opportunities, you can be quite successful following your ethical culture. I do not think you have to compromise your key ethical rules or principles. It is unfair to blame the government and the officials because a company has a choice to make more profit, reasonable profit, less profit or loss; that's all about corporate choice.

Similarly, Mr Mi stated that even small companies can resist corruption, because administrative procedures are now simpler than before and easier to manage for small domestic companies. He suggested that engaging (or not) in corrupt practices depends on the companies' leadership.

For Mr Huyen, one of the reasons why some companies in Vietnam engage in corrupt practices is because corruption provides them with more business opportunities than anti-corruption compliance. He commented that companies engage in corrupt practices to get more profits: 'If a company wants to pay money [bribes], it means that the project is much more profitable than the money spent, and also that company is very greedy'. However, he suggested that a company's culture matters as well: 'in some companies, there is definitely a company culture where

they try to violate the laws to maximise profits; but in other companies, it is definitely prohibited, and they care about their reputation’.

4.1.2. Members of the TEC share the neo-liberal ideology conveyed by global anti-corruption norms

Many of the assumptions identified in the interviews relate to state governance, with interviewees’ responses indicating views consistent with the neoliberal ideology conveyed by global anti-corruption norms. Some of the interviewees linked the prevalence of corruption in Vietnam with the country’s lack of economic development and its communist political system. For example, Mr Mi stated that if Vietnam was more developed economically, there would be less corruption. Placing blame for Vietnam’s corruption on the communist government, Mr Phun asserted that transnational companies do not have any influence on Vietnam’s business environment because of the government’s reluctance to change that environment.

The TEC’s assumptions echo other neoliberal aspects of global anti-corruption norms, which promote deregulation and privatisation. Thus, Mr Huyen argued that in order to reduce corruption in the public service, the salaries of public servants must be increased. For him, however, the only way to increase these salaries is by cutting 50% of public jobs, notably those sponsored by the Communist Party. Reflecting on the benefits of privatisation, Ms Ba stated that SOEs would inevitably become less corrupt if they were privatised. In her opinion, there is a correlation between market liberalisation and privatisation, on the one hand, and the reduction of corruption, on the other hand. She asserted that the government should not manage any company, that it should only deal with issues of policy, and that there should not be too much intervention by the government into the economy. For her, the barriers to creating a business, such as the regulations bearing on permits, licences, and so on, should be minimised as much as possible. Similarly, Mr Tung stated that the prevalence of corruption in Vietnam is partly due to an excess of regulations and bureaucratic procedures, the lack of competition among companies, and the lack of governmental support for businesses.

4.1.3. Members of the TEC share a rules-based approach to corruption

In line with some of the key assumptions underlying global anti-corruption norms, members of the TEC share a rules-based approach to corruption and believe that

formal institutions and laws are the best way to reduce corruption. The TEC's identification of institutional factors that signal weak or opaque regulation and enforcement as key drivers of corruption indicates that the community has adopted a rules-based approach to corruption. Many interviewees pointed to the lack of efficient taxation, legal, and banking systems, as well as poor transparency and the ineffective enforcement of laws, as primary reasons for the prevalence of corruption in Vietnam.

Ms Ba's comments offer a good summation of the various responses in this connection. She attributed endemic corruption among public officials to the opacity of and lack of public information about administrative procedures, and also to inappropriate personal contacts between companies and public officials vis-à-vis decision-making processes. She argued that reducing these personal interactions—for example, by shifting administrative procedures online—would prevent corruption. Interviewees also stated that enhanced governance and legal enforcement, as well as improved legal knowledge among Vietnamese businesses, would reduce corruption. Mr Tung emphasised that business operators' knowledge and understanding of laws were essential to their effectiveness: 'when the government introduces new laws, the new regulations [mean that businesses have to] follow some procedures...for everybody to know and understand these regulations [is key], so the regulations can be effective'.

Another factor that indicates the alignment of the TEC with rules-based approaches is their prioritisation of legal transactions over relational transactions. This prioritisation also demonstrates that the TEC members are embedded in a rule-of-law ideology. They use formal laws to regulate their behaviour, and they are assessed according to the rule of law. Therefore, they would be considered corrupt if they violated the law (either international standards and domestic laws). Simply put, what constitutes corruption for these companies is violation of the law.

4.1.4. Members of the TEC believe in the effectiveness of codes of conduct

The TEC's rules-based approach to corruption also entails that transnational companies comply with international standards and implement strict internal rules, because they believe doing so is an effective way to reduce unethical and corrupt practices among their employees. The TEC thus assumes that codes of conduct

help promote companies' ethical standards among their employees, providing an effective means for preventing corrupt practices. Ms Hoan's comments, for example, point to the pressure that she feels from the expectations of her company when it comes to avoiding corrupt behaviour. She explained:

I work for a foreign law firm, and to my mind, corruption is not acceptable. Even if I could gain some benefits from it, the risks are too serious. In order to keep my job, I have to comply with anti-corruption rules. A lot of employees who work for foreign companies think the same.

Mr Mi also reflected on the role of codes of conduct in regulating employees' behaviour. He suggested that his company has a code of conduct that is more strict than Vietnamese laws. He explained that his company code consists of detailed guidelines that regulate practices involving government officials, such as gift-giving. He added that his company also conducts and organises trainings for its employees 'to make sure [they] do not do anything wrong' and to protect its reputation. However, Mr Mi also indicated that the way the company communicates the code is important to its effectiveness. He said that the company must demonstrate to its employees that it takes the code seriously. He mentioned that his company gives awards to employees who respect the code, to encourage other employees to do the same. Other interviewees' comments add support to Mr Mi's insistence that a company's messaging around its code of conduct is important. Ms Hoan expressed the view that codes of conduct only work if there is a strong enforcement by the company. Similarly, Mr Tung stated that codes of conduct will be effective only if the executive management (and everyone else in the company) follows them.

4.2. Members of the TEC regard transnational companies as the model for anti-corruption behaviour

The interviews reveal that for members of the TEC, transnational companies set the standard that should be followed by all companies in Vietnam. TEC members share the assumption that the business practices of transnational companies are ethically superior to those of traditional Vietnamese companies. Many interviewees stated that transnational companies operating in Vietnam influence traditional Vietnamese companies' business practices in a positive way. For example, Mr Hong and Ms Ba both asserted that Vietnamese companies are becoming more transparent due to the influence of standards upheld by transnational companies. Interviews pointed to

the increased interactions between local businesses and transnational companies as one way in which transnational companies are impacting local business practices. Ms Hoan suggested that economic globalisation means that Vietnamese companies do business with transnational companies, and, as a consequence, they will seek out legal services because the transnational companies require them to follow legal rules. Making a similar argument, Professor Tong, a professor of economics at a Vietnamese national university, suggested that if a Vietnamese company wants to work with a transnational company, it has to meet the transnational company's expectation that it will follow the law.

Reflecting on the influence of transnational companies on local business practices, interviewees also saw a link between working internationally and being less corrupt. According to Mr Tung, if a business or public project involves transnational companies, there tends to be less corruption, because the businesses involved in the project have to apply international standards in addition to domestic laws. Mr Mo, a freelance economics consultant, opined that there is less corruption in cities compared to rural areas because there are fewer transnational and foreign companies in rural areas. Similarly, Mr Hong stated that corruption is less prevalent among transnational companies, which 'need and require transparency'. Confirming this view, Dr Banh, a senior official from the VCCI, asserted that transnational companies investing in Vietnam have an influence on local business practices. He suggested that in the provinces where there has been more foreign investment, there is a higher standard of corporate governance because transnational companies require a more transparent business environment, and they put pressure on Vietnamese companies to improve their corporate governance: 'If Vietnamese companies want to enter the stock-exchange market, or to be suppliers of international big corporations, they have to change their system, their governance'. Similarly, for Mr Le, Vietnamese companies are under increasing pressure to comply with international laws and global anti-corruption norms if they want to be part of the global economy and export their products.

Thus, as these interviewees see it, transnational companies should not adapt to local practices; rather, Vietnamese companies need to adapt to transnational companies' standards. They consider transnational companies' business practices as superior to Vietnamese companies' business practices. The interviewees' statements also imply

that complying with global anti-corruption norms is a sign of development and modernity, whereas engaging in corrupt practices means moving backwards. Further, insofar as TEC members see their companies as a regulatory model for Vietnamese companies to follow, they assume that their companies' business practices (based on transparency and legal compliance) are ethical.

5. Conclusion

This chapter finds that Vietnamese managers working in transnational companies operating in Vietnam form an epistemic community distinct from the two other epistemic communities identified in this thesis. The main distinguishing characteristic of members of the TEC is that they are exposed to global anti-corruption norms not only through their personal background but also, and primarily, through their work as employees of transnational companies. These norms are diffused inside their companies, putting pressure on them to comply with the norms in question. At the same time, members of the TEC engage in cross-cultural code-switching by alternating between their companies' business practices and traditional Vietnamese business practices, in which they are embedded via their personal life. Some members of this community are defensive about Vietnamese SME business practices. However, they also hold that transnational companies' business practices are ethically superior to traditional Vietnamese business practices, which they regard as backward. Members of this community share the assumption that transnational companies have more agency to resist corruption than Vietnamese SMEs, which they see as incapable of complying with global anti-corruption norms.

The interviews also reveal that members of the TEC have pragmatic incentives to comply with global anti-corruption norms. A core epistemic assumption circulating within the TEC is that formal institutions and laws provide more benefits to their business than informal institutions and corrupt practices. Members of the TEC rely on legal and anti-corruption compliance in conducting business because they assume that legal compliance is the best way for their companies to avoid risks and to maintain a good reputation. Yet, the TEC's reliance on formal institutions is informed not only by pragmatic assessments but also by deeper normative assumptions that legal and anti-corruption compliance is the morally and normatively correct way to order business transactions. Indeed, TEC members share the core

epistemic assumptions underlying global anti-corruption norms, with this community contributing to their willingness to comply with the norms in question. For them, engaging in corrupt practices is unethical. Even if some transnational companies might violate global anti-corruption norms in practice, members of the TEC still regard these norms and international business standards as the model that should be followed. Therefore, unlike the transitional community, which still relies to a significant extent on relational business and will revert to formal institutions only when it can see the immediate material benefit of doing so, the TEC assume that formal institutions are the most appropriate means for conducting business transactions.

This chapter's findings show again that business managers' attitudes towards corruption and global anti-corruption norms are shaped by their working environment as well as their personal and professional experience. Members of the TEC share the key epistemic assumptions underlying global anti-corruption norms because they are exposed to these norms through their work in transnational companies, which promote these norms. Therefore, members of the TEC are potentially more likely to comply with global anti-corruption norms than Vietnamese SME managers, who are less exposed to these norms.

In short, exposure to international business standards and global anti-corruption norms seems to play a crucial role in encouraging business managers to comply with these norms. The different degrees of exposure to these norms among the three epistemic communities discussed in this thesis help explain the uneven responses to the transfer of the norms into Vietnam. This difference sheds light on why there is fragmentation in the interpretation of global anti-corruption norms in Vietnam, and also on why the transfer of these norms into Vietnam has not produced the expected reduction in corruption.

Chapter Seven – Towards a convergence of epistemic assumptions about anti-corruption norms in Vietnam

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1. Introduction

Chapter One hypothesised that the transfer of global anti-corruption norms has not produced the expected reduction in corruption in Vietnam because different types of companies respond to anti-corruption rules in different ways. This chapter applies the theoretical framework discussed in Chapter Two to address the issues raised by this hypothesis. Using systems theory, the present chapter explains why there is fragmentation in the interpretation of global anti-corruption norms within Vietnam’s business community. It summarises the epistemic assumptions conveyed by Vietnam’s anti-corruption regime (discussed in Chapter Three) as well as those shared by the three epistemic communities examined in Chapters Four, Five and Six. It then considers how differences among these assumptions contribute to

interpretive fragmentation before analysing whether a convergence of the assumptions is possible.

1.1. Theoretical overview

As discussed in Chapter Two, systems theory posits that modern societies are divided into different sub-systems that interpret external information, such as global anti-corruption norms, through internal epistemic assumptions (Luhmann 1990, p. 11; Nobles & Schiff 2012, p. 270; Teubner 2013). These sub-systems involve an internal set of norms and legitimacy criteria, which are used to regulate their members' internal behaviour (King 2006, p.43) and to interpret information external to a given sub-system, including information of the sort associated with global anti-corruption norms. Each sub-system operates with different norms and legitimacy criteria, and each has only a limited understanding of how other sub-systems operate (King 2006, p.51; 2013, p.73). Therefore, the legal rules that are part of the legal sub-system, including rules based on global anti-corruption norms, might not be seen by other sub-systems as 'relevant to their operations', or they might be interpreted in ways that conflict with the objectives of the rules in question (King 2013, p. 73). Consequently, for laws to effectively regulate other sub-systems, their underlying assumptions must be made as transparent as possible (King 2006, p. 48). In particular, for global anti-corruption norms to be effective in reducing business corruption, the business sub-systems must interpret these norms in ways that are compatible with the intentions of the anti-corruption norms themselves.

As discussed in Chapter Two, this thesis follows Hiller's (2010) postulate that sub-systems operate like epistemic communities that generate shared epistemic assumptions about regulatory problems and their appropriate responses (Gillespie 2007, p. 716). The study uses the concept of epistemic communities to map how different business groups interpret anti-corruption norms. It suggests that there is fragmentation in the way companies in Vietnam interpret anti-corruption norms because they belong to different epistemic communities, which construe these norms in different ways. The findings presented in Chapters Four, Five and Six demonstrate that assumptions regarding anti-corruption norms vary across the three epistemic communities at issue.

The working hypothesis guiding this study's analysis is that the companies most likely to comply with global anti-corruption norms are the ones that share the epistemic assumptions underlying these norms. Consequently, for these norms to be effective, there needs to be a convergence between the business communities' assumptions and the epistemic assumptions underlying these norms. Here, convergence means that these communities hold the same normative and epistemic assumptions as the ones underlying global anti-corruption norms. Convergence can only be achieved through communication among the different communities. Communication operates through 'structural coupling', resulting in mutual influence and interdependence among the communities in question (King 2013, p. 71). Structural coupling can overcome fragmentation by encouraging discourse through a mutually comprehensible conceptual grammar. As Teubner (2013) suggests, structural coupling can promote 'coevolution' and a convergence in how organisations interpret external rules such as global anti-corruption norms. However, internal change and external dialogue between epistemic communities is necessary for such convergence to occur. For internal change inside epistemic communities to happen, these communities must be cognitively open to new ideas, and an external dialogue between the communities must take place.

1.2. Objectives

This chapter applies systems theory to explore how Vietnam's business communities and the state can communicate to create a convergence between their epistemic assumptions, on the one hand, and those conveyed by global anti-corruption norms, on the other hand. Three main types of companies inside Vietnam's business environment can be distinguished: SOEs, transnational companies, and Vietnamese SMEs (including micro-enterprises, such as household businesses). Given the difficulty of obtaining data from SOEs, this study has examined only transnational companies and Vietnamese SMEs. Specifically, it has identified three distinct epistemic communities within these business groups: traditional Vietnamese SMEs (Chapter Four); transitional Vietnamese SMEs (Chapter Five); and Vietnamese managers working in transnational companies operating in Vietnam (Chapter Six). This chapter compares the epistemic assumptions held by each community with those underlying Vietnam's anti-corruption regime. It then examines whether and

how these epistemic assumptions might converge. This analysis points the way towards effective anti-corruption reforms for Vietnam.

2. Epistemic assumptions conveyed by Vietnam's anti-corruption regime

As discussed in Chapter Three, the first formal anti-corruption regulations appeared in Vietnam during imperial times. These regulations were influenced by Confucianism and based on the concept of 'virtue rule'. They aimed to promote moral rectitude among mandarins and prevent abuses of power. While the French tried to introduce anti-corruption regulations during the colonial period, these were ineffective because the Vietnamese population still regulated themselves according to the traditional virtue rule. In the 1950s and 1960s, following the revolution and the introduction of a Soviet-style legal system, Vietnam's socialist government focused its anti-corruption regulations on the misappropriation of socialist property into illegal private markets. These reforms did not disturb the concept of virtue rule. Rather, corruption was considered a lack of moral rectitude in public officials and party cadres, in a way that extended the concept of virtue rule.

The approach to corruption shifted after the *Đổi Mới* market reforms, initiated in 1986, creating a conflict between socialist and free-market ideologies. These reforms also brought with them new opportunities for corruption that jeopardised the CPV's legitimacy, and prompted the government to introduce new anti-corruption reforms in the 1990s. These further reforms were based on global anti-corruption norms. The key features of the reforms clearly followed the orthodox regulatory approach and consisted of the development of an anti-corruption legal framework that criminalises corrupt practices. These reforms also aimed to increase transparency and accountability by setting up ethical standards in the public and private sectors. They included professionalising bureaucrats, restructuring public services, and simplifying administrative processes and, notably, business regulations. In addition, the reforms were designed to increase access to public information and whistle-blower protection and to support the creation of anti-corruption bodies.

Recent Vietnam anti-corruption regulations, including the ACL (2005) and the new Anti-Corruption Law (Law No. 36/2018/QH14 2018 and Decree No. 59/2019/ND-CP on Anti-Corruption 2019) (ACL (2018)) maintain the orthodox approach to corruption.

These anti-corruption laws (ACLs) define corruption as an abuse of power by public officials and assume that formal laws regulate public officials' behaviour. However, the more recent reforms also suggest that Vietnam is developing a broader understanding of corruption, which goes beyond public officials' practices to include the private sector. The ACL (2018) holds office-holders in enterprises and organisations other than state organisations accountable for engaging in corrupt practices. Business communities in Vietnam, which are the focus of this study, are required to comply with Vietnam's anti-corruption legislation (ACL). Accordingly, the present chapter compares the epistemic assumptions underlying the ACL with those circulating within the three different business communities identified in this study.

Although there was considerable continuity in Vietnam's approaches to corruption from the pre-colonial to the post-colonial periods, this section extracts the norms attached to the recently imported anti-corruption regime. The core epistemic assumptions of the ACL, which is based on global anti-corruption norms, include the following:

- corruption is based on individual choices;
- formal rules are the most effective way to regulate public officials' and businesses' behaviour;
- universal legal standards define corrupt behaviour;
- it is morally wrong to take advantage of positions of power for personal gain;
- business competition, transparency, and legal accountability reduce corruption;
- anti-corruption compliance is required for a successful business environment.

To analyse the possibilities of convergence between these assumptions and those held by the three business communities identified, the next section summarises these communities' epistemic assumptions regarding anti-corruption norms.

3. Epistemic assumptions of Vietnam's business communities

The thesis examines the assumptions held by Vietnamese SME managers and also by Vietnamese managers working in transnational companies operating in Vietnam. The main difference between Vietnamese SMEs and transnational companies is that, in general, Vietnamese SMEs tend to rely (to a greater or lesser degree) on informal transactions and institutions as well as corrupt practices in conducting business, whereas transnational companies rely more on formal rules and institutions, including global anti-corruption norms. In addition, the previous chapters have identified two distinct epistemic communities within Vietnamese SMEs: the traditional business community, which operates and understands business on a primarily relational basis, and the transitional business community, which is more law-oriented and adopts a selective approach to formal legal institutions versus informal institutions. The following sections provide a brief overview of each of the three epistemic communities and a summary of their key epistemic assumptions.

3.1. Traditional Vietnamese SMEs

Chapter Four showed that complying with legal formalities and anti-corruption rules is not a primary consideration for traditional Vietnamese SME managers. Rather, these managers rely on informal institutions, such as personal relationships, local customs, and corrupt practices, when conducting business, even as they downplay formal legal institutions. In Vietnam's traditional business environment, trust-based relationships arise from reciprocal obligations and gift-giving rather than from the formal legal framework for business transactions. In other words, traditional Vietnamese SMEs do not trust the regulatory system and formal institutions and prefer to use informal institutions that they trust more.

The preference of traditional SMEs for informal institutions is justified by cultural reasons and pragmatic incentives. Cultural reasons include traditional Confucian values, which promote a reliance on personal relationships, reciprocity, gift-giving, social and familial obligations, and customary practices over the use of formal rules. In addition, traditional managers' reliance on informal institutions is informed by their pragmatic understandings that personal relationships and corrupt practices are more efficient and beneficial for their business than legal and anti-corruption compliance.

They associate corrupt practices with profitability and development. This assumption also implies that traditional managers consider profit maximisation to be more important than legal and anti-corruption compliance.

Traditional Vietnamese SME managers' reliance on informal institutions is also explained by deeper epistemic assumptions: namely, that they do not have the agency needed to resist corruption and that corruption is inevitable. Indeed, traditional managers believe that they have no alternative than to rely on informal institutions and engage in corrupt practices in order to 'survive' and to make profits. They think that corruption is acceptable and ethical because there is no other option.

To summarise, traditional Vietnamese SME managers share the following key epistemic assumptions:

- Trust-based business relationships are developed through informal institutions rather than formal legal institutions;
- corruption is culturally determined;
- personal relationships and corrupt practices are more beneficial than legal and anti-corruption compliance;
- profit maximisation is more important than legal and anti-corruption compliance;
- corruption is the only possible way of doing business.

3.2. Transitional Vietnamese SMEs

As discussed in Chapter Five, some Vietnamese SME managers adopt what can be characterised as a transitional approach to anti-corruption norms. Although they share many of the views about ethical ways to conduct business that are circulating in the traditional epistemic community, these transitional managers also believe that formal legal institutions can be beneficial for their businesses. They take a selective approach, choosing to rely on formal or informal institutions depending on the circumstances and on which option they view as the most profitable for their businesses. Transitional managers consider the law useful when they are entering into important, valuable contracts, because it allows them to avoid risk. They also tend to take recourse to the law when something goes wrong or they need protection from potential abuses by public officials or from business partners or clients in case of disputes. These ways of doing business suggest that, for transitional SMEs,

compliance is not incompatible with corruption, as long as engaging in corrupt practices does not carry any risk. These managers also assume that they have no choice but to comply with anti-corruption rules if they want to export their products or work with foreign companies.

From an ethical point of view, however, these transitional managers increasingly recognise the problems caused by Vietnamese businesses' reliance on informal institutions, such as personal relationships and corrupt practices. They see the practical problems resulting from the continued reliance on personal relationships and reciprocal obligations, which they see as being economically inefficient and harmful to their business, at least in some instances. They also consider traditional businesses' emphasis on personal relationships, and on the corrupt practices that are associated with relational business, as unethical and unfair. They regard legal compliance, international business standards, and anti-corruption rules as ethically superior to Vietnamese traditional practices. They believe that if they had the agency needed to resist corruption, they would not engage in corrupt practices. Therefore, they do not think that corruption is culturally determined; rather, they see it as based on individual choices and as morally wrong. Nevertheless, transitional SMEs also assume that they can choose between relational and anti-corruption regimes based on cost-benefit calculations; this assumption suggests they do not fully believe in the moral superiority of one system over the other. Thus, what is distinctive about this epistemic community is that there is no clear hierarchy of norms and cognitive assumptions, resulting in an oscillation between one system and the other. In this respect, the transitional community differs from both the traditional epistemic community and the TEC, both of which do have clear normative and cognitive hierarchies.

That said, however, the views expressed by transitional Vietnamese SME managers indicate that they share some of the assumptions underlying global anti-corruption norms. For example, they hold the orthodox view that corruption can be reduced via reforms promoting better public governance and transparency, clearer regulations and better enforcement of anti-corruption laws, better salaries and training for public officials, and fuller automation of administrative processes, to reduce personal contact between public officials and businesses. These managers also expressed views consistent with the neoliberal economic ideas conveyed by global anti-

corruption norms. For example, they think that the government interferes too much in the economy, that it should support domestic private companies in preference to SOEs, and that regulations should facilitate private businesses. These views echo the assumptions underpinning the orthodox approach to corruption, namely that increasing competitiveness among businesses, promoting privatisation, and engaging in deregulation will reduce corruption.

To summarise, the transitional Vietnamese SME managers share the following key epistemic assumptions:

- both formal and informal institutions are beneficial for businesses;
- corruption and legal compliance are compatible in some instances;
- corruption is based on individual choices rather than being culturally determined;
- it is morally wrong to take advantage of positions of power for personal gain;
- business competition, transparency, and legal accountability reduce corruption.

3.3. Transnational companies operating in Vietnam (TEC)

In Chapter Six, the analysis showed that members of the Transnational Epistemic Community (TEC) share pragmatic and normative support for global anti-corruption norms. The core epistemic assumption circulating within the TEC is that formal institutions and laws provide more benefits to their business than informal institutions and corrupt practices. TEC members rely on legal and anti-corruption compliance in conducting business because they assume that legal compliance is the best way for their companies to avoid risks and to maintain a good reputation.

From an ethical point of view, members of the TEC regard engaging in corrupt practices as morally wrong. They also believe that corruption is not culturally determined, but rather the result of individual behaviour led by a cost-benefit calculus. They see international business standards as the model to follow. Members of the TEC share the other core epistemic assumptions underlying global anti-corruption norms. Because they are influenced by a rule-of-law ideology, members of the TEC use the law to regulate and monitor their business practices. They believe that if officials violate the law (either international standards or domestic laws) for personal benefit, then they have acted corruptly. For them, then, universal

legal standards define corrupt behaviour. They also assume that codes of conduct and internal rules are effective in preventing unethical behaviour and corrupt practices among employees.

Underlying these assumptions is an acceptance of the neoliberal ideology informing global anti-corruption norms. For example, they believe that the prevalence of corruption in Vietnam is due to a lack of economic development, Vietnam's communist political system, an excess of regulations and procedures, the lack of competition among companies, and the lack of governmental support for businesses. Members of the TEC also adopt a rules-based approach to corruption grounded in universal standards that prohibit bribery, nepotism, collusion, and conflicts of interest. They believe that the high level of corruption in Vietnam is due to institutional factors, such as a lack of efficient taxation, legal, and banking systems; a lack of transparency; inadequate enforcement of the law; and inappropriate personal contacts between companies and public officials. Consequently, they assume that corruption can be addressed by reducing the size of bureaucracy, increasing public officials' salaries, and promoting deregulation and privatisation. They also believe that improving governance and legal enforcement, strengthening legal knowledge among Vietnamese businesses, and reducing personal contacts between officials and businesses by making administrative procedures accessible online would effectively prevent corruption.

To summarise, TEC members share the following key epistemic assumptions:

- compliance with anti-corruption laws is more beneficial for business than personal relationships and corrupt practices;
- it is morally wrong to take advantage of positions of power for personal gain;
- corruption is based on individual choices, rather than being culturally determined;
- universal legal standards define corrupt behaviour;
- business competition, transparency, and legal accountability reduce corruption.

The next section explores how the variety of epistemic assumptions circulating within these three epistemic communities leads to fragmentation in the interpretation of anti-corruption norms in Vietnam, undermining the effectiveness of these norms.

4. Fragmentation in the interpretation of global anti-corruption norms

Systems theory suggests that different sub-systems interpret external information through different sets of epistemic assumptions, creating fragmentation in the interpretation of legal transfers. Chapter Three revealed fragmentation inside Vietnam’s legal system by highlighting Vietnam’s legal plurality, whereby indigenous laws and customs co-exist with both domestic and imported formal rules. This plurality creates legal confusion and fragmentation in the way Vietnam business communities interpret and respond to formal laws and anti-corruption regulations. As demonstrated in Chapters Four, Five and Six, traditional Vietnamese SMEs seem to rely more on customary practices (versus formal laws) compared to the two other epistemic communities examined.

This section compares the core assumptions regarding anti-corruption norms held by traditional Vietnamese SMEs, transitional Vietnamese SMEs, and transnational companies operating in Vietnam. The comparison highlights the fragmentation created by the diversity of assumptions held by these communities—fragmentation leading to contrasting interpretations of the anti-corruption norms. To aid the analysis, the core epistemic assumptions about anti-corruption norms held by each of the three epistemic communities are summarised in Table One. The discussion that follows demonstrates that there is fragmentation in the way companies in Vietnam interpret and respond to global anti-corruption norms because they belong to different epistemic communities.

Table 1: Comparison of the three epistemic communities’ assumptions on anti-corruption norms

Epistemic assumptions	Traditional Vietnamese SMEs	Transitional Vietnamese SMEs	TEC
Corruption is based on individual choices		√	√
Formal rules are the most effective way to regulate public officials and businesses’ behaviour			√
Universal legal standards define corrupt behaviour			√

It is morally wrong to take advantage of positions of power for personal gain		√	√
Business competition, transparency, and legal accountability reduce corruption		√	√
Anti-corruption compliance is required for a successful business environment			√
Profit maximisation is more important than legal and anti-corruption compliance	√		
Personal relationships and corrupt practices are more beneficial than legal and anti-corruption compliance	√		
Trust-based business relationships are developed through informal institutions rather than formal legal institutions	√	√	
Corruption is culturally determined	√		
Corruption is the only possible way of doing business	√		
Laws are necessary for an orderly market		√	√
Corruption and legal compliance are compatible		√	
Both formal and informal institutions are beneficial for businesses		√	
Corruption is based on individual choices, rather than being culturally determined		√	√
Legal and anti-corruption compliance are more beneficial for businesses than personal relationships and corrupt practices			√

A comparison of the epistemic communities shows that the traditional SMEs hold a set of views about corruption that set them apart from both the transitional and the transnational communities. Most notably, unlike the transitional and transnational communities, the traditional SMEs did not share any of the core assumptions underlying global anti-corruption norms. They believe that profit maximisation is more important than legal compliance and that personal relationships and corrupt practices are more beneficial for their business than formal legal institutions. In contrast, members of the TEC think that legal and anti-corruption compliance are more beneficial for their business than personal relationships and corrupt practices. And while the transitional epistemic community takes a more selective approach, their views indicate a shift from preferring traditional relational business practices to recognising the value of formal institutions for business efficiency and profitability. Furthermore, traditional SMEs believe that trust-based business relationships are

developed through informal institutions rather than formal legal institutions, and that corruption is the only possible way of doing business in Vietnam. Conversely, TEC members consider that trusting relationships are developed through formal legal institutions, that corruption is based on individual choices, and that anti-corruption compliance is required for a successful business environment.

Although it is possible to identify commonalities across the epistemic assumptions held by the transitional community and the TEC, there are also crucial differences. Significantly, even though the transitional community's assumptions do align with some of the key epistemic assumptions underlying global anti-corruption norms, the transitional community does not prioritise legal compliance as much as the TEC. This is because the transitional community still rely on traditional business practices, such as reciprocal obligations and gift-giving, when it is beneficial for their business.

Some of the assumptions held by transitional SMEs also conflict with those held by traditional SMEs. For example, while traditional SMEs believe that personal relationships and corrupt practices are more beneficial for businesses than legal compliance, transitional SMEs think that formal legal institutions are useful in some circumstances. Even if they consider legal compliance compatible with corrupt practices, and even if they assume that both laws and personal relationships are beneficial for their business, transitional SMEs nevertheless hold that corrupt practices are unethical, and that it is wrong to take advantage of positions of power for personal gain. On those points, their assumptions are similar to those held by transnational companies. These two communities also share the assumption that business competition, transparency, and accountability reduce corruption. However, transitional managers do not share the assumption that universal legal standards define corrupt behaviour, one of the key assumptions shared by members of the TEC. In addition, unlike traditional SMEs and the TEC, which have clear normative and cognitive hierarchies, there is no clear hierarchy of norms and cognitive assumptions within the transitional SME community.

These findings suggest that the epistemic assumptions held by the traditional community, on one side, and by the transnational community, on the other side, are the furthest apart. By contrast, the transitional and transnational communities share

many assumptions, and may over time converge in adopting the norms underlying global anti-corruption norms.

5. Conditions for convergence

This section examines whether the epistemic communities that hold assumptions that are compatible with those underlying global anti-corruption norms are more likely to comply with these norms. Systems theory suggests that there are two possible avenues for fostering convergence between the epistemic assumptions held by different epistemic communities: namely, internal change (or evolution of thinking) inside epistemic communities, and external dialogue between communities.

Internal change is most likely to occur in cases where epistemic communities have internally inconsistent epistemic assumptions that allow cognitive space for new ideas. In these circumstances, there are no dominant ideas preventing change, such that the epistemic communities are open to external dialogue. External dialogue can promote convergence when epistemic communities are able to converse in a mutually comprehensible cognitive grammar. This means that for the legal system to effectively regulate epistemic communities, for example, it must be grounded in epistemic assumptions that are compatible with those held by the epistemic communities in question—so that the assumptions are comprehensible to them. The following discussion uses these ideas from systems theory to determine which of the epistemic communities studied here are the most likely to converge with the assumptions underlying Vietnam’s anti-corruption regime. To this end, the following sections identify which community shares assumptions most compatible with those underlying global anti-corruption norms, which is the most inclined to internal change and open to external dialogue, and which is the least prone to internal change and external dialogue.

Accordingly, the sections that follow begin by comparing the three epistemic communities’ assumptions about corruption with those underlying Vietnam’s anti-corruption regime and examining whether internal change is possible within each epistemic community. Then, they consider the potential for external dialogue among the communities, the elements that are blocking the convergence of assumptions, and the changes that are necessary for this convergence to occur.

5.1. Comparison of assumptions and internal change

The thesis finds that traditional Vietnamese SMEs rely on ethical standards that fundamentally conflict with the assumptions underlying the ACL. For example, the traditional community strongly believes that personal relationships are more beneficial than formal laws because trust-based business relationships arise from reciprocal obligations and gift-giving. These assumptions are irreconcilable with the assumption that anti-corruption compliance is required for a successful business environment, which is a key idea underlying the ACL. More generally, Table 2 summarises which business communities share the epistemic assumptions underlying the ACL:

Table 2: Comparison of the epistemic communities' assumptions with the ACL's epistemic assumptions

Epistemic assumptions of the ACL	Traditional Vietnamese SMEs	Transitional Vietnamese SMEs	TEC
Corruption is based on individual choices		√	√
Formal rules are the most effective way to regulate public officials and businesses' behaviour			√
Universal legal standards define corrupt behaviour			√
It is morally wrong to take advantage of positions of power for personal gain		√	√
Business competition, transparency and legal accountability reduce corruption		√	√
Anti-corruption compliance is required for a successful business environment			√

This table shows that the traditional SMEs community does not share any of the assumptions underlying the ACL, whereas the TEC shares all of them. In another difference, although the ACL assumes that formal rules are the most effective way to regulate public officials' and businesses' behaviour, traditional Vietnamese SMEs, as discussed in Chapter Four, regulate themselves through customary practices rather than formal rules. Similarly, although the ACL presupposes that corruption is based on individual choices, traditional SMEs believe that corruption is culturally determined and thus inevitable in Vietnam's business environment. The ACL also suggests that it is morally wrong to take advantage of positions of power for personal

gain and that anti-corruption compliance is required for a successful business environment. These assumptions, too, conflict with an assumption shared by traditional SMEs: namely, that engaging in corrupt practices is the only possible way of making profits.

Unlike traditional SMEs, the TEC supports ethical standards that are based on global anti-corruption norms, which, in turn, inform the ACL. Regarding transitional Vietnamese SME managers, they simultaneously hold some traditional assumptions about businesses regulation and some of the assumptions underlying the ACL. In conducting business, these managers do not solely rely on domestic business practices, which are mainly relational, but also take international business practices, which are more law-oriented, into account. They choose to do business using a traditional (relational) approach or a transitional (law-based) system depending on the circumstances. Their ethical standards, however, differ from those of traditional SMEs. Indeed, some Vietnamese traditional business practices are regarded as unethical by transitional managers. These managers increasingly prioritise legal compliance over traditional business practices and corrupt practices, because they recognise the benefits of complying with the ACL. The very fact that transitional managers switch between traditional and transitional approaches shows that the transitional community does hold a dominant cognitive view that might block convergence with global anti-corruption norms. It also suggests that internal change can occur within the transitional Vietnamese SMEs community.

These findings indicate that traditional SMEs' assumptions about corruption are the least compatible with the assumptions underlying the ACL, whereas the TEC's assumptions are the most compatible. Traditional Vietnamese SMEs seem the least prone to internal change, because their epistemic assumptions are embedded in deeper cultural values. In addition, traditional managers believe that engaging in corrupt practices is more beneficial for their business than anti-corruption compliance, and this belief is likely to prevent their compliance with the ACL. The TEC hold the opposite assumption, believing that anti-corruption compliance is more beneficial for their business than engaging in corrupt practices. This core epistemic assumption, on the part of the TEC, encourages compliance with the ACL.

Regarding the transitional Vietnamese SMEs community, internal change already seems to be a factor within this community, which holds internally inconsistent epistemic assumptions—as revealed by their selective approach to informal and formal institutions. On the one hand, they rely on traditional business practices; on the other hand, they increasingly use best practices for international business. Internal change is occurring in this community because its members are more exposed to different business models and practices than the other two epistemic communities considered here. As discussed in Chapter Five, transitional managers are exposed to traditional Vietnamese business practices as well as international business practices through their business activities and their personal background. Consequently, of the three communities examined in this study, the transitional community is the most cognitively open to new ideas. It is more open to change than the traditional community, which has less exposure to different ways of conducting business and to international business practices, in particular. Ultimately, the internal change occurring within the transitional Vietnamese SME community seems to be leading towards increasing compliance with the ACL.

5.2. External dialogue

The thesis' findings suggest that both the TEC and the transitional community are open to external dialogue, which has the potential to influence their assumptions. Chapter Six showed that members of the TEC are, compared to traditional Vietnamese SMEs, more influenced by a Westernised business culture, international business best practices, and global anti-corruption norms. They are embedded in a corporate culture that promotes these global norms, and they have the linguistic and educational background needed to make these ideas comprehensible. Chapter Six demonstrated that members of the TEC are exposed to international business practices and global anti-corruption norms through their personal experience and their work as employees of transnational companies. Indeed, many efforts are made within transnational companies to raise employees' awareness about these norms, and to encourage employees to follow them.

Chapter Five showed that international business practices are also increasingly influencing the transitional SMEs community, most likely because these companies need to follow such practices if they want to work internationally. Knowledge about international business practices is diffused among transitional managers through

global supply chains and their professional interactions with transnational and foreign companies. Findings from the interviews considered in Chapter Five suggest that the personal background of transitional managers also plays a role in shaping their responses to anti-corruption rules. For example, managers of transitional Vietnamese SMEs changed their perception towards traditional business practices when they were exposed to different business models, especially Western models, through education in foreign countries, student exchanges, and travel.

Conversely, because traditional SMEs are less exposed to international business practices, they are less inclined to follow these practices, including global anti-corruption norms. There are also institutional factors that explain why traditional SMEs are more reluctant to follow these norms than the TEC and transitional SMEs. Relevant factors include the lack of clarity and inadequate enforcement of laws as well as the lack of transparency and efficiency in formal institutions. The discourse circulating among traditional SMEs reinforces their views about the benefits of relational business practices and, conversely, the problems with law-based solutions.

Therefore, external discourses, such as those surrounding international business best practices, that are diffused through businesses' corporate cultures seem to have a greater potential for fostering a convergence of assumptions than changes inside the legal system itself. The interviewees did not mention public discussion about corruption as a significant influence. This finding suggests that business managers' international exposure through personal or professional experience is a critical factor vis-à-vis compliance with global anti-corruption norms.

5.3. Reasons why discourse may not promote convergence towards the ACL

The findings also suggest reasons why some SMEs may not change their views even if they are exposed to discourses promoting the assumptions underlying the ACL. In some circumstances, SMEs may filter external ideas through a cost-benefit analysis based on the epistemic assumption that profit maximisation is more important than legal compliance. Indeed, the findings indicate that self-interest influenced how SMEs interpreted the ACL. For example, traditional Vietnamese SMEs do not rely on formal legal institutions in conducting business because they do not find them relevant for their business. What is more, they do not trust these formal legal institutions to guide business decision making. Conversely, transnational

companies seem to rely on formal legal institutions in conducting business because they find material benefits in doing so. Unsurprisingly, profit was uppermost in the minds of the business managers across these epistemic communities. In addition, pragmatic assessments of profit potential are reinforced by deeper normative and cognitive assumptions.

Accordingly, discourse conveying the assumptions underlying global anti-corruption norms may not necessarily increase compliance with these norms. Companies tend to comply with global anti-corruption norms and the ACL when compliance provides them with more benefits than non-compliance, or when they do not have other choices. For instance, transitional SMEs seem to use a cost-benefit calculus when choosing between compliance with anti-corruption laws or the pursuit of corrupt practices: what they do in a given case depends on which option is more beneficial and profitable. This finding is significant, because it shows that the business managers conceptualise self-interest within a broader normative and cognitive epistemic framework. For example, traditional Vietnamese SMEs may be more inclined to comply with the ACL if they believe that these norms are relevant and beneficial for their business. In other words, the epistemic assumption that personal relationships and corrupt practices are more beneficial than formal laws and institutions prevents them from complying. At the same time, however, traditional managers' compliance with the ACL might increase, if, like transitional business managers, they come to believe that law is useful in ordering business transactions. This analysis offers a way of understanding compliance with the ACL that does not locate corruption in the individual, wealth-maximising choices presupposed by rules-based approaches to corruption. Furthermore, traditional businesses' pragmatic assessments are reinforced by their normative beliefs in relational business that might discourage them from complying with the ACL, even when they see a material benefit in compliance.

Another reason why discourse may not change underlying beliefs is that traditional SMEs distrust Vietnam's legal system and formal institutions. However, there needs to be trust in a set of rules or customs that guides business transactions and 'provides a means of coping with risk and uncertainty in exchange relationships' (Lai Xuan Thuy & Truong Quang 2005, p. 391). In other words, trust is essential for conveying information. However, traditional SMEs' distrust towards Vietnam's legal

system and formal institutions is reinforced by the contradictory information transmitted by the government to the business community. For example, one reason why traditional Vietnamese SMEs do not comply with the ACL is because they mistrust a legal system with opaque and highly changeable laws. Some traditional managers went so far as to suggest that laws are simply instruments used by the government to extract bribes from businesses. Thus, traditional SMEs' overall distrust towards Vietnam's legal system prevents their epistemic community's convergence with assumptions underlying the ACL.

Another reason for the distrust is that the party-state apparatus does not strictly follow the assumptions embedded in the ACL, particularly when they conflict with party rule. For example, whereas the ACL defines corruption as the abuse of power by public officials, Vietnam's state-party defines corruption as the lack of moral rectitude in public officials. High-ranking party members are also often shielded from the ACL. Such divergences signal to the public that Vietnam is not strictly governed by laws, and that the system of regulations may not follow the assumptions underlying global anti-corruption norms. Indeed, there may be a greater chance for convergence between the traditional business community and this non-legal version of anti-corruption initiatives, according to which officials have the moral right to manage society. This non-legal approach also influences the traditional managers' view that they cannot resist corruption or evade public officials' abuses of power.

Furthermore, in Vietnam, customary practices co-exist with formal laws, and government officials still regulate themselves according to morality rather than according to a set of formal rules. Practices that are considered corrupt according to the ACL, such as bribery or nepotism, do not necessarily contradict the version of public morality promoted by the Party-state. In turn, because the epistemic assumptions underlying the ACL conflict with some of the assumptions conveyed by the Party-state's version of public morality, business communities are subject to confusion and fragmentation in their interpretation of anti-corruption norms. Ultimately, the state sends mixed messages to businesses, and lacks the institutions that are needed to promote coherent views.

5.4. Changes required for convergence

For convergence to occur between the assumptions shared by the three epistemic communities, on the one hand, and the assumptions underlying the ACL and global

anti-corruption norms, on the other hand, these norms must be framed as relevant and beneficial for these communities' businesses. Although the TEC and the transitional community are headed in this direction, the traditional SMEs are guided by a set of epistemic assumptions that fundamentally conflicts with the ACL and global anti-corruption norms. These findings show that the epistemic communities that are the most likely to comply with global anti-corruption norms are those that share the epistemic assumptions underlying the norms in question.

6. Conclusion

Using systems theory, this chapter demonstrates that there is fragmentation in the interpretation of global anti-corruption norms within Vietnam's business community. The chapter also answers the research questions by showing that different types of companies belong to distinct epistemic communities that have contrasting understandings about what constitutes ethical and appropriate business behaviour. The resulting fragmentation hinders compliance with, and the overall effectiveness of, global anti-corruption norms.

At the same time, however, the chapter shows that internal change is occurring within the transitional Vietnamese SMEs' epistemic community, which is cognitively open to external dialogue. Such internal change has the potential to reshape the transitional community's assumptions regarding corruption and anti-corruption norms. External dialogue is made possible through international exposure and the diffusion of international best practices within both the transitional and the transnational communities. Conversely, the traditional business community is the least likely to converge with the ACL and global anti-corruption norms because it is the least exposed to these international practices. In addition, there is a lack of effective communication between the state's legal system and the traditional business community, which receives contradictory information.

The concluding chapter considers what might be done to ensure that the traditional community supports and follows the ACL. For example, such convergence might be fostered by implementing legal and institutional reforms specifically adapted to Vietnam's business environment; by promoting the diffusion of international business practices through market globalisation, and internationalising business education and training; and by expanding businesses' legal knowledge.

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1. Introduction

Like many governments in developing economies, since the 1990s, Vietnam's government incorporated the global anti-corruption norms elaborated by the international anti-corruption movement into its domestic laws. However, many studies suggest that, in developing states like Vietnam, the impact of such anti-corruption reforms on rates of corruption has been disappointing (Amukowa 2013; Brata 2009; Caiden 2013a; 2013b; Carr 2007; Huther & Shah 2000; Quah 2011; 2017; Shah 2008). Focusing on Vietnam, the main objective of this thesis was to understand why the transfer of global anti-corruption norms into developing economies has not produced the expected reduction in corruption.

To examine how global anti-corruption norms are interpreted by recipients in Vietnam, this thesis adopted a social constructionist approach to corruption, suggesting that ethical views about corruption are formed inter-subjectively within particular social groups. To complement social constructionism, this thesis used a version of systems theory, by means of which the highly abstract concept of sub-systems can be reconceived as more concrete social entities—namely epistemic communities—that interpret external knowledge according to norms and

assumptions internal to those communities. In particular, the study draws on the concept of epistemic communities as a way of investigating how different groups interpret anti-corruption norms.

Whereas most of the legal transfer literature addresses the reception of global norms by government agencies (Gillespie 2015, p. 936), this thesis explores, instead, the ways in which private companies interpret and respond to imported anti-corruption norms. Further, unlike the orthodox scholarship on corruption that focuses on institutional weaknesses as the main reason why anti-corruption reforms do not work in developing economies, this thesis explored the moral and pragmatic concerns shared by companies operating in Vietnam—concerns that can be identified by studying their social processes and interactions. In other words, the thesis analysed the ‘communicative processes’ within and among companies in Vietnam—processes through which these companies build their epistemic assumptions related to global anti-corruption norms.

This study hypothesised that there is fragmentation in the way companies in Vietnam interpret and respond to global anti-corruption norms. It is this fragmentation, the hypothesis posits, that hinders the effectiveness of these norms: companies in Vietnam belong to different epistemic communities that interpret global anti-corruption norms differently. In addition, the study’s working hypothesis was that the companies that share the epistemic assumptions underlying global anti-corruption norms are the ones most likely to comply with these norms. To address the issues raised by these hypotheses, the study posed four central research questions:

1. Is it possible to categorise companies in Vietnam into different epistemic communities?
2. What are the different epistemic assumptions shared by these communities regarding global anti-corruption norms?
3. How do companies in Vietnam rationalise and legitimise business behaviour that is prohibited by global anti-corruption norms?
4. Why do companies in Vietnam respond differently to global anti-corruption norms if (as orthodox approaches to anti-corruption reforms claim) they are exposed to similar deterrents and motivated by similar cost-benefit calculations?

The previous chapters have explored questions one and two. They confirm that it is possible to categorise companies in Vietnam into different epistemic communities. Specifically, this thesis examined three epistemic communities operating in Vietnam's business environment: traditional Vietnamese SMEs (Chapter Four); transitional Vietnamese SMEs (Chapter Five); and Vietnamese managers working in transnational companies in Vietnam (Chapter Six). Chapters Four, Five, and Six presented the different epistemic assumptions regarding global anti-corruption norms held by each of these three communities, and Chapter Seven, which provided a comparative analysis of these assumptions.

This final chapter will focus on the last two key research questions. To this end, the chapter will draw out the significance of the research findings presented in previous chapters to show, first, that there is fragmentation in the interpretation of global anti-corruption norms within Vietnam's business community, and that this fragmentation hinders the effectiveness of the norms in question. Second, the chapter will also demonstrate that the companies most likely to comply with global anti-corruption norms are the ones that share the epistemic assumptions underlying these norms. The chapter will then explore how to foster convergence between the assumptions of the three epistemic communities, on the one hand, and global anti-corruption norms, on the other hand. Convergence, in this context, means that these epistemic communities use the same normative and epistemic assumptions as the ones underlying global anti-corruption norms. Finally, the chapter discusses the study's contribution and limitations, and provides some suggestions for further research.

2. Fragmentation in the interpretation of global anti-corruption norms

To address the questions raised by the main hypothesis, first, a historical review of anti-corruption initiatives in Vietnam was conducted (Chapter Three). This review was essential, because it shed light on Vietnam's legal plurality and the conflicting ideologies bound up with traditional Confucian assumptions, Vietnam's communist regime, and the assumptions underlying global anti-corruption norms. This section discusses how this legal plurality and conflicting ideologies to which it gives rise ultimately create legal confusion for Vietnamese businesses and citizens, and hence uneven responses to anti-corruption norms. The thesis also found that Vietnam's

business community can be divided into different epistemic communities that perceive corruption and interpret global anti-corruption norms in contrasting ways. Indeed, the different epistemic communities sit differently within the country's legal plurality and conflicting ideologies—that is, they are differently exposed to and influenced by the 'sources' at issue: Confucian understandings of business and trust, communist-influenced ideology, and global anti-corruption norms. This section explains how each community's epistemic assumptions lead to fragmentation in the way anti-corruption norms are interpreted, with this fragmentation, in turn, undercutting these norms' effectiveness.

2.1. Fragmentation due to legal confusion

Chapter Three showed that Vietnam's first official anti-corruption regulations, introduced during imperial times, were based on the Confucian values of 'moral rectitude' among mandarins and a form of 'virtue rule' aimed at preventing abuses of power by bureaucrats and rulers. These values survived the country's colonisation by the French and, later, Vietnam's socialist revolution. Attempts by the French colonialists to base new anti-corruption regulations on a civil law system were ineffective, because the Vietnamese population still regulated themselves according to traditional virtue rule rather than the imported legal rules. Likewise, the concept of virtue rule still prevailed after the socialist revolution.

During the high socialist period, the introduction of the *Đổi Mới* reforms added further complexity to the legal plurality in Vietnam. The reforms based on the idea of free markets came into conflict with Vietnam's socialist legal system. This conflict of ideologies intensified with Vietnam's implementation of new anti-corruption regulations and the ACL (2005), which were based on global anti-corruption norms. Indeed, these norms, which are based on a neoliberal ideology that promotes privatisation and deregulation, conflict with Vietnam's Marxist-Leninist organisational structures, which promote top-down control and the preferential treatment of SOEs. At the same time, anti-corruption norms based on a rules-based approach to corruption conflict with virtue rule, which promotes morality above formal rules as a means to regulate people's behaviour. As suggested in Chapter Seven, this conflict of ideologies sends contradictory messages to Vietnam's companies, and hinders their compliance with Vietnam's regulations in general and anti-corruption laws in particular. Chapter Three also highlighted the legal plurality in Vietnam, showing how

indigenous laws, customary practices, and domestic as well as imported formal rules co-exist in the country.

To take one concrete example of the impact of conflicting ideologies, Chapter Four showed that traditional Vietnamese SMEs do not rely on formal laws in their daily business operations due to their distrust of Vietnam's legal system, which they regard as lacking in clarity and credibility. This attitude towards formal laws stems from their preference for informal institutions, which are grounded in trust-based personal relationships. Chapter Four also presented the finding that traditional Vietnamese SME managers believe that the Vietnamese Government openly favours SOEs to the detriment of private companies, and that government officials use formal laws as a tool to solicit bribes from private companies and get more personal benefits. These findings further highlight the ideological conflict caused by the clash between Vietnam's communist regime and free-market policies.

Legal plurality also creates legal confusion and fragmentation within the Vietnamese population when it comes to interpreting and responding to rules in general and anti-corruption regulations more specifically. Chapters Four, Five, and Six confirmed this fragmentation by revealing the three epistemic communities' uneven attitudes towards formal legal institutions. Chapter Four showed that traditional Vietnamese SME managers rely more on customary practices than on formal laws to regulate their behaviour. Chapter Five demonstrated that transitional Vietnamese SMEs use both formal laws and customary practices, whereas Chapter Six revealed that transnational companies mostly rely on formal legal institutions.

Therefore, legal confusion, resulting from contradictions between Vietnam's legal system and its anti-corruption regime can be identified as a principal cause of the limited influence of global anti-corruption norms transferred into the country. The conflicts between Vietnam's legal system and anti-corruption regime ultimately lead to fragmented responses to this regime within Vietnam's business community, which, as the next section confirms, comprises multiple epistemic communities.

2.2. Fragmentation due to different epistemic communities sharing different epistemic assumptions

The thesis has demonstrated that Vietnam's business community can be divided into different epistemic communities that perceive corruption, and interpret and respond

to anti-corruption rules, in different ways. The three analysis chapters (Chapters Four, Five and Six) showed that the uneven responses of companies in Vietnam to the transfer of anti-corruption norms can be attributed to differences in their attitudes towards formal legal institutions.

Chapter Four showed that legal and anti-corruption compliance are not a primary consideration for traditional Vietnamese SME managers, because in conducting business these managers rely more on informal institutions—such as personal relationships and corrupt practices—than on formal legal institutions. This is not to say that traditional SMEs reject all governance through laws, but rather that they resist state interference into their business transactions, including anti-corruption rules. They believe that trust-based business transactions are better enabled through informal institutions than formal institutions. In addition, they distrust these formal legal institutions, which they do not regard as beneficial for their business. In contrast, Chapter Six found that transnational companies rely on formal legal institutions, such as international business best practices and global anti-corruption norms, in their daily business operations. A more mixed picture appeared in Chapter Five, which showed that transitional Vietnamese SMEs use a selective approach. In other words, they sometimes use formal laws and sometimes use informal institutions, depending on the circumstances. The different communities' contrasting attitudes towards formal rules thus offer a partial explanation for why the transfer of global anti-corruption norms, which follow a rules-based approach, produces uneven responses from Vietnam's business community. These contrasting attitudes also explain why the transfer has had a limited influence on the business practices of traditional Vietnamese SMEs in particular, given their strong level of distrust vis-à-vis formal rules and their tendency not to rely on such rules in their daily business operations.

In addition to exploring these contrasting attitudes towards formal rules, Chapter Seven also highlighted differences in the way the three epistemic communities interpret anti-corruption norms. Chapter Seven showed that traditional SMEs hold a set of views about corruption that sets them apart from the transitional and transnational communities. Traditional SMEs' assumptions about corruption are the least compatible with the assumptions underlying global anti-corruption norms, whereas the TEC's assumptions are the most compatible. These findings further

demonstrate that there is fragmentation in the interpretation of global anti-corruption norms within Vietnam's business community, and that this fragmentation hinders compliance with, and the effectiveness of, the norms in question.

Chapter Seven also revealed that the three business epistemic communities examined in this thesis, like other businesses throughout the world, operate according to a cost-benefit calculus, and make decisions to achieve the most profitable outcome possible. However, what Vietnamese SMEs consider to be beneficial for their business is not necessarily considered beneficial by a transnational company. Chapter Four showed that one of the reasons why traditional Vietnamese SMEs do not comply with global anti-corruption norms is because they do not believe that these norms benefit their business. For example, traditional SMEs regard legal compliance as more costly than engaging in corrupt practices. Conversely, transnational companies perceive compliance with global anti-corruption norms to be of benefit for their business. They consider these norms as providing a level playing field and allowing them to avoid the additional costs of paying bribes or penalties for non-compliance.

These contrasting understandings of the benefits of anti-corruption compliance go to the fourth key research question. They help explain why companies in Vietnam respond differently to global anti-corruption norms even though (as orthodox approaches to anti-corruption efforts claim) they are exposed to similar deterrents and motivated by similar cost-benefit calculations. This conclusion also suggests that the limited effectiveness of global anti-corruption norms in Vietnam cannot be attributed solely to institutional factors, such as poor institutional coordination or weak enforcement of the law. Rather, the orthodox approach to anti-corruption reforms does not sufficiently account for the differences between cost-benefit calculations that different businesses undertake. Such calculations are informed by contrasting tacit assumptions circulating within different types of companies. Thus, whereas global anti-corruption norms might suit transnational companies' understandings of how their business operates and of what can lead to the most beneficial outcomes, these norms are not adapted to traditional Vietnamese SMEs, which operate under different assumptions and face different challenges. The compatibility of the TEC's understandings of corruption with global anti-corruption norms confirms that the epistemic communities most likely to comply with global anti-

corruption norms are the ones that share the same epistemic assumptions underlying the norms in question.

Furthermore, the analysis chapters respond to the third research question, which concerns how companies in Vietnam rationalise and legitimise business behaviour that is prohibited by global anti-corruption norms. Chapter Four explained that Vietnamese traditional SME managers justify their reliance on personal relationships and corrupt practices by means of cultural and institutional reasons, and also in terms of a lack of the agency needed to resist corruption. In addition, Chapter Six revealed that members of the TEC sometimes rationalise and legitimise behaviours prohibited by global anti-corruption norms on the same grounds. Even if transnational managers share the core epistemic assumptions underlying global anti-corruption norms, they remain defensive about Vietnamese SMEs, which they regard as powerless and unable to resist corruption.

3. Recommendations for fostering a convergence of assumptions

This thesis suggests that the limited effectiveness of transferring global anti-corruption norms into Vietnam is due to a fragmented interpretation of these norms—with different kinds of companies interpreting the norms in different ways. That said, the thesis has also suggested that fostering a convergence between the assumptions of the three epistemic communities, on the one hand, and the assumptions underlying the anti-corruption norms, on the other hand, can help overcome this problem of fragmentation. Indeed, developing convergent interpretations of global anti-corruption norms within Vietnam's business community could lead to more uniform and therefore more effective compliance with these norms.

Chapter Seven suggested that for convergence of this sort to come about, the anti-corruption norms must be framed as relevant and beneficial for all three epistemic communities. Although the findings presented in Chapters Five and Six demonstrated that the TEC and, to a lesser extent, the transitional community are headed in this direction, traditional Vietnamese SMEs are guided by a set of epistemic assumptions that fundamentally conflict with those underlying global anti-corruption norms. This study argues that fostering a convergence of assumptions

might be possible in this instance as well, however—first, by improving the dialogue between the state and the traditional Vietnamese SME community; and second, by increasing traditional Vietnamese SME managers' exposure to different business models and international business best practices.

3.1. Improving the dialogue between the state and the traditional Vietnamese business community

Chapter Four showed that traditional Vietnamese SMEs do not rely on formal legal institutions in part because of the level of distrust they hold towards Vietnam's legal system and government. To overcome this distrust, Vietnam's legal system must communicate more effectively with the traditional Vietnamese SME community. For this to happen, the government should first attempt to remove any confusing language, contradictions, and ambiguity from its regulations. The government needs to improve the clarity and consistency of its regulations in general and its anti-corruption regulations in particular. These regulations should leave no room for errant interpretations or abuse by public officials.

To convince traditional Vietnamese SME managers that it supports them, the government should simplify business procedures and implement regulations favouring private companies instead of SOEs. The government should adapt its business regulations to the specific needs of Vietnamese SMEs, so formal laws become more relevant to them. Similarly, for formal institutions to gain trust from and be used by Vietnamese SMEs, these institutions must look professional, demonstrate credibility, and prove that they support businesses. The government must also reduce the prevalence of corruption inside these formal institutions.

3.2. Increasing the traditional Vietnamese business community's international exposure

Chapter Five and Six demonstrated that international exposure, whether through personal or through professional experiences, influences business managers' perception of corruption. When they are exposed to different business practices and different business models, managers are more likely to identify the potential negative effects of traditional business practices, such as the reliance on personal relationships and reciprocal obligations. This thesis suggests that the more business managers are exposed to best practices for international business, the more likely they are to adhere to and comply with global anti-corruption norms.

Therefore, to foster convergence of the sort that is needed, traditional SMEs' exposure to different business models and international best practices should be increased. This goal could be achieved by developing commercial exchanges between Vietnam's markets, Western countries' markets, and transnational and foreign companies, to encourage the diffusion of international business practices. This diffusion might also be expanded through education and university student exchanges.

4. Thesis contribution

This thesis makes a contribution to the legal transfer literature by looking beyond instrumental and institutional explanations for transfer failure or unexpected outcomes of legal transfers. The findings from this research indicate that legal transfers do not have inherent meaning; rather, interpretations of imported norms by recipients shape responses to those transfers, and determine their effectiveness. This study also suggests that the way recipients in developing economies perceive corruption and conceptualise imported anti-corruption norms affects responses to, and the effectiveness of, anti-corruption measures. It shows that the transfer of global anti-corruption norms into Vietnam has produced fragmented interpretation of, and responses to these norms within Vietnam's business community hindering the effectiveness of these norms. Therefore, this research demonstrates that anti-corruption initiatives based solely on transferring anti-corruption legal rules and institutions are likely to be ineffective in reducing corruption.

This thesis also contributes to the literature that seeks to understand corruption in developing economies. Notably, it adds to the emerging body of scholarship that takes a social constructionist approach to corruption and explores the social and cultural contexts of corruption. This thesis demonstrates that theories such as legal transfer theory, social constructionism, systems theory, and the concept of epistemic communities—together with research methods such as discourse analysis and semi-structured interviews—can help explain why actors engage in corrupt practices. The theories and research methods used in this thesis also overcome some of the common limitations of the orthodox scholarship on corruption. Whereas the orthodox scholarship tends to evaluate the reasons why corruption is prevalent in one country or area, usually by looking at institutional factors, the present study examines how

the epistemic assumptions held by the managers of different kinds of businesses influence their response to anti-corruption rules. It provides insights into the reasons why businesses in developing economies engage in corrupt practices. It shows that these reasons are not always the result of institutional deficiencies or cost-benefit calculations by immoral individuals, as corruption studies based on rational-choice theory suggest. This thesis demonstrates that deeper normative and cognitive assumptions also affect businesses' response to anti-corruption rules.

This thesis also contributes to the general literature on corruption in Vietnam. Most studies on corruption in Vietnam use neo-liberal and rational-legal approaches to corruption; they rely on a rational-choice definition of corruption and mostly focus on bribery (Gueorguiev & Malesky 2012; Maitland 2001; Rand & Tarp 2012; 2017; Sato 2009; Thuy Thu Nguyen & van Dijk 2012; Tran Thi Bich 2014). Accordingly, the anti-corruption remedies suggested by many authors are influenced by a Weberian model and the anti-corruption movement's own recommendations (Binh Tran-Nam 2017; Chene 2008; Malesky & Pham Ngoc Thach 2019; McCornac 2012; Painter 2014; Sato 2009; Tsuboi 2005; Vian et al. 2012). Many authors have explained the limited effectiveness of Vietnam's anti-corruption measures in terms of a lack of implementation and enforcement (Chene 2008, p. 6; Fritzen 2005; Martini 2012, p. 1; Painter 2014, p. 275) along with institutional factors such as the lack of coordination and political independence among anti-corruption agencies (Nawaz 2008, p. 1; Painter 2014, p. 283). Furthermore, many of the studies that explore the nature, prevalence, and impact of corruption in Vietnam use quantitative analysis, econometrics, and surveys (CECODES, VFF-CRT & UNDP 2017; Jie Bai et al. 2013; 2019; Malesky et al. 2019; Ngoc Nguyen, Quang Doan & Binh Tran-Nam 2016; Nguyen Anh, Nguyen Minh & Binh Tran-Nam 2016; Quang Vinh Dang 2016; Rand & Tarp 2012; 2017; Segon, Booth & Pearce 2010; Spector 2016; Thang Van Nguyen et al. 2020; Thang Van Nguyen et al. 2017; Tran Thi Bich 2014). This thesis contributes to this area of inquiry by filling the gap in qualitative research about corruption in Vietnam. This thesis also adds to the limited number of studies analysing corruption in Vietnam in light of its social context (Gillespie et al. 2020; Hoang 2018; Hun Kim 2017; Nicholson 2002; Segon & Booth 2010; Thang Van Nguyen et al. 2017; UNDP 2017; Vu Anh Dao 2017). Yet, unlike these studies, which typically focus on how government agencies interpret and respond to imported global

anti-corruption norms, this thesis provides insights into how businesses interpret and conceptualise these norms.

Thus far, the existing literature on business corruption in Vietnam has been limited to quantitative perception studies that assess the nature and cost of corrupt practices in business, what types of corruption firms believe are prevalent, and some of the pragmatic reasons why businesses engage in corrupt practices (CECODES, VFF-CRT & UNDP 2017; Dang Giang, Phung Xuan & Ninh Hai 2016; Malesky et al. 2017; Ngoc Nguyen, Quang Doan & Binh Tran-Nam 2016; Rand & Tarp 2012; 2017; Segon, Booth & Pearce 2010). These studies do not provide 'substantive insights into interpretations of key concepts and issues related to bribery and corruption' (Segon, Booth & Pearce 2010, p. 22), and they say little about the underlying business practices and precepts that support, reject, or transmute anti-corruption rules. This thesis fills this gap in the literature by using a social constructionist approach, which allows analysts to explore the epistemic and structural factors that shape how businesses conceptualise corrupt practices and respond to governmental anti-corruption initiatives. It highlights the pragmatic, normative, and cognitive epistemic assumptions, which influence Vietnam's business community's response to these norms. By revealing the tacit assumptions about corruption shared by businesses in Vietnam, this thesis generates new insights into the reasons why these businesses engage in corrupt practices. By confirming that there is fragmentation in the way businesses interpret these norms, the study illuminates why the responses to transfers of global anti-corruption norms have been uneven in many developing economies.

The findings from this thesis also add to understandings of how cultural contexts and cultural practices can encourage (or discourage) corruption. Chapter Three draws attention to the importance in Vietnam of Confucian values, such as devotion to the family, the emphasis on reciprocal obligations, gift-giving, and the preference for the use of customary rules rather than formal rules. These Confucian principles, however, are concerned with ethics and morality. Therefore, traditional Vietnamese SME managers still rely on Confucian principles to evaluate what business practices are ethical or unethical. Chapter Four showed that many traditional Vietnamese SMEs' business practices are based on these Confucian values. For example, traditional Vietnamese SME managers, in conducting business, rely more on

customary practices, reciprocal and familial obligations, and gift-giving than on formal legal institutions. Yet this preference, and this reliance on Confucian values, encourages certain corrupt practices. For example, nepotism is not considered unethical by traditional Vietnamese SME managers, because helping one's family is seen as an obligation. Similarly, traditional SME managers consider giving gifts to the public officials who help them with their administrative procedures as an ethical practice. This research also innovates from other studies on corruption in Vietnam, by showing that traditional managers' lack of reliance on formal rules contributes, to a large extent, to the limited effectiveness of Vietnam's anti-corruption legislation.

Furthermore, the findings from this thesis can be transposed to similar countries, notably China, given the close political, economic, and cultural links between Vietnam and China. Indeed, Confucianism and the concept of reciprocal obligations (or '*guanxi*' in China) is also prevalent in China, where it influences business practices. The study's findings add to the literature that suggests that corruption, rather than always coming down to a pragmatic cost-benefit calculus by individuals, or to ineffective formal legal institutions, is sometimes encouraged by embedded cultural practices. The study also demonstrates that the transfer of global anti-corruption norms based on Western conceptions of corruption and a neo-liberal ideology conflict with the embedded cultural values of non-Western economies. It adds weight to the existing calls for the tailoring of anti-corruption reforms and initiatives to the local cultural context where the reforms are implemented. Yet, this thesis also reveals that Western ideas, such as international business practices and global anti-corruption norms, can be exported to non-Western countries and diffused through different means, by, for example, developing commercial and educational exchanges.

5. Thesis limitations

The sample of Vietnamese managers working for transnational companies in Vietnam is limited; it consists of only seven participants. Due to this small sample size, the thesis could not draw generalisations about potential variations between the TEC members related to which industry they work in and/or the country in which their companies' headquarters are based. Thus, the thesis could not comment on possible differences between Western and Asian companies in this respect.

Regarding the Vietnamese SME managers, the sample was large enough to support generalisations about the two epistemic communities. However, this sample does not allow for generalisations that relate to the companies' industries, sizes (micro, small, or medium enterprises), types (household businesses or limited liability companies), or revenues. Neither does it support the analysis of how differences among the interviewees' interpretations of anti-corruption norms might relate to their age, gender, region of origin (e.g., Hanoi versus Ho Chi Minh City), or level of education.

6. Suggested directions for further study

The findings in the thesis reveal that there is fragmentation in the way companies in Vietnam interpret anti-corruption norms. The thesis demonstrates that there are differences between Vietnamese SMEs versus transnational companies, but also heterogeneous views regarding anti-corruption norms within each of these three epistemic communities.

Further research is needed to understand what factors create these variations. Findings from the interviews suggest that the managers' personal background, their age, their level of education, the countries in which they studied, and the industry in which their companies operate may influence the way they perceive corruption and interpret anti-corruption norms. However, the sample is too small to support generalisations along these lines. It would be interesting to compare different companies' interpretation of anti-corruption norms depending on their size or type, in one particular industry, or to look at differences in interpretation among managers related to their gender, age, and education. In particular, more research is needed on SOEs managers' interpretation of anti-corruption norms and the influence of SOEs' corrupt practices on Vietnam's private sector's response to anti-corruption rules.

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Appendix One – List of interviewees²³

Business experts

- 1.1. Mr La, 50+ years old, male, associate in a Vietnamese law firm, interviewed on 8 March 2018 in Hanoi
- 1.2. Ms Dong, 35+ years old, female, senior officer at Vietnam's Ministry of Justice, interviewed on 10 March 2018 in Hanoi
- 1.3. Mr Du, 30+ years old, male, official from the VCCI, interviewed on 20 March 2018 in Hanoi
- 1.4. Mr Le, 60+ years old, male, director of a Vietnamese NGO, interviewed on 28 March 2018 in Hanoi
- 1.5. Mr Cang, 50+ years old, male, partner and founder of a Vietnamese law firm, interviewed on 29 March 2018 in Hanoi
- 1.6. Ms Tuyen, 40+ years old, female, senior official in a foreign development agency, interviewed on 26 July 2018 in Hanoi
- 1.7. Dr Banh, 45+ years old, male, senior official from the VCCI, interviewed on 27 July 2018 in Hanoi
- 1.8. Prof Tong, 50+ years old, male, professor of economics in a Vietnamese national university, interviewed on 7 August 2018 in Hanoi
- 1.9. Mr Mo, 35+ years old, male, freelance consultant in economics based in Ho Chi Minh City, interviewed on 21 August 2018 in Ho Chi Minh City
- 1.10. Ms Hoan, 40+ years old, female, senior associate in an international law firm in Ho Chi Minh City, interviewed on 24 August 2018 in Ho Chi Minh City

Managers of Vietnamese SMEs

- 2.1. Mr Buc, 40+ years, male, director of a small IT company, interviewed on 12 March 2018 in Hanoi
- 2.2. Mr Tanh, 40+ years, male, manager of a small garment company, interviewed on 16 March 2018 in Hanoi
- 2.3. Mr Ca, 40+ years, male, owner and director of a small coal and mining equipment company, interviewed on 19 March 2018 in Hanoi
- 2.4. Ms Trang, 35+ years, female, manager in a small IT company, interviewed on 21 March 2018 in Hanoi
- 2.5. Mr Ruong, 45+ years, male, vice-director of a medium-sized construction investment and development company, interviewed on 21 March 2018 in Hanoi
- 2.6. Mr. Truyen, 40+ years, male, director of a small transport company, interviewed on 23 March 2018 in Hanoi
- 2.7. Mr Munster, 60+ years, male, citizen of a Western European country, co-director and founder with his Vietnamese wife of a small tourism company, interviewed on 24 March 2018 in Hanoi
- 2.8. Mr Vinh, 45+ years, male, director of a small cosmetics company, interviewed on 29 March 2018 in Hanoi
- 2.9. Mr. Huyen Minh, 50+ years, male, director of a small trading company, interviewed on 30 March 2018 in Hanoi
- 2.10. Mr Toang, 30+ years, male, owner of a karaoke bar, interviewed on 22 July

²³ In compliance with Monash University Ethics policies, the names of all the interviewees have been modified to ensure their anonymity.

2018 in Hanoi

- 2.11. Ms Chi, 25+ years, female, director of a small tourism and event company, interviewed on 24 July 2018 in Hanoi
- 2.12. Ms Chanh, 35+ years, female, manager of a small clothes shop owned with her family, interviewed on 24 July 2018 in Hanoi
- 2.13. Mr Tuc, 30+ years, male, director of a small IT company, interviewed on 27 July 2018 in Hanoi
- 2.14. Ms Quang, 25+ years, female, co-director and co-owner with her family of a small cosmetics company, interviewed on 28 July 2018 in Hanoi
- 2.15. Mr Be, 35+ years, male, director of a small steel company, interviewed on 29 July 2018 in Hanoi
- 2.16. Mr Gon, 35+ years, male, owner of a coffee shop in Hanoi, interviewed on 31 July 2018 in Hanoi
- 2.17. Ms Huong, 35+ years, female, former owner of several restaurants in Hai Phong province, interviewed on 1st August 2018 in Hanoi
- 2.18. Mr Hoa, 35+ years, male, owner of a coffeeshop in Ho Chi Minh City, interviewed on 17 August 2018 in Ho Chi Minh City
- 2.19. Ms Phi, 35+ years, female, owner of a coffeeshop in Ho Chi Minh City, interviewed on 17 August 2018 in Ho Chi Minh City
- 2.20. Mr Lee, 60+ years, male, Taiwanese, director of a medium-sized steel manufacturing company, interviewed on 17 August 2018 in Ho Chi Minh City
- 2.21. Mr Chai, 25+ years, male, director of a small beverage company, interviewed on 20 August 2018 in Ho Chi Minh City
- 2.22. Ms Thuan, 35+ years, female, director of a small HR (Human Resource) development and training company, interviewed on 20 August 2018, in Ho Chi Minh City
- 2.23. Mr Thuong, 50+ years, male, director of a medium-sized spice and condiment company, interviewed on 31 August 2018, in Ho Chi Minh City
- 2.24. Mr Do, 50+ years, male, director of a medium-sized garment company, interviewed on 1st September 2018, in Ho Chi Minh City
- 2.25. Mr Minh, 45+ years, male, director of a small garment company, interviewed on 1st September 2018, in Ho Chi Minh City

Managers of transnational companies

- 3.1. Mr Hong, 30+ years old, male, junior manager in a large American IT company, interviewed on 7 March 2018 in Hanoi
- 3.2. Mr Tung, 60+ years old, male, senior manager in a large Japanese investment company, interviewed on 17 March 2018 in Hanoi
- 3.3. Ms Ba, 50+ years old, female, senior partner in a large British auditing company, interviewed on 19 March 2018 in Hanoi
- 3.4. Mr Huyen, 40+ years old, male, senior legal counsel in a transnational Vietnam-focused financial institution, interviewed on 21 August 2018 in Ho Chi Minh City
- 3.5. Mr Tuy, male, 40+ years old, male, senior legal counsel in a large Korean mobile phone manufacturing company, interviewed on 17 January 2019 via email from Melbourne
- 3.6. Mr Mi, 35+ years old, male, senior manager in a large dairy company, interviewed on 6 April 2019 over the phone from Melbourne
- 3.7. Mr Phun, 30+ years old, male, lawyer in a large international law firm, interviewed on 11 April 2019 over the phone from Melbourne

Appendix Two – Profiles of Vietnamese SME managers

Name	Age	Education Level	Industry	Location	Overseas Experience
Mr Buc	40+	Unknown	IT	Hanoi	No
Mr Tanh	40+	Unknown	Textile	Hanoi	No
Mr Ca	40+	Tertiary Education	Coal and mining	Hanoi	Yes
Ms Trang	35+	Tertiary Education	IT	Hanoi	No
Mr Ruong	45+	Tertiary Education	Construction	Hanoi	No
Mr Truyen	40+	Tertiary Education	Transport	Hanoi	Yes
Mr Munster	60+	Tertiary Education	Tourism	Hanoi	Yes
Mr Vinh	45+	Tertiary Education	Cosmetics	Hanoi	No
Mr Muyen	50+	Tertiary Education	Trading	Hanoi	Yes
Mr Toang	30+	Tertiary Education	Entertainment (Karaoke bar)	Hanoi	No
Ms Chi	25+	Tertiary Education	Tourism / Event	Hanoi	No
Ms Chanh	35+	Tertiary Education	Textile	Hanoi	Yes
Mr Tuc	30+	Tertiary Education	IT	Hanoi	Yes
Ms Quang	25+	Tertiary Education	Cosmetics	Hanoi	Yes
Mr Be	35+	Tertiary Education	Steel	Hanoi	No
Mr Gon	35+	Tertiary Education	Hospitality	Hanoi	No
Ms Huong	35+	Tertiary Education	Hospitality	Hanoi	Yes
Mr Hoa	35+	Tertiary Education	Hospitality	Ho Chi Minh City	No
Ms Phi	35+	Secondary Education	Hospitality	Ho Chi Minh City	No
Mr Lee	60+	Secondary Education	Steel	Ho Chi Minh City	Yes
Mr Chai	25+	Secondary Education	Beverages	Ho Chi Minh City	No
Ms Thuan	35+	Secondary Education	Human Resources	Ho Chi Minh City	No
Mr Thuong	50+	Tertiary Education	Spice and condiment	Ho Chi Minh City	No
Mr Do	50+	Tertiary Education	Textile	Ho Chi Minh City	No
Mr Minh	45+	Secondary Education	Textile	Ho Chi Minh City	No

Appendix Three – Profiles of Vietnamese managers working in transnational companies operating in Vietnam

Name	Age	Education Level	Industry	Position	Location of Company Headquarters	Overseas Experience
Mr Hong	30+	Post-graduate	IT	Junior manager	U.S.A.	Yes
Mr Tung	60+	Post - graduate	Investment	Senior manager	Japan	No
Ms Ba	50+	Post graduate	Audit	Senior partner	U.K.	No
Mr Huyen	40+	Post-graduate	Finance	Senior legal counsel	Offshore (did not want to say)	Yes
Mr Tuy	40+	Post-graduate	Mobile phone manufacturing	Senior legal counsel	South Korea	Yes
Mr Mi	35+	Post-graduate	Dairy	Senior manager in the marketing/sales department	New Zealand	Yes
Mr Phun	30+	Post-graduate	Legal services	Lawyer	U.K. and Singapore	Yes

Appendix Four – Ethics Approval



Monash University Human Research Ethics Committee

Approval Certificate

This is to certify that the project below was considered by the Monash University Human Research Ethics Committee. The Committee was satisfied that the proposal meets the requirements of the *National Statement on Ethical Conduct in Human Research* and has granted approval.

Project Number: 12183
Project Title: Transfer of business anti-corruption norms in developing countries: A case study of Vietnam
Chief Investigator: Professor John Gillespie
Approval Date: 09/02/2018
Expiry Date: 09/02/2023

Terms of approval - failure to comply with the terms below is in breach of your approval and the *Australian Code for the Responsible Conduct of Research*.

1. The Chief Investigator is responsible for ensuring that permission letters are obtained, if relevant, before any data collection can occur at the specified organisation.
2. Approval is only valid whilst you hold a position at Monash University.
3. It is responsibility of the Chief Investigator to ensure that all investigators are aware of the terms of approval and to ensure the project is conducted as approved by MUHREC.
4. You should notify MUHREC immediately of any serious or unexpected adverse effects on participants or unforeseen events affecting the ethical acceptability of the project.
5. The Explanatory Statement must be on Monash letterhead and the Monash University complaints clause must include your project number.
6. Amendments to approved projects including changes to personnel must not commence without written approval from MUHREC.
7. Annual Report - continued approval of this project is dependent on the submission of an Annual Report.
8. Final Report - should be provided at the conclusion of the project. MUHREC should be notified if the project is discontinued before the expected completion date.
9. Monitoring - project may be subject to an audit or any other form of monitoring by MUHREC at any time.
10. Retention and storage of data - The Chief Investigator is responsible for the storage and retention of the original data pertaining to the project for a minimum period of five years.

Thank you for your assistance.

Professor Nip Thomson

Chair, MUHREC

CC: Ms Candice Lemaitre

List of approved documents:

Document Type	File Name	Date	Version
Consent Form	Consent Form	05/02/2018	1
Supporting Documentation	Emails of invitation to send to potential interview participants	05/02/2018	1
Explanatory Statement	Explanatory Statement - Candice	08/02/2018	2

Appendix Five – Consent Form

CONSENT FORM

(Relevant Participant Group)

Project: Transfer of business anti-corruption norms in developing countries: a case study of Vietnam

Chief Investigator: Prof. John Gillespie

I have been asked to take part in the Monash University research project specified above. I have read and understood the Explanatory Statement and I hereby consent to participate in this project.

I consent to the following:	Yes	No
I agree to be interviewed by the researcher Audio recording during the interview	<input type="checkbox"/>	<input type="checkbox"/>
I agree to allow the interview to be audio-taped	<input type="checkbox"/>	<input type="checkbox"/>
I agree to make myself available for a further interview if required	<input type="checkbox"/>	<input type="checkbox"/>

I understand that my participation is voluntary, that I can choose not to participate in part or all of the project, and that I can withdraw at any stage of the project without being penalised or disadvantaged in any way.

I understand that any data that the researcher extracts from the interview for use in reports or published findings will not, under any circumstances, contain names or identifying characteristics.

Name of Participant _____

Participant Signature _____

Date _____

Appendix Six – Explanatory Statements

EXPLANATORY STATEMENT

(Group of managers of foreign companies registered in Vietnam)

Project: Transfer of business anti-corruption norms in developing countries: a case study of Vietnam

Chief Investigator: Prof. John Gillespie

Department of Business Law and Taxation
Faculty of Business and Economics
Monash University
Phone:
email: john.gillespie@monash.edu

Student: Candice Lemaitre

Department of Business Law and Taxation
Faculty of Business and Economics
Monash University
Phone : +61452349549
email: candice.lemaitre@monash.edu

You are invited to take part in this study. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, you are encouraged to contact the researchers via the phone numbers or email addresses listed above.

The aim of this project is to explore how companies in Vietnam interpret and respond to global anti-corruption norms. The purpose of this research is to gain insights into the epistemological assumptions that shape business practices in Vietnam and the reasons why the interpretation and response to anti-corruption norms by companies in Vietnam is potentially fragmented.

You have been selected to participate in this research because of your knowledge and familiarity with business practices in Vietnam, and willingness to share your experiences and views. Your contact details have been obtained from the [nationality] Chamber of Commerce of which your company is a member.

You are invited to participate in this research project by agreeing to take part in an interview indicated in the attached Consent Form. Participating in this study is voluntary and you are under no obligation to consent to participation. Interviews will be arranged at a mutually agreed time and place. The interview will take approximately one hour. You can refuse to answer any or all of the questions. You are also free to withdraw from the interview at any stage before or during the interview and information collected from you will be destroyed.

Information obtained from interviews is needed to develop a general picture of what is considered as ethical and unethical business practices in Vietnam. Interviews will be conducted with four groups of participants, namely managers of Vietnamese State-Owned Enterprises and large Vietnamese companies, managers of foreign companies registered in Vietnam, managers of Vietnamese Small and Medium Enterprises, as well as business experts and professionals such as lawyers, accountants

or academics and members of organisations who may have informed views about business practices in Vietnam.

The interview questions will concern your personal views and opinions about what constitute ethical and unethical business practices. Please note that the interview questions will not concern potential involvement in illegal activity.

The information gathered will be compiled into case studies that describe precepts, attitudes and habits of different business actors in Vietnam towards global anti-corruption norms. Neither you nor your work will be identifiable from the case studies. The researcher will use codes and/or pseudonyms.

Information obtained from the interviews will be used for the thesis and potentially in articles published in academic journals as well as for Conference's presentations, to describe the interpretation and response to global anti-corruption norms in Vietnam. Views of individual participants will not be identifiable. Only aggregate de-identified data will be used for these projects.

If you wish to read the final thesis and any potential articles, you can contact the research student who will send them to you by email.

The information collected will be transcribed or noted. Any tapes used during the interview will be wiped clean after use. You will be shown by the researcher a copy of the interview transcript or notes and given an opportunity to change any or all of the details. The transcripts and notes will be stored in accordance with Monash University regulations, kept on University premises, in a locked filing cabinet for 5 years.

Should you have any concerns or complaints about the conduct of the project, you are welcome to contact the Executive Officer, Monash University Human Research Ethics (MUHREC):

Executive Officer
Monash University Human Research Ethics Committee (MUHREC)
Room 111, Chancellery Building D,
26 Sports Walk, Clayton Campus
Research Office
Monash University VIC 3800

Tel: +61 3 9905 2052 Email: muhrec@monash.edu Fax: +61 3 9905 3831

Please delete this paragraph from your final document

For projects in non-English speaking countries, please replace the MUHREC Complaints contact with the name of a local person and their contact details. This person should be fluent in English and not associated with the research. Please include this person's written agreement to take on this role with your application documentation.

Thank you,

(insert Chief Investigator's signature)

Prof. John Gillespie

EXPLANATORY STATEMENT

(Group of managers of Vietnamese small and medium enterprises)

Project: Transfer of business anti-corruption norms in developing countries: a case study of Vietnam

Chief Investigator: Prof. John Gillespie

Department of Business Law and Taxation
Faculty of Business and Economics
Monash University
Phone:
email: john.gillespie@monash.edu

Student: Candice Lemaitre

Department of Business Law and Taxation
Faculty of Business and Economics
Monash University
Phone : +61452349549
email: candice.lemaitre@monash.edu

You are invited to take part in this study. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, you are encouraged to contact the researchers via the phone numbers or email addresses listed above.

The aim of this project is to explore how companies in Vietnam interpret and respond to global anti-corruption norms. The purpose of this research is to gain insights into the epistemological assumptions that shape business practices in Vietnam and the reasons why the interpretation and response to anti-corruption norms by companies in Vietnam is potentially fragmented.

You have been selected to participate in this research because of your knowledge and familiarity with business practices in Vietnam, and willingness to share your experiences and views. Your contact details have been obtained from your company website.

You are invited to participate in this research project by agreeing to take part in an interview indicated in the attached Consent Form. Participating in this study is voluntary and you are under no obligation to consent to participation. Interviews will be arranged at a mutually agreed time and place. The interview will take approximately one hour. You can refuse to answer any or all of the questions. You are also free to withdraw from the interview at any stage before or during the interview and information collected from you will be destroyed.

Information obtained from interviews is needed to develop a general picture of what is considered as ethical and unethical business practices in Vietnam. Interviews will be conducted with four groups of participants, namely managers of Vietnamese State-Owned Enterprises and large Vietnamese companies, managers of foreign companies registered in Vietnam, managers of Vietnamese Small and Medium Enterprises, as well as business experts and professionals such as lawyers, accountants or academics and members of organisations who may have informed views about business practices in Vietnam.

The interview questions will concern your personal views and opinions about what constitute ethical and unethical business practices. Please note that the interview questions will not concern potential involvement in illegal activity.

The information gathered will be compiled into case studies that describe precepts, attitudes and habits of different business actors in Vietnam towards global anti-corruption norms. Neither you nor your work will be identifiable from the case studies. The researcher will use codes and/or pseudonyms.

Information obtained from the interviews will be used for the thesis and potentially in articles published in academic journals as well as for Conference's presentations, to describe the interpretation and response to global anti-corruption norms in Vietnam. Views of individual participants will not be identifiable. Only aggregate de-identified data will be used for these projects.

If you wish to read the final thesis and any potential articles, you can contact the research student who will send them to you by email.

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Thank you,

(insert Chief Investigator's signature)

Prof. John Gillespie

EXPLANATORY STATEMENT

(Group of Vietnam's business experts, business professionals and academics)

Project: Transfer of business anti-corruption norms in developing countries: a case study of Vietnam

Chief Investigator: Prof. John Gillespie

Department of Business Law and Taxation
Faculty of Business and Economics
Monash University
Phone:
email: john.gillespie@monash.edu

Student: Candice Lemaitre

Department of Business Law and Taxation
Faculty of Business and Economics
Monash University
Phone : +61452349549
email: candice.lemaitre@monash.edu

You are invited to take part in this study. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, you are encouraged to contact the researchers via the phone numbers or email addresses listed above.

The aim of this project is to explore how companies in Vietnam interpret and respond to global anti-corruption norms. The purpose of this research is to gain insights into the epistemological assumptions that shape business practices in Vietnam and the reasons why the interpretation and response to anti-corruption norms by companies in Vietnam is potentially fragmented.

You have been selected to participate in this research because of your knowledge and familiarity with business practices in Vietnam, and willingness to share your experiences and views. Your contact details have been obtained from your organisation website.

You are invited to participate in this research project by agreeing to take part in an interview indicated in the attached Consent Form. Participating in this study is voluntary and you are under no obligation to consent to participation. Interviews will be arranged at a mutually agreed time and place. The interview will take approximately one hour. You can refuse to answer any or all of the questions. You are also free to withdraw from the interview at any stage before or during the interview and information collected from you will be destroyed.

Information obtained from interviews is needed to develop a general picture of what is considered as ethical and unethical business practices in Vietnam. Interviews will be conducted with four groups of participants, namely managers of Vietnamese State-Owned Enterprises and large Vietnamese companies, managers of foreign companies registered in Vietnam, managers of Vietnamese Small and Medium Enterprises, as well as business experts and professionals such as lawyers, accountants or academics and members of organisations who may have informed views about business practices in Vietnam.

The interview questions will concern your personal views and opinions about what constitute ethical and unethical business practices. Please note that the interview questions will not concern potential involvement in illegal activity.

The information gathered will be compiled into case studies that describe precepts, attitudes and habits of different business actors in Vietnam towards global anti-corruption norms. Neither you nor your work will be identifiable from the case studies. The researcher will use codes and/or pseudonyms.

Information obtained from the interviews will be used for the thesis and potentially in articles published in academic journals as well as for Conference's presentations, to describe the interpretation and response to global anti-corruption norms in Vietnam. Views of individual participants will not be identifiable. Only aggregate de-identified data will be used for these projects.

If you wish to read the final thesis and any potential articles, you can contact the research student who will send them to you by email.

The information collected will be transcribed or noted. Any tapes used during the interview will be wiped clean after use. You will be shown by the researcher a copy of the interview transcript or notes and given an opportunity to change any or all of the details. The transcripts and notes will be stored in accordance with Monash University regulations, kept on University premises, in a locked filing cabinet for 5 years.

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Thank you,

(insert Chief Investigator's signature)

Prof. John Gillespie

Appendix Seven – List of questions for interviewees

Business experts

- What are the key differences between Vietnam's business environment and other countries' (especially Western countries) business environment?
- Do the way of conducting business in Vietnam differs depending on the size of the company?
- Do most companies in Vietnam employ lawyers or seek legal advice? If yes, what for?
- Do you think laws and the judiciary system are effective in regulating business practices in Vietnam? Do you think businesses take laws into account when they conduct business?
- What do you think are the institutional and legal factors that are facilitating unethical and corrupt business practices in Vietnam?

Scenario 1:

Mrs B, a public official, is in charge of finding a contractor to build a new public hospital. Mrs B believes that only some bidders have the technical expertise to carry out the public project and decides to give these bidders an advantage that breaches the tender rules.

- Do you think this type of situation happens often in Vietnam?
- If yes, why do you think it occurs?

Scenario 2:

The Ministry of Education is regularly looking for construction companies to build new public schools and publish tenders to find suitable contractors. A group of construction companies breach the tenders' rules and collude by forming red and green 'armies' that take turns to bid and are given tender sensitive information.

- Do you think this type of situation happens often in Vietnam?
- If yes, why do you think it occurs?

Scenario 3:

Company G have concluded a contract with company M. However, company G considers that company M has breached the contract's rules. As going to Court to solve the dispute is a long and costly process, company G decides to avoid the judiciary system and to solve the dispute by other means.

- Do you think this type of situation happens often in Vietnam?

- If yes, why do you think it occurs?

Scenario 4:

Mrs Z works for the human resources department of a medium-size company. Her company needs to hire a new accountant. The internal company's regulations require that for any position that needs to be filled, a job advertisement be published online. However, as Mrs Z's nephew is an accountant and is currently looking for a job, Mrs Z decides not to publish the job advertisement and to invite her nephew directly to the office for an interview.

- Do you think this type of situation happens often in Vietnam?
 - If yes, why do you think it occurs?
- Do different types of companies have different perceptions about what constitutes ethical and unethical practices?
 - What accounts for these differences? Do differences result from different interactions with officials, different levels of knowledge?
 - Have you noticed any change in terms of business practices since the beginning of *Đổi Mới*? Do you think unethical business practices have decreased or increased?
 - Do you think unethical business practices damage Vietnam's business environment and Vietnam's economy?
 - What do you think about Vietnam's Anti-Corruption Law 2005? Do you think it can be effective in reducing some unethical business practices?
 - What do you think are the strengths and challenges of the current anti-corruption law and reforms?
 - Do you think that internal codes of conduct/ethics implemented inside companies can help reducing unethical business practices and be an effective way to deter businesses to engage in these practices?
 - Do you think the recent corruption scandals (such as the one involving Trinh Xuan Thanh) have an impact on Vietnam businesses' practices and act as a deterrent for businesses and public officials to engage in unethical business practices?
 - In general, do you think that businesses could be more inclined to respect the law because they are afraid of being prosecuted? Do you think it is something they take into account?
 - What are your recommendations to reduce unethical business practices in Vietnam?

Vietnamese SMEs

- In which category your company belongs to? Large, medium or small?
- Does your company do business only in Vietnam or internationally as well?
- What type of industry does your company belong to?
- What is your academic and professional background? Have you ever studied or worked outside Vietnam?
- What do you think about Vietnam's business environment? Do you think it is easy to open and conduct business in Vietnam?
- What difficulties do you encounter?
- What were your motivations to start your own business?
- Are there common business practices in Vietnam that you find unethical or immoral and you would like to see disappear?
- What are according to you, the factors that encourage those business practices?

Scenario 1:

Mrs B wants to open a small restaurant in Hanoi. She thinks that the procedures and regulations to obtain the necessary licences and authorisations are too long and complicated. In order to speed up the procedures, she gives a gift to the public official in charge of providing her with the necessary licences and authorisations.

- What do you think about this practice?
- Do you think this practice is common in Vietnam?
- If yes, why?

- How would you describe your relationships with public officials?
- In general, what do you think about laws and regulations? Do you think they are useful for your business?
- How does your company settle a contract with another company?
- Does your company employ lawyers or seek legal advice in Vietnam? What for?
- In general, do you think laws and the judiciary system are effective in regulating business practices in Vietnam?

Scenario 2:

The Ministry of Education is regularly looking for construction companies to build new public schools and publish tenders to find suitable contractors. A group of construction companies breach the tenders' rules and collude by forming red and green 'armies' that take turns to bid and are given tender sensitive information.

- What do you think about this practice? Do you consider this practice as ethical?
 - Do you think this type of situation happens often in Vietnam?
 - If yes, why do you think it occurs?
- In general, do you think relationships and networks are necessary to conduct business in Vietnam?
- Do you see that as a positive thing or as a negative thing?

Scenario 3:

Company G have concluded a contract with company M. However, company G considers that company M has breached the contract's rules. Rather than going to Court, Company G decides to avoid the judiciary system and to solve the dispute by other means.

- What do you think about this practice?
- Do you think this type of situation happens often in Vietnam?
- If yes, why do you think it occurs?
- If your company has a dispute with another company, would you rather go to Court or try to solve the disputes by other means?

Scenario 4:

Mrs Z works for the human resources department of a medium-size company. Her company needs to hire a new accountant. The internal company's regulations require that for any position that needs to be filled, a job advertisement be published online. However, as Mrs Z's nephew is an accountant and is currently looking for a job, Mrs Z decides not to publish the job advertisement and to invite her nephew directly to the office for an interview.

- What do you think about this practice? Do you consider this practice as ethical?
 - Do you think this type of situation happens often in Vietnam?
 - If yes, why do you think it occurs?
- What personal qualities do you look for in recruiting staff or building external relations? Why are these qualities useful?
- How important are personal qualities versus professional knowledge and skills?
- What are the most important moral values for you and your company?

- Do you have formal or informal workplace rules? Does your company have internal codes of ethics or codes of conduct? If yes, what values do they try to spread among employees?
- What formal or informal rules guide external relationships (in forming business agreements and dealing with officials)? For example, what are the rules regarding 'good will' gifts commissions? How do you determine how much to give for presents for the relatives of officials, which relatives should receive presents etc?
- Is it best to apply clear sets of values to each situation or search for different sets of values suitable for each situation? (thao dang)
- Do you think that elaborating and implementing codes of conduct inside companies could be an effective way to deter businesses to engage in unethical business practices?
- More broadly, what change would you like to see in Vietnam's business environment?

Transnational companies

- In which category your company belongs to? Large, medium or small?
- In which country are the headquarters of your company?
- What type of industry does your company belong to?
- What is your academic and professional background? Have you ever studied or worked outside Vietnam?
- What do you think about Vietnam's business environment? Do you think Vietnam has a business-friendly environment?
- What difficulties do you encounter in doing business in Vietnam?
- How would you describe an ideal business environment? What are, according to you the elements necessary for an ideal business environment?
- Would you say that Vietnam's business environment is different from other countries' business environment, especially Western countries? If yes, how is it different and which environment do you prefer?
- Are there common business practices in Vietnam that you find unethical and you would like to see disappear?
- What are according to you, the factors that encourage those business practices?

Scenario 1:

The Ministry of Education is regularly looking for construction companies to build new public schools and publish tenders to find suitable contractors. A group of construction companies breach the tenders' rules and collude by forming red and green 'armies' that take turns to bid and are given tender sensitive information.

- What do you think about this practice? Do you consider this practice as ethical?
- Do you think this type of situation happens often in Vietnam?
- If yes, why do you think it occurs?

Scenario 2:

Company G have concluded a contract with company M. However, company G considers that company M has breached the contract's rules. As going to Court to solve the dispute is a long and costly process, company G decides to avoid the judiciary system and to solve the dispute by other means.

- What do you think about this practice?
- Do you think this type of situation happens often in Vietnam?
- If yes, why do you think it occurs?

- If your company has a dispute with another company, would it rather go to Court or try to solve the disputes by other means?

Scenario 3:

Mrs Z works for the human resources department of a medium-size company. Her company needs to hire a new accountant. The internal company's regulations require that for any position that needs to be filled, a job advertisement be published online. However, as Mrs Z's nephew is an accountant and is currently looking for a job, Mrs Z decides not to publish the job advertisement and to invite her nephew directly to the office for an interview.

- What do you think about this practice? Do you consider this practice as ethical?
 - Do you think this type of situation happens often in Vietnam?
 - If yes, why do you think it occurs?
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- What are the most important values for your company?
 - If you have to recruit someone, what personal qualities do you look for? Why are these qualities useful?
 - How important are personal qualities versus professional knowledge and skills?
 - Does your company employ lawyers or seek legal advice in Vietnam? What for?
 - In general, do you think laws and the judiciary system are effective in regulating business practices in Vietnam?
 - Do you have formal or informal workplace rules? Does your company have internal codes of ethics or codes of conduct? If yes, what values do they try to spread among employees?
 - What formal or informal rules guide external relationships (in forming business agreements and dealing with officials)? For example, what are the rules regarding 'good will' gifts commissions? How do you determine how much to give for presents for the relatives of officials, which relatives should receive presents etc?
 - Do you think that elaborating and implementing codes of conduct inside companies could be an effective way to deter businesses to engage in unethical business practices?
 - How do you think unethical business practices in Vietnam could be reduced?