

Anti-money laundering and countering financing of terrorism legislation in Vietnam: Criminalization, Practice and Challenges

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ABSTRACT This paper aims to examine the effectiveness and suitability of the Vietnamese anti-money laundering (AML) and countering financing terrorism (CFT) regime. This paper has three parts. The first part of the paper will provide an overview of the Law on Anti-money laundering 2012 (the Law on AML) and the criminalization of money laundering offences in the Criminal Code 2015, amended in 2017. The second part of the paper seeks to examine the practice and challenges of the Vietnamese AML/CFT framework in terms of the (i) implementation of preventive measures adopted by the reporting institutions in order to preclude and identify money laundering cases; (ii) use of reporting and combating identifiable or suspected money laundering transactions to the relevant authorities; and (iii) domestic and international cooperation in AML. The third part of the paper will provide recommendations as referencing for other jurisdictions.

KEYWORDS: *Anti-money laundering, counter financing of terrorism, FATF, Vietnam*

1. Introduction

The definition of money laundering varies depending on the objective of each organization. For example, money laundering is the process of disguising the illegal origin of the financial proceedings of crime.¹ After the United States and Europe paid a lot of attention to illegal drug trade, money laundering became an important global issue in the 1980s, when it was first made illegal. This led to the creation of a special organisation, the Financial Action Task Force (FATF), an affiliated organization of the Organisation for Economic Cooperation and Development (OECD) in 1989 in Paris. The general definition proposed by FATF is the process of criminal proceedings in order to disguise illegal origin.²

¹ Jeffrey Simser, "Money laundering: emerging threats and trends," *Journal of Money Laundering Control* 1, no. 16 (2013): 41–54.

² FATF, FATF Report: Operational Issues Financial Investigations Guidance. Paris, 2012.

Currently, the FATF is made up of 37 countries and two regional groups. Together, they represent most of the world's major financial centers.³ Its job is to provide regularly updated recommendations that aim to set legislative and regulatory standards for AML. The recommendations cover a wide range of topics, such as the general adoption of background AML policies, criminalization of money laundering, and setting up legal frameworks for seizure and confiscation, as well as more specific topics like rules for identifying customers and keeping records, exchanging information, and helping each other in legal issues. After the terrorist attacks on September 11, 2001, the FATF's function was expanded to include fighting the financing of terrorism. Thus, nine more special recommendations were created. FATF's work is supported by a number of other groups and policies, and such as regional task forces, which use the same format as FATF but on a smaller scale,⁴ such as the Asia/Pacific Group on Money Laundering - APG) that compel their members to comply with FATF recommendations. The FATF and FATF-style regional bodies periodically evaluate their members' levels of technical compliance and the effectiveness of implementation of FATF recommendations through a process of Mutual Evaluation Report. The FATF has created a global Mutual Evaluation Methodology to guide these evaluations. Vietnam is assessed within the APG framework.

In general, the AML/CFT regime in Vietnam consists of: (i) the establishment of a comprehensive AML/CFT framework that covers legal and regulatory issues; (ii) the responsibility of reporting institutions in terms of preventive measures; (iii) the roles of the financial intelligence unit and related law enforcement agencies; and (iv) the national and international cooperation between related agencies and other jurisdictions.⁵

In order to clarify the effectiveness and suitability of AML/CFT regime in Vietnam, this paper has three parts. The first part of the paper will provide an overview of the AML/CFT framework in which the Law on AML 2012 and the criminalization of money laundering offences in the Criminal Code 2015, amended in 2017 are the key elements. The second part of the paper seeks to examine the practice and challenges of the AML/CFT framework by exploring (i) the implementation of preventive measures adopted by the reporting institutions to detect and prevent money laundering cases; (ii) the role of law enforcement agencies in combating money laundering; and (iii) domestic and international cooperation. The third part of the paper will give recommendations as referencing for other jurisdictions.

³ <https://www.fatf-gafi.org/about/membersandobservers/>.

⁴ <https://www.apgml.org/fatf-and-fsrb/page.aspx?p=94065425-e6aa-479f-8701-5ca5d07ccfe8>.

⁵ Chat Le Nguyen, "The international anti-money laundering regime and its adoption by Vietnam," *Asian Journal of International Law* 4, no. 1 (2014): 197–225.

2. Overview of AML/CFT framework in Vietnam

Vietnam has undergone significant market reforms since the start of the *Doi Moi* era, which has led to incredible economic growth and transformation. Nevertheless, despite expanding levels of foreign investment and trade, Vietnam's economy is still centered on cash. Additionally, due to its extensive border with China, Lao PDR, and Cambodia, Vietnam is susceptible to illegal activities like money laundering.⁶

Vietnam's AML/CFT framework has undergone significant transformation since its first mutual evaluation and inclusion in the FATF's International Cooperation Review Group (ICRG) process in 2009.⁷ The adoption of a new Criminal Code in 2015, which revised money laundering and terrorist financing offences and established corporate criminal liability, as well as the Law on AML in 2012, the Law on Anti-Terrorism of 2013, and their implementing Decrees, have resulted in some improvements in Vietnam's AML/CFT system and an increase in technical compliance. However, significant technical deficiencies remain and improvements are needed in many areas.⁸

The key AML/CFT regulation in Vietnam is the Law on AML of 2012 and the Criminal Code in 2015, amended in 2017.

2.1 The Law on AML

The Vietnamese National Assembly passed the law on AML No. 07/2012/QH13 on June 18, 2012. The law came into effect on January 1, 2013, giving a strong legal framework for AML. The Law on AML consists of five chapters with fifty articles that specify procedures to prevent, identify, stop, and handle organisations and individuals that conduct money laundering; the obligations of agencies, organisations, and individuals in AML; and international cooperation on AML. Subjects of application of the Law on AML include: (i) financial organisations; (ii) organisations and individuals doing business in relevant financial sectors; (iii) organisations and individuals and foreigners living in Vietnam or foreign organisations, international organisations, and non-governmental organisations operating in Vietnamese territory who have financial transactions and other property transactions with

⁶ Hai Thanh Luong, "Transnational crime and its trends in South-East Asia: A detailed narrative in Vietnam," *International Journal for Crime, Justice and Social Democracy* 9, no. 2 (2020): 88.

⁷ Chat Nguyen Le, "The growing threat of money laundering to Vietnam: The necessary of intensive countermeasures," *Journal of Money Laundering Control* (2013): 321–332.

⁸ APG. Mutual Evaluation: Report Anti-Money Laundering and Combating the Financing of Terrorism, 2009, <http://www.apgml.org/mutual-evaluations/documents/default.aspx?s=title&c=8b7763bf-7f8b-45c2-b5c7-d783638f3354&pcPage=4>.

organisations and individuals; and (iv) Other organizations and individuals related to the prevention of money laundering.⁹

When carrying out high value transactions, these subjects are required by law to report to the State Bank of Vietnam (SBV). The Prime Minister shall prescribe the value rate of high value transactions that must be reported in line with the state of the nation's social and economic growth in each period of time. Additionally, the aforementioned parties are required to notify the SBV whenever there are suspicions or good reason to believe that the property included in the transaction was obtained through illegal means or is connected to money laundering. The typical suspicious signs include: (i) The client provides inaccurate, insufficient, and inconsistent client identification information; (ii) There was a sudden change in the account's transaction turnover; (iii) Money was deposited into and withdrawn from accounts quickly; (iv) The client frequently exchanges small denominations of currency for larger denominations.¹⁰

2.2 The Criminal Code of 2015, amended in 2017

Recommendation 3 of the 40 FATF recommendations on AML/CFT mandates that countries criminalise money laundering in accordance with the obligations outlined in the 1988 United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances and the 2000 United Nations Convention against Transnational Organized Crime. Definitions of these two treaties on money laundering, proceedings of crime, and predicate offences have become worldwide norms.¹¹

According to Article 324 of the Vietnamese Criminal Code of 2015, amended in 2017, the following acts will be punished as money laundering crimes: (i) Directly or indirectly participating in financial transactions, banking transactions, or other transactions to conceal the illegal origin of money or property obtained through the offender's commission of a crime, or obtained through another person's commission of a crime with the offender's knowledge; (ii) Using money or property obtained through the offender's commission of a crime or obtained through another person's commission of a crime with the offender's knowledge of doing business or other activities; (iii) Concealing information about the true origin, nature, location, movement, or ownership of money or property obtained through the offender or commission of a crime or obtained through another person's commission of a crime with the offender's knowledge, or obstructing the verification of such information; and (iv) Committing any of the offences specified in points (a) through (c) of this clause

⁹ National Assembly: "The Law on Anti-money laundering No. 07/2012/QH13," Article 2., 2012, <https://www.economica.vn/Portals/0/Documents/H68T22321452588666.pdf>.

¹⁰ Article 22 of the Law on AML, 2012.

¹¹ Thu Thi Hoai Tran and Gregory L. Rose, "The legal framework for prosecution of money laundering offences in Vietnam," *Australian Journal of Asian Law* 22, no. 1 (2022): 35.

while knowing that the money or property is obtained through transfer or conversion.¹²

These above offences are punishable by one to five years in jail.¹³ The penalty will be between five and ten years in prison if: (i) The offence is committed by an organized group; (ii) The offender misuses his/her position or power to commit the offence; (iii) The offence has been committed more than once; (iv) The offence is committed in a professional manner; (v) The offence involves deceitful methods; (vi) The illegal money or property is assessed from VND 200,000,000 to VND 500,000,000; (vii) The illegal profit earned is from VND 50,000,000 to VND 100,000,000; and (viii) Dangerous recidivism.¹⁴ This offence committed in any of the following circumstances carries a penalty of 10 - 15 years' imprisonment: (i) The illegal money or property is assessed at \geq VND 500,000,000; (ii) The illegal profit earned is \geq VND 100,000,000; (iii) The offence has a negative impact on security of the national currency or finance system.¹⁵ Preparatory acts to the commission of a money laundering offence are penalised by imprisonment ranging from 6 to 36 months.¹⁶ A corporate legal entity that violates any of the provisions of this article will be punished by a maximum fine of VND 20,000,000,000 or by having its operations suspended for a period of one to three years.

Furthermore, Resolution No. 03/2019/NQ-HDTP dated 24 May 2019, issued by the Supreme People's Court on establishing guidelines for Article 324 of the Criminal Code explains some terms, crime determination circumstances, penalty determination circumstances pertaining to money laundering crime. The Resolution became effective on 7 July, 2019. Accordingly, "money laundering" subject to penalty consists of Vietnam currency, any foreign currency; cash or money in an account. The term "predicate offence" refers to the crimes specified in the Criminal Code, and the property earned through such crimes is subject to money laundering charges such as murder; intentionally inflicting injury or harm to the health of other persons; human trafficking, corruption. Predicate crimes can be committed by Vietnamese nationals, Vietnamese commercial entities, stateless people residing continuously within or outside the borders of the Socialist Republic of Vietnam. The prosecution of criminal liability for money laundering might occur concurrently with the criminal prosecution of the predicate crimes.¹⁷ The Resolution is a positive step toward providing law enforcement authorities with advice and clarity regarding the application of AML legislation.

¹² National Assembly, Law No. 100/2015/QH13, The Criminal Code, Article 324, 2015.

¹³ Clause 1 of the Article 324, the Criminal Code 2015.

¹⁴ Clause 2 of the Article 324, the Criminal Code 2015.

¹⁵ Clause 3 of the Article 324, the Criminal Code 2015.

¹⁶ Clause 4 of the Article 324, the Criminal Code 2015.

¹⁷ Supreme People's Court, Resolution No. 03/2019/NQ-HDTP - Guiding the application of Article 324 of the Criminal Code on money laundering. <https://vbpq.toaan.gov.vn/webcenter/portal/htvb/chitiet?dDocName=TAND071208&Keyword=>.

3. The practice and challenges in the implementation of preventive measures

National Risk Assessment on Money Laundering and Terrorist Financing (NRA), completed in April 2019, was Vietnam's first formal money laundering and terrorist financing risk assessment. The task was accomplished under the collaboration of a group of sixteen ministries and agencies. Overall, the NRA issued a medium-high money laundering risk rating and a low terrorist financing risk rating.¹⁸ The NRA evaluates the threats posed by the proceedings of seventeen predicate offences and foreign criminal proceedings. Corruption, illegal gaming, drug trafficking, tax evasion, wildlife trafficking, fraud, currency and goods smuggling, and human trafficking were identified as the greatest risks. The NRA serves as a foundation for Vietnam's understanding of its money laundering, and terrorist financing risks.

The following table shows the level of risk for specific economic sectors according to NRA:

Sectors	Money laundering threat	Money laundering Vulnerability	Risk of Money laundering
Banking	High	Medium High	High
Insurance	Medium Low	Low	Medium Low
Securities	Medium	Medium	Medium
Real Estate	High	Medium	Medium High
Accountants and Auditors	Low	Low	Low
Precious metals and stones	Low	Medium	Medium Low
Casino	Medium	Medium	Medium
Trust and Company service Provider	Low	Medium Low	Medium Low
Lawyer, Notaries and other Independent Legal Experts	Low	Low	Low
People Credit Funds	Low	Low	Low
Pawnshops	Low	Medium	Medium Low
Micro Finance Institution	Low	Low	Low
Foreign currency remittance company	Medium High	Medium	Medium High
Local development investment funds	Low	Medium High	Medium Low
Underground remittance	High	High	High

Source: Vietnam's National Risk Assessment on Money Laundering and Terrorist Financing (2019)

¹⁸ Vietnam Government, National Risk Assessment Report, 2019, <https://www.sbv.gov.vn/>.

It can be seen from the table that the banking sector is among the most exposed to a high risk of money laundering.

The preventive measures are stipulated in Chapter 2 of the Law on AML, including the following (i) Clients identification and update of clients information; (ii) Responsibility for keeping of information, report and transfer of information on prevention of money laundering and (iii) Application of provisional measures and violation handling.

3.1 Client identification and update of client information

On the one hand, Article 8 of the Law on AML and Article 3 of Decree No.116/2013 detailing the implementation of a number of articles of the Law on AML require financial institutions to identify clients when: (i) Customers open an account or establish business relationships with a financial institution; (ii) Customers conduct occasional high value transactions or wire transfers but there is lack of information about the name, address, and account number of the originator. A designated occasional high value transaction is defined as a transaction involving a customer who does not hold an account with a financial institution or a customer who holds a current account but has not conducted a transaction in six months or more and the transaction value is at least VND 300,000,000 VND per day; (iii) there is a suspicion that the transaction or transaction-related parties are connected to money laundering activities; or (iv) there are suspicions about the accuracy or adequacy of customer identification information previously collected. In practice, however, there are no explicit requirements for financial institutions to conduct client identification measures when a single transaction is conducted as part of a series of operations that appear to be linked, or when money laundering is suspected in circumstances other than transactions, or when terrorist financing is suspected.¹⁹ Although financial institutions are obligated to identify all customers using standard information for the various customer types and then they must verify identification through management agencies or other relevant authorities by using source information²⁰ these verification techniques are neither obligatory nor enforceable. In addition, financial institutions are not required to employ credible, independent source documents, data, or information when authenticating the identification of customers.

On the other hand, financial institutions are required to regularly update client identifying information to ensure that sufficient information is available

¹⁹ APG, Anti-money laundering and counter-terrorist financing measures – Vietnam, Third Round Mutual Evaluation Report, APG, Sydney, 2021, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/APG-Mutual-Evalutaion-Report-Vietnam-2022.pdf>.

²⁰ Vietnamese Government, Decree 116/2013 Detailing the implementation of a number of articles of the Law on AML, Article 4, 2013, <https://thuvienphapluat.vn/van-ban/Tien-te-Ngan-hang/Nghi-dinh-116-2013-ND-CP-huong-dan-Luat-phong-chong-rua-tien-209305.aspx>.

about the customer at the time a commercial connection is established. Financial institutions are also required to ensure that customer transactions are compatible with information previously gathered, such as the customer's activities, risks, and sources of assets.²¹ However, it is unclear what is meant by routinely updating customer identity information, since financial institutions are not required to update information on "high-risk" customers or conduct assessments of current records.²²

3.2 Responsibility for keeping information, and report and transfer of information on prevention of money laundering

In term of keeping information, the Law on AML requires reporting entities to keep the records of identification, account documents and reports relating to only large value transactions, suspicious transactions, and wire transfers above thresholds set by the SBV.²³ for at least five years after the closure of the account or transaction or date of reporting.²⁴ However, there is no specific requirement for the keeping of all records collected from customer due diligence processes, and commercial correspondence. In addition, it is unclear whether this covers record-keeping of infrequent transactions that fall below the threshold of high value. Reporting entities must provide files, stored documents, and related information to the SBV and authorized state agencies on request.²⁵ However, according to the assessment made by APG, there is lack of requirement for reporting entities to provide these documents and information to authorized state agencies swiftly.

Reporting entities are also required to submit suspicious transaction reports to the SBV where they suspect that funds are derived from criminal activities or are related to money laundering. The SBV is responsible for receiving suspicious transaction reports related to terrorist financing.²⁶ Article 34 of the Law on Anti-Terrorism 2013 imposes an obligation on reporting entities to report to the Ministry of Public Security (MPS) and SBV when there is a suspicion that a customer or their transaction relates to terrorist financing or the customer is on a designated list regardless the amount of money transacted.²⁷

²¹ Article 10 of the Law on AML.

²² APG, Anti-money laundering and counter-terrorist financing measures – Vietnam, Third Round Mutual Evaluation Report, APG, Sydney, 2021, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/APG-Mutual-Evaluation-Report-Vietnam-2022.pdf>.

²³ Article 21, 22, 23 of the Law on AML.

²⁴ Article 27 of the Law on AML.

²⁵ Article 28 of the Law on AML.

²⁶ National Assembly, Law No. 28/2013/QH13, 2013 of on Anti-Terrorism, Article 45, 2013.

²⁷ Article 14 of Decree No. 116/2013.

3.3 Application of provisional measures and violation handling

According to Article 34 of the Law on AML, reporting entities have the authority to freeze accounts, apply sealing, or seize the assets of persons and legal entities at the request of competent authorities. The Law on AML, however, exclusively addresses account freezing. Article 23 of Decree No 116/2013 expands these powers to permit the sealing and seizing of other property. Clause 5 of Article 324 of the Criminal Code 2015 covers the confiscation of part or all the property of a person who has committed any money laundering offence.

4. The roles of the financial intelligence unit and related law enforcement agencies

4.1 Financial Intelligence Unit and anti-money laundering

Vietnam is exposed to a range of money laundering risks. Continuing economic expansion and diversification, increased international trade, and a lengthy land border all suggest that Vietnam's exposure to illicit funding is growing and will continue in the forthcoming years. Global Financial Integrity estimates that the combined value of illicit inflows into Vietnam and outflows from Vietnam in 2015 exceeded USD 9 billion.²⁸ The Financial Intelligence Unit (FIU) is one of the AML entities with the authority to collect, analyse, and transfer information to the appropriate authorities and agencies for use in prosecuting suspected offenders. This information is used to determine whether money laundering and/or its associated offences have been committed.²⁹

The Vietnam Anti-Money Laundering Department (AMLDD), a specialised national organisation tasked with collecting, examining, and disseminating information on suspicious transactions, was established in 2005 with the goal of actively participating in the global AML effort and building a transparent financial system in the domestic economy. The AMLDD act as Vietnam's Financial Intelligence Unit (FIU).³⁰ Vietnam's FIU is stipulated as the sole body to receive and process the information concerning transactions and other information related to AML/CFT according to the Law on AML and the Law on Anti-Terrorism of 2013.³¹ The responsibilities of AMLDD include analysing

²⁸ <https://gfintegrity.org/report/2019-iff-update/>.

²⁹ E. E Mniwasa, "The financial intelligence unit and money laundering control in Tanzania: The law, potential and challenges," *Journal of Money Laundering Control* 22, no. 3 (2019): 543–562.

³⁰ Vietnamese Government, Decree No. 74/2005/ND-CP on Anti-money laundering, 2005, <https://www.icj.org/wp-content/uploads/2005/06/Decree-No.74-2005-ND-CP-on-Prevention-and-Combat-of-Money-laundering.pdf>.

³¹ Article 14 of the Decree No.74/2005.

information and reports, requesting information and transferring information or case records to competent authorities.

The AMLD receives reports in both manual and electronic formats, with manual reporting being more widespread than electronic reporting, with the exception of commercial banks, who tend to report STRs online. However, manual reporting and the lack of integrated information technology tools to facilitate the analysis process cause difficulties for AMLD retrieval and analysis. As a result, this limits the ability of the AMLD to analyse and disseminate financial intelligence in relation to these sectors. While the real estate sector, remittance companies, and casinos face greater money laundering risks,³² the number of STRs received are not commensurate with the level of money laundering risk in these sectors, resulting in no intelligence developed to support an increase in money laundering investigations.

In addition, the AMLD has not reconciled with international colleagues about money laundering. Consequently, AMLD analysis often excludes data gathered from overseas counterparts. In relation to terrorist financing, AMLD has disseminated 29 cases of financial intelligence dissemination to MPS between 2013 and 2019 based on terrorist financing-related matters reported by banks. These reports have not led to any investigations, prosecutions or convictions.³³

4.2 Law enforcement agencies and anti-money laundering

Vietnam's legal system provides a range of powers and responsibilities for law enforcement agencies (LEAs) to investigate and prosecute money laundering offences.

MPS is the competent authority to investigate money laundering as the primary money laundering investigation agency. MPS is responsible for investigating all crimes, including money laundering, predicate offences and terrorist financing, except where those offences fall into the jurisdiction of the investigation authorities of the People's Army.³⁴ The Law on AML of 2012 designates MPS as responsible for presiding over and coordinating with other agencies, organisations and individuals concerned in the detection, investigation and handling of money laundering crimes.³⁵ There is a specialist investigative team, consisting of officers from the Anti-Terrorism Department and the Investigating Security Agency, which is also dedicated to investigating terrorist financing.

³² Chat Nguyen Le, "The growing threat of money laundering to Vietnam: The necessary of intensive countermeasures," *Journal of Money Laundering Control* (2013): 321–332.

³³ Vietnam Government, National Risk Assessment Report, 2019, <https://www.sbv.gov.vn/>.

³⁴ National Assembly, Law No. 101/2015/QH13, Criminal Procedure Code 2015, Article 163.

³⁵ Article 38 of the Law on AML.

MPS is the largest recipient of the AMLD's intelligence dissemination. However, the number of ML cases is disproportionately low when compared with the financial intelligence provided by the AMLD. During 2014-2018, MPS received 349 cases comprising of 1,832 STRs from the AMLD.³⁶ Despite the enormous number of crimes in Vietnam that generate money, such as drug trafficking, corruption, and embezzling assets, as well as the considerable amount of financial intelligence products shared with the MPS, there have been relatively few money laundering investigations and prosecutions.. Only four money laundering investigations have been conducted in the last 10 years, and only three money laundering investigations have led to convictions as defined by Article 324 of the Criminal Code of 2015. The four money laundering investigations were related to smuggling, embezzlement, fraudulently appropriating property and organising gambling. However, there have been no money laundering investigations concerning drug trafficking, corruption and tax evasion as the predicate offence. There have been no cases that pursued money laundering as a stand-alone offence. This raises questions on the efficiency of Vietnam's AML enforcement measures.³⁷

In terms of terrorist financing, the Vietnamese government assessed that the risk is low. Although the authorities admitted that rising globalisation and quick technical development may expose Vietnam to more terrorist financing risks in the future, Vietnam is mostly vulnerable to domestic terrorism from anti-Vietnamese government groups. The Homeland Security Department and Investigative Security Agency within the MPS are the designated counter-terrorism forces. They take the lead in coordination with related agencies in terrorism and terrorist financing investigation. Until now, there have been no prosecutions or convictions for terrorist financing offences in Vietnam. Nevertheless, there have been investigations, prosecutions and convictions for terrorism.

Several other organisations are in charge of carrying out some investigative tasks within their specific areas of responsibility.³⁸ These organisations include border-guard agencies, customs, forest protection offices, marine police agencies, fisheries surveillance, the People's Public Security Offices and People's Army offices. However, they must contact the MPS or the People's Army, depending on the jurisdiction, and transfer the case file to them within seven days for review if they discover money laundering or terrorist financing.

³⁶ Vietnam Government, National Risk Assessment Report, 2018, <https://www.sbv.gov.vn/>.

³⁷ Tran and Rose, "The legal framework for prosecution," 35.

³⁸ Article 164 of the Criminal Procedure Code, 2015.

5. Domestic and international cooperation in combating money laundering

The framework for national coordination and cooperation at a policy level is well structured. At an operational level, ministries and agencies regularly hold inter-ministerial meetings to discuss specific issues, such as meetings between LEAs (including SBV, Ministry of Finance, MPS, Supreme People's Procuracy, and Supreme People's Court) to accelerate the investigation, prosecution, and adjudication of money laundering offenses and predicate crimes. The SBV has responsibility for the coordination of the exchange of information between agencies during the investigation, prosecution and conviction of money laundering offences. The exchange of information is facilitated through individual memorandum of understanding (MOU) agreements between ministries and agencies. MOU's between relevant ministries and agencies include coordination principles, information exchange content, information exchange forms and terms, authorities exchanging information, responsibilities of parties and validity of the MOU. However, the process of exchanging information and communication with the LEAs is manual, which gives rise to delays in dissemination and concerns about data security. Whilst some protections are in place to secure the confidentiality of information, the exchange of information manually raises the risk of breaches of confidentiality and security of information and intelligence.³⁹

Regarding international cooperation, with the proactive and active policy of international economic integration, Vietnam's bilateral, regional and global economic relations with other countries and international organizations are increasingly expanded. Vietnam is currently a member of international organisations such as the United Nations (UN), World Trade Organization, Association of Southeast Asian Nations (ASEAN), Asia-Europe Cooperation Forum (ASEM), Asia-Pacific Economic Cooperation Forum (APEC), World Bank, International Monetary Fund, Asian Development Bank and many more. Until December 2021, Vietnam established diplomatic ties with 189 countries: of which it has a "special relationship" with three countries; a "strategic partnership" with 17 countries; a "comprehensive partnership" with 13 countries, and promoting economic, trade and investment relations with 224 markets in all continents.⁴⁰

Vietnam has signed and joined many international and regional treaties on combating crimes in general, and money laundering offenses and terrorist financing offenses in particular. Specifically, Vietnam has signed and joined the UN Conventions on AML/CFT including the Convention against Transnational

³⁹ APG, Anti-money laundering and counter-terrorist financing measures – Vietnam, Third Round Mutual Evaluation Report, APG, Sydney, 2021, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/APG-Mutual-Evaluation-Report-Vietnam-2022.pdf>.

⁴⁰ <https://thediplomat.com/2022/05/vietnams-growing-strategic-partnerships-with-european-countries/>.

Organized Crime of 2000 (Palermo Convention) on 8 June 2012; Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Vienna Convention) on 4 November 1997, International Convention for the Suppression of the Financing of Terrorism of 1999 on 25 September 2002, Convention Against Corruption of 2005 (Merida Convention) on 19 August 2009, ASEAN Convention on Counter-Terrorism of 2007, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000. Vietnam has also ratified all nine international conventions attached the 1999 International Convention for the Suppression of the Financing of Terrorism.

Vietnam became the 34th member of APG in May 2007. Vietnam is responsible for complying with FATF recommendations and completing its membership duties as a member of APG. Vietnam undertook an AML/CFT mutual evaluation in 2008 in accordance with FATF 40+9 Recommendations. Vietnam is now a member of the Egmont Group as an observer and has taken the necessary measures to seek for membership.

LEAs send their requests to the AMLD to request foreign counterparts to provide the required information. The exchange of information on AML/CFT with FIUs or AML foreign agencies has been strengthened through bilateral and multilateral MOUs. Basic information such as identity verification or legal status of a firm is processed via AMLD rather than direct access between LEAs, which demonstrates the challenges of other agencies to exchange information. There has been limited international cooperation to identify and exchange beneficial ownership information in relation to legal persons and no cooperation in relation to legal arrangements. Deficiencies in relation to transparency of beneficial ownership information may, in practice, impede the ability of competent authorities to provide formal or informal cooperation in this area.

6. Recommendation for the legal system and operational issues

There are some recommendations that could be taken to address the current inadequacies remaining in Vietnam's AM framework as follows:

Enhancing customer identification framework: The Law on AML stipulates that reporting entities are required to identify and record customer information based on valid transaction registration and other information provided by the customer such as phone number, email, address, beneficial owners and make sure that these pieces of information are accessible among related authorities.

Reducing cash transactions: Over recent years, the Vietnamese government has made efforts to limit cash transactions in the economy. In 2012, the government issued Decree No 101/2012/ND-CP and other guideline documents encouraging the use of banking accounts, non-cash payment services, and intermediary payment services. While cashless payments have seen a rapid increase in popularity in Vietnam, cash remains widely used and is experiencing a comeback as pandemic restrictions ease. The National Payment Corporation

of Vietnam reported that cashless transactions rose by 169 percent between 2020 and 2021. Global Payments Report reported that 58 percent of Vietnam's point-of-sale transactions were made in cash,⁴¹ while data from the SBV found cash accounted for 11.35 percent of all payments nationwide as of April 2021.⁴² The use of cash in transactions creates difficulties for LEAs in locating and identifying source of money. Therefore, it suggests that stronger laws and policies are needed to significantly reduce the rate of cash transactions in the economy.

Enhancing communication, information sharing, and financial intelligence between the AMLD and other LEAs to support their operational requirements. In order to prioritise financial investigations to produce evidence and track criminal proceedings related to money laundering, predicate offences, and terrorist financing, LEAs and other investigation authorities should improve the development and regular use of financial intelligence and other relevant information. This can be done both through LEAs' own processes and intelligence developed by AMLD. AMLD needs to gather enough financial data and give it over to LEAs. In accordance with Vietnam's risk profile, policies and programs should also be developed to increase awareness among all LEAs and related authorities and agencies about the importance of prioritising and carrying out money laundering investigations and prosecutions both in case of predicate offences and stand-alone money laundering.

7. Conclusion

The Vietnamese AMLCFT regime has witnessed a significant development in accordance with international standards. Vietnam has signed and joined many international and regional treaties on combating crimes in general, and money laundering offenses and terrorist financing offenses in particular. The framework is now mostly compliant with international standards despite some shortcomings. The paper has examined challenges in the practice and implementation of these regimes in Vietnam from the context of prevention, investigation, prosecution and conviction. Based on that, the paper suggested some legal policy reforms to better combat money laundering and terrorist financing issues.

⁴¹ <https://worldpay.globalpaymentsreport.com/en>.

⁴² <https://www.findevgateway.org/news/vietnam-habits-using-cash-still-popular-despite-boom-cashless-payments>.