



**COMBATING MONEY LAUNDERING IN VIETNAM:  
THE ROLE OF THE POLICE FORCE**

**By Thai Ha Van**

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**Under the co-supervision of:**

**Prof. Dr. Gál István and Prof. Dr. habil. Kóhalmi László**

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## **Abstract**

This thesis investigates the prevention and combat of money laundering in Vietnam, with a particular emphasis on the role of the police force. It begins by examining the present literature's general understandings of money laundering. The research then investigates the existing international and national legal frameworks governing money laundering and terrorist financing. Vietnam's geographical location, legal, political, and economic environment make it an appealing location for money laundering activities. Money laundering is monitored and prevented in Vietnam via a network of governmental, banking, and law enforcement institutions. The Vietnamese legal system gives anti-money laundering jurisdiction to a wide range of institutions and agencies, as long as such actions are within the mandates and responsibilities of those institutions and agencies. Despite the fact that many predicate offenses have been investigated and convicted, the investigation and prosecution of money laundering is quite limited.

The State Bank of Vietnam (SBV), Anti-Money Laundering Department (AMLD) within the SBV and Ministry of Public Security (MPS) are among the leading authorities in combating money laundering and terrorist financing. However there are major problems in the policing of money laundering in practice such as the lack of consistent knowledge of money laundering risks and anti-money laundering responsibilities across agencies, the problem of information exchange, or no specialize law enforcement teams. The thesis also highlights that the lack of integrated system and facilities contributes to the effectiveness in combating this kind of offence. Based on that analysis, some suggestions are proposed to better dealing with money laundering in Vietnam.

## Abbreviations

AML	Anti-Money Laundering
AMLDD	Anti-Money Laundering Department
APG	Asia/Pacific Group on Money Laundering
ASEAN	Association of Southeast Asian Nations
ASEANAPOL	Association of Police Commanders of ASEAN
BCBS	Banking Regulations and Supervisory Practices
CDD	Customer Due Diligence
CFT	Combating Financing of Terrorism
DNFBP	Designated Non-Financial Businesses and Professions
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GDC	General Department of Customs
GDP	Gross Domestic Product
GI	Government Inspectorate
GSO	General Statistics Office
INTERPOL	International Criminal Police Organization
KYC	Know Your Customer
MER	Mutual Evaluation Report
MLA	Mutual Legal Assistance
MOC	Ministry of Construction
MOD	Ministry of Defence
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOHA	Ministry of Home Affairs

MOIT	Ministry of Industry and Trade
MOJ	Ministry of Justice
MPI	Ministry of Public Security
NCB	National Central Bureau
OCIB	Organization of Criminal Investigation Bodies
PEP	Politically Exposed Person
SBV	State Bank of Vietnam
SPC	Supreme People's Court
SPP	Supreme People's Procuracy
SSC	State Securities Commission
STRs	Suspicious Transaction Reports
UN	United Nations
UNCAC	UN Convention against Corruption
WMD	Weapons of Mass Destruction

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## CHAPTER 1: INTRODUCTION

### 1.1. General Background of Research

Money laundering is the illegal process of making large sums of money derived from unlawful activity, such as drug trafficking, fraud, or corruption, appear to have originated from a legal source. The process of "laundering dirty money" to make it appear pure is referred to as "money laundering".

In the last few decades, international organizations and governments in almost every part of the world have ramped up their efforts and resources to combat this phenomenon. A number of international organizations and governments, including the United States (US), have taken strong measures to handle money laundering. They have also helped fund and shape many anti-money laundering (AML) regulations on a global scale. International organizations have stipulated these norms in the form of agreements and guidelines. Among these, the primary and key conventions and recommendations are the United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988 (the Vienna Convention), the UN Convention against Transnational Organized Crime (the Palermo Convention), the UN Convention against Corruption (UNCAC), and the Financial Action Task Force (FATF) and its recommendations.

In recent years, Vietnam has responded to the call for the international cooperation in fighting transnational crime in general, and money laundering in particular, by joining the most crucial international conventions. For example, Vietnam ratified the 1988 Vienna Convention, the UNCAC, and the Palermo Convention in 1997, 2009, and 2012, respectively. Vietnam is also an official member of the Asia/Pacific Group on Money Laundering (APG) and has committed itself to complying with the FATF recommendations. As a result, Vietnam has gradually implemented the international AML standards and strengthened its AML legal framework.

This thesis presents a critical evaluation of the situation, trends, and issues in the combat and prevention of money laundering in Vietnam. It examines how the enforcement agencies and other governmental agencies in Vietnam are tackling the problem of money laundering.

The aims of the thesis are to examine the following:

- a) The international and regional AML regulations in combating money laundering;
- b) The legal framework and mechanism for combating money laundering in Vietnam;
- b) The money laundering situation in Vietnam;



c) The role of the competent agencies in combating and preventing money laundering, with a focus on the role of the Vietnamese police force in this task.

d) In light of the findings of the study, the thesis proposes necessary changes to have a more effective and consistent system of money laundering control in Vietnam.

## **1.2. The Research Questions**

To achieve these aims, a number of research questions will be discussed, as follows:

i) What is the evolution of international regulations in dealing with money laundering?  
ii) What are the existing legal frameworks and mechanisms for combating and preventing money laundering in Vietnam?

ii) How is the money laundering situation in Vietnam?

iii) What are the responsibilities and powers of competent agencies in Vietnam, especially the police force, in the fight against money laundering?

iv) How effective is the combat and prevention of money laundering in Vietnam?

v) What the supplements and amendments should be imposed to better combat money laundering?

## **1.3. Literature review**

As far as I know, none of the previous studies focused on the role of the police force in combating money laundering in Vietnam. The acknowledgement of the lack of research on the role of the Vietnamese police in combating and preventing money laundering is the main reason why I carry out my doctoral research on this topic. This is the most recent and updated research on the role of the police in combating money laundering in Vietnam.

## **1.4. Research Methodology**

This thesis makes use of a mixed qualitative and quantitative approach to its methodology. This thesis utilizes a qualitative technique to analyze how the Vietnamese legal system has conformed to AML obligations over time. The estimated number of criminal cases is calculated using a quantitative approach. Document analysis, comparison analysis, and a review of relevant laws and regulations in Vietnam formed the basis for these approaches. The purpose of this thesis is to evaluate how well international standards have been incorporated into Vietnam's legal system with regard to money laundering.

This study gathered a wide range of project-related documents and statistics. Documentary information is vital and valuable in any data collection procedure. A variety of policy and operational papers, such as United Nations Conventions, various laws and regulations, governmental documents, and official reports from ministries and agencies such as SBV, AMLD, and MPS, will be collected from relevant authorities for analysis. Official

records are frequently accurate because they contain ideas and questions that cannot be investigated through other research methods but have emerged in public reporting, the news, and other media. In other words, documentation analysis might direct the researcher's search for information or validate findings made by other research approaches.

The documentary data's strength is that it is stable and can be checked frequently, while the collection method is unobtrusive.<sup>1</sup> Documents will also be beneficial for policy evaluation and analysis, which is a critical component of our research. Furthermore, some papers are extremely important, such as police reports, because police action is frequently influenced by legal documents; hence, the contribution of documentary analysis to this research is significant. The website of the agency or other institution responsible for collecting or making the data public, published reports, research articles based on the data, and personal conversations with relevant individuals are all sources of this information.

Another source of data includes the secondary examination of data acquired by other researchers, as well as published academic research and internal papers created by Vietnamese government entities. Another crucial aspect of secondary data analysis is that the quantitative findings of published research be taken seriously. This can be used to identify theoretically interesting problems.<sup>2</sup> Secondary data can also be used to improve the reliability of study outcomes. Secondary research allows academics to determine and comprehend how their colleagues have previously tackled the topic. Secondary research also enables academics to get data in less time and at a cheaper expense.

### **1.5. Structure of the Thesis**

This thesis consists of 7 chapters, as follows:

**Chapter 1** provides the general background, the aims, and the research questions of the thesis. Then it examines the current literature in the area of money laundering. The research method is also provided in this chapter. **Chapter 2** deals with the contours of money laundering in general, such as the money laundering definition, the process of money laundering, and its impacts on the economy, politics, and society. Then it explores the concepts of terrorist financing and its relation with money laundering. **Chapter 3** highlights the development of international and regional AML frameworks that play a key role in combating money laundering. Such pivotal regulations consist of a number of UN conventions and organizations that regulate the combating of money laundering and terrorist

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<sup>1</sup> Bryman, A. (2012). *Social research methods*. Oxford, England: Oxford University Press.

<sup>2</sup> Church, R. M. (2002). The effective use of secondary data. *Learning and motivation*, 33(1), 32-45.

financing. This chapter helps to answer the question: What is the evolution of international regulations in dealing with money laundering?

**Chapter 4** provides an overview of AML regulation in the Vietnam context. It explores the development of Vietnam's AML law and the criminalization of money laundering offences in the Criminal Code. By doing this, the thesis answers the question: What are the existing legal frameworks and mechanisms for combating and preventing money laundering in Vietnam? Furthermore, this research also takes into account the regulation of money laundering in the Hungarian legal system as a source of reference.

**Chapter 5** provides information about Vietnam such as its geographical, economic, and political environment which can contribute to the magnitude of the money laundering offence. Then it analyzes the current situation of money laundering in Vietnam by exploring the major predicate offences of money laundering. These works aim to justify the next question: How is the money laundering situation in Vietnam?

**Chapter 6** continues with the examination of the role and power of governmental agencies, with a focus being put on the police force in combating money laundering in terms of identifying suspicious cases, investigating, confiscating money laundering cases, cooperating nationally and internationally in combating this offence. This chapter will give answer for the question: What are the responsibility and power of competent agencies in Vietnam in the fight against money laundering? Or How does the combat work in reality?

**Chapter 7** answers the last question: What the supplementation and amendment should be imposed to better combat money laundering? It concludes the research by giving recommendations to better handle this type of crime in the future.

## CHAPTER 2: THE CONCEPT OF MONEY LAUNDERING

### 2.1. Definition of Money Laundering

Money laundering has become a global phenomenon in recent decades since its actions are not limited to the borders of a single country.<sup>3</sup> Although "money laundering" is a relatively recent term, some authors contend that its practice is not.<sup>4</sup> Researchers, national and international organizations, and law enforcement agencies each have their own definitions of money laundering.<sup>5</sup> The origin of the term "money laundering" has not been agreed upon globally.

To combat the phenomenon of money laundering, various international organizations have developed a variety of definitions. For instance, the Vienna Convention adopted the definition of money laundering as follows

“i) the conversion or transfer of property, knowing that such property is derived from a drug offence for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

ii) the concealment or disguise of the true nature, source, location, disposition, movements, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences.”<sup>6</sup>

The Financial Action Task Force (FATF), which was created in 1989 by the Group of Seven (G7) countries in order to combat money laundering, defined “money laundering” as:

“The conversion or transfer of property, knowing that such property is derived from a criminal offence, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequence of such actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect

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<sup>3</sup> Unger, B. (2013). Money laundering regulation: From al capone to al qaeda. In Research handbook on money laundering (pp. 19-32). Edward Elgar Publishing, p.19

<sup>4</sup> Naylor, R. T. (2004). Wages of crime: Black markets, illegal finance, and the underworld economy. Cornell University Press.

<sup>5</sup> Korejo, M. S., Rajamanickam, R., & Md. Said, M. H. (2021). The concept of money laundering: a quest for legal definition. *Journal of Money Laundering Control*, 24(4), 725-736.

<sup>6</sup> UN. (1988). The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 3b

to, or ownership of property, knowing that such property is derived from a criminal offence; [and] the acquisition, possession, or use of property, knowing at the time of receipt that such property was derived from a criminal offence or from an act of participation in such offence.”<sup>7</sup>

Although the terminology and approaches of these authors vary, they all make reference to the fact that the primary objectives of money laundering are to conceal and acquire an ostensibly legal source for illicit proceeds obtained through predicate crimes. Regardless of the viewpoint, money laundering can be generally defined as the definition proposed by the FATF, as “the processing of criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source.”<sup>8</sup> Money laundering's major goal is to facilitate the transfer of funds, the remittance of money, the hiding of the money's criminal origin, and its reintroduction into the legitimate economic system so that the money launderer can enjoy the advantages without fear of prosecution. In other terms, money laundering is merely the concealment of the source of money because of its unlawful roots.<sup>9</sup>

## **2.2. The Process of Money Laundering**

A stylised explanation of the money laundering procedure has been given by experts in the field. Numerous techniques can be used to clean money. The three overarching categories that describe the money laundering process are placement, layering, and integration.<sup>10</sup>

## **2.3. Effects of Money Laundering**

It is now well-established that money laundering poses a great threat to both national and international economies, the political systems, and social security.<sup>11</sup> It's hard to calculate a price for the damage that money laundering does to a country, but it's undeniably detrimental.<sup>12</sup> Nations in the world aims to take actions to combat money laundering in order

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<sup>7</sup> Alexander, K. (2001). The international anti-money-laundering regime: the role of the financial action task force. *Journal of Money Laundering Control*, 4(3), 231-248, p.233

<sup>8</sup> FATF, What is money laundering. Available at <https://www.fatf-gafi.org/en/pages/frequently-asked-questions.html#tabs-36503a8663-item-6ff811783c-tab>. Accessed 10 April 2023

<sup>9</sup> Thai, H, V. (2022). The Fight Against Money Laundering and Terrorist Financing in the Digital Age. In Tóth, D. (2022). *Az internet és a közösségi média jogi kihívásai–Konferenciakötet*.

<sup>10</sup> Buchanan, B. (2004). Money laundering - a global obstacle. *Research in International Business and Finance*, 18(1), 115-127.

<sup>11</sup> Leong, A. V. M. (2016). *The disruption of international organised crime: an analysis of legal and non-legal strategies*. Routledge, p.41

<sup>12</sup> Ryder, N. (2012). *Money Laundering-an Endless Cycle?: A Comparative Analysis of the Anti-money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada*. Routledge.

to protect their economies, businesses, and societies from the various dangers and consequences that money laundering may pose.<sup>13</sup> The section discusses some of the major economic, political and social consequences of money laundering.

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<sup>13</sup> McDowell, J., & Novis, G. (2001). The consequences of money laundering and financial crime. *Economic Perspectives*, 6(2), 6-10.

## **CHAPTER 3: INTERNATIONAL AND REGIONAL INITIATIVES ON ANTI-MONEY LAUNDERING**

As a result of globalization, money laundering has spread over the globe in recent years.<sup>14</sup> The growing threat posed by transnational organized crime and money laundering has increased the need for domestic law enforcement to develop new and effective strategies to combat these crimes.<sup>15</sup> At this point, it should be obvious that national law enforcement organizations cannot rely solely on unilateral domestic measures. Expanded cross-border travel means that no country can afford to handle the issue of money laundering in isolation. As a result, there is an urgent need for expanded international collaboration to combat this global problem. The international community has responded to the menace of global organized crime and money laundering by launching a more concerted and concrete effort to combat these problems.<sup>16</sup>

### **3.1. International Initiatives**

- The Basel Committee on Banking Regulations and Supervisory Practices
- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988
- The United Nations Convention for the Suppression of the Financing of Terrorism in 1999
- The United Nations Convention against Transnational Organized Crime and the Protocols Thereto in 2000
- The United Nations Convention against Corruption
- INTERPOL and anti-money laundering control
- The Financial Action Task Force and Its Recommendations
- Financial Intelligence Units

### **3.2. Regional Initiatives**

Money laundering and terrorism financing are undeniably global issues that no single nation can adequately address. The international community is aware of this, and as a response, most countries have taken a number of regional steps to combat money laundering

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<sup>14</sup> Bassiouni, M. C., & Gualtieri, D. S. (2005). International and national responses to the globalization of money laundering. In *Responding to Money Laundering* (pp. 127-206). Routledge.

<sup>15</sup> Barone, R., & Masciandaro, D. (2011). Organized crime, money laundering and legal economy: theory and simulations. *European journal of law and economics*, 32, 115-142.

<sup>16</sup> Gilmore, W. C. (1992). International efforts to combat money laundering. *Commonwealth Law Bulletin*, 18(3), 1129-1142.

and terrorist financing. This section will concentrate on the European Union's, Asia/Pacific countries, and ASEAN's efforts to combat money laundering and terrorism financing.

- The Europol and anti-money laundering control
- The Asia/Pacific Group on Money Laundering
- The Association of Southeast Asian Nations and anti-money laundering control



## **CHAPTER 4: VIETNAM ANTI-MONEY LAUNDERING LEGISLATION IN COMPARISON WITH HUNGARY**

This chapter provides an examination of the laws and other regulations relating to the prevention and combat of money laundering in Vietnam, based on an analysis of the existing literature and the official documents obtained for this study. The study will analyse both the internal and external factors that have served as a conduit for the promulgation of money laundering laws in the region.

In addition, the chapter examines the organizational arrangements in place for the policing of money laundering in Vietnam, the main components of which are the National Anti-Money Laundering Committee (NAMLC), the Anti-Money Laundering Department (AMLDD) located within the State Bank of Vietnam (SBV), and the police force. The roles and responsibilities of each of these bodies in the policing of money laundering crime cases are also explained. The chapter looks at how these bodies are expected to operate in practice and the powers that each has in the policing of money laundering cases. It will also make some comparison in with the AML regulation in Hungary as a source of reference

### **4.1. The Development of Vietnam Legislative Measures to Control Money Laundering**

- Decree Number 74/2005/ND/CP on Preventing and Combating Money Laundering
- The Law on Anti-money Laundering in 2012
- The Law on Anti-money Laundering in 2022
- The criminalization of money laundering in the Criminal Code

### **4.2. Money Laundering Control Mechanism in Vietnam**

In Vietnam, money laundering is policed and prevented through a network of governmental, financial, and law enforcement agencies. The Vietnamese legal system grants AML/CFT jurisdiction to a wide range of institutions and agencies, so long as such measures are within the scope of those institutions' and agencies' mandates and responsibilities.

The institutional framework for AML/CFT in Vietnam is as follows:

#### ***4.2.1. The Anti-Money Laundering Steering Committee***

On 12 May 2022, Vietnam's Prime Minister signed and promulgated Decision No.581/QĐ-TTg on the establishment of The Anti-Money Laundering Steering Committee (AMLSC). AMLSC is an interdisciplinary agency that assists the Prime Minister in directing and coordinating activities among ministries and branches in the prevention and combat of

money laundering within the territory of Vietnam.<sup>17</sup>

AMLSC is set up under the chairmanship of the Deputy Prime Minister and it consists of 16 representatives of the following:

1. The State Bank of Vietnam (SBV)
2. Ministry of Public Security (MPS)
3. The Supreme People's Court (SPC)
4. The Supreme People's Procuracy (SPP)
5. The Government Office (GO)
6. Ministry of Defence (MOD)
7. Ministry of Justice (MOJ)
8. Ministry of Foreign Affairs (MOFA)
9. Ministry of Home Affairs (MOHA)
10. Ministry of Finance (MOF)
11. Ministry of Industry and Trade (MOIT)
12. Ministry of Planning and Investment (MPI)
13. Ministry of Information and Communications (MIC)
14. Ministry of Construction (MOC)
15. Government Inspectorate (GI)
16. Committee for Management of State Capital at Enterprises (CMSC).<sup>18</sup>

In accordance with Article 3 of Decision No. 581/2022, AMLSC is responsible for information coordination on a policy level. All relevant organizations participate. At the operational level, ministries and agencies hold regular inter-ministerial meetings to discuss particular issues, such as meetings between law enforcement agencies such as SBV, MOF, MPS, SPP, and SPC to expedite the investigation, prosecution, and adjudication of money laundering offenses and predicate crimes. The SBV is responsible for coordinating the transmission of information between agencies during money laundering investigations, prosecutions, and convictions.<sup>19</sup>

At the operational level, the exchange of information is facilitated by bilateral MOU between ministries and agencies. MOU between relevant ministries and agencies includes coordination principles, information exchange content, information exchange forms and

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<sup>17</sup> Prime Minister, (2022). Decision No.581/QĐ-TTg, on the establishment of the Anti-Money Laundering Steering Committee Article 1

<sup>18</sup> Ibid, Article 2

<sup>19</sup> Decree No.116, 2013: Detailed provisions for implementation of some articles of the Law on AML, Article 21

terms, information-exchanging authorities, party responsibilities, and MOU validity. Article 21 of Decree No. 116 permits the exchange of information between SBV and other agencies in the absence of an MOU. This Decree grants agencies and pertinent ministries the authority to sign coordination and information exchange regulations.

#### ***4.2.2. The State Bank of Vietnam and Anti-Money Laundering Department***

##### *The State Bank of Vietnam*

The State Bank of Vietnam (SBV) is a ministerial-level agency of the Government and is the central bank of the Socialist Republic of Vietnam. The SBV performs the function of state management of currency and banking activities; performs the functions of the Central Bank in terms of money issuance, banking of credit institutions and provision of monetary services to the Government.<sup>20</sup>

The SBV serves as the focal point for drafting legal documents on the prevention and combat of money laundering; assuming the primary responsibility for, and coordinating with related ministries and branches in periodically assessing money laundering risks in Vietnam; formulating and submitting to competent authorities for approval and promulgation a national strategy and plan on AML; and promulgating legal documents guiding the implementation of legal provisions on AML. Regarding specialized management, the SBV shall be responsible for inspecting and supervising customers' AML activities. The subject of this report is accountable for the administration of state currency, banking activities, and foreign exchange.

Regarding the AML mechanism, the SBV is authorized to request relevant organizations and individuals to provide the data, records, and documents required for the analysis and transfer of information on the prevention and combat of money laundering and international cooperation on AML.<sup>21</sup> In addition to licensing gold bar stores, credit institutions, foreign currency exchanges, money transfer remittance services, and intermediary payment service providers, the SBV is also the licensing authority for foreign currency exchanges.

##### *Anti-Money Laundering Department*

Since money laundering is a global issue, different nations have developed their own legal systems to combat it. Many jurisdictions have established a central authority for the purpose of receiving suspicious activity reports from financial institutions, analyzing them, and then forwarding them to the appropriate law enforcement agencies for further

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<sup>20</sup> National Assembly, (2010). The Law on the SBV, Article 2

<sup>21</sup> The 2022 Law on AML, Article 41

investigation and prosecution. This organization is commonly known as the "Financial Intelligence Unit" (FIU). This organization functions as a conduit between the financial sector and the state's criminal investigation agencies.

Anti-Money Laundering Department (AMLDD) is designated as Vietnam's FIU. AMLDD is set under the Banking Supervision Agency (BSA) of the SBV.<sup>22</sup> Vietnam's FIU was established within the SBV in 2005 as the sole body to receive and process the information concerning transactions and other information.<sup>23</sup>

Article 39 (1) of the 2022 Law on AML stipulates that AMLDD has the right to request relevant organizations and individuals provide information, documents, records and other necessary information for the analysis and transfer of information on money laundering.<sup>24</sup> AMLDD is also authorised to request additional information from reporting entities and requires reporting entities to comply with requests.<sup>25</sup> In order to access necessary information, AMLDD is granted to access a wide range of financial information from reporting entities using the powers specified above.

In terms of information dissemination, AMLDD is responsible for providing information to investigating authorities where there are reasonable reasons to think that the transactions include money laundering or money laundering acts with the intent to fund terrorism. AMLDD is also responsible for reporting to the MPS's Anti-Terrorism Force anytime they get a report or other information that leads them to believe that the transactions are related to terrorism or terrorist financing.<sup>26</sup>

In term of international cooperation on AML/CFT, AMLDD is responsible for international cooperation on AML/CFT within the scope of responsibility of the SBV, including negotiating and signing MOUs, albeit based on authorization of the Governor of the SBV.<sup>27</sup>

Vietnam failed to demonstrate that AMLDD has a separate budget from SBV and conducts recruitment independently and without assistance in this regard. As a result, AMLDD

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<sup>22</sup> Within SBV, the BSA is a General Department level entity. It advises and aids the Governor in carrying out the Governor's state management duty over credit institutions, foreign bank branches, inspection, complaint and denunciation resolutions, anticorruption and anti-money laundering, and deposit insurance. In areas overseen by the SBV, it undertakes administrative and professional inspections, as well as banking supervision. It carries out AML/CFT operations as instructed by the Governor in line with applicable laws and regulations.

<sup>23</sup> Decree No.74/2005, Article 14

<sup>24</sup> The 2022 Law on AML, Article 39 (1)

<sup>25</sup> Decree No.116/2013, Article 19 (2)

<sup>26</sup> The Law on Anti-terrorism 2013, Article 45

<sup>27</sup> Decision No. 1367/2019, Article 2 (5)

has limited access to financial resources and has a limited capacity to acquire and deploy the resources needed to consistently complete its tasks.<sup>28</sup>

In 2009, Vietnam submitted an application to join the Egmont organization. However, this membership application has not been approved due to flaws in the legal system. AMLD currently has observer status with the Egmont group.

#### ***4.3.3. The Ministry of Public Security***

In Vietnam, MPS is the designated money laundering and terrorist financing investigation authority, responsible for leading and coordinating detection and investigation of crimes related to AML/CFT and related predicate offences.

The 2015 Criminal Procedure Code and the Law on Organization of Criminal Investigation Bodies in 2015 (the 2015 Law on OCIB) stipulate the responsibilities of criminal investigation bodies in Vietnam. For example, according to Article 163 of the 2015 Criminal Procedure Code, the MPS is responsible for investigating all crimes, including predicate offenses, money laundering, and terrorist financing, unless those offenses fall under the jurisdiction of the People's Army's investigation authorities or the SPP's investigation authority.<sup>29</sup> Furthermore, the 2015 Law on OCIB designates the investigating police officers of the MPS as responsible for investigating money laundering,<sup>30</sup> and the investigating security officers of the MPS are responsible for investigating terrorist financing.<sup>31</sup> The responsibility of the MPS is also included in the other legal documents. Article 49 of the 2022 Law on AML stipulates these responsibilities includes:

i) Collecting, receiving and processing information on the fight against money laundering crimes.

ii) Notifying the results of processing information related to suspicious transactions to the SBV.

iii) Assuming the prime responsibility for, and coordinate with relevant agencies, organizations and individuals in preventing, detecting, investigating and handling money laundering crimes.

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<sup>28</sup> APG, (2022). Anti-money laundering and counter-terrorist financing measures – Vietnam, Third Round Mutual Evaluation Report, APG, Sydney

<sup>29</sup> National Assembly, (2015). The Criminal Procedure Code, Article 163 (1)

<sup>30</sup> The 2015 Law on OCIB, Article 19, 20, 21

<sup>31</sup> The 2015 Law on OCIB, Article 16, 17

iv) Exchange of information and documents on new methods of domestic and foreign money laundering with the SBV.

v) Assuming the prime responsibility for making a list of organizations and individuals involved in terrorism and terrorist financing.

vi) Providing mutual legal assistance in money laundering prevention and combat within the scope of their functions and tasks.

vii) Cooperate with the SBV in conducting the national risk assessment on money laundering specified in Clause 1, Article 7 of this Law; assess and update money laundering risks for high-risk source crimes specified in Clause 2, Article 7 of this Law.<sup>32</sup>

In term of anti-terrorism, the following tasks fall under the purview of MPS: advising the government on the development and advancement of legislation relating to the prevention and eradication of terrorism; coordinating the formulation, submission, and implementation of strategies, programs, plans, and measures to do so; coordinating the training program with the relevant agencies and organizations; and implementing international cooperation in these areas.<sup>33</sup> Only the MPS and People's Army investigating security offices are authorized to look into offenses involving terrorist finance, and they may do so while looking into a terrorism offense.

INTERPOL Vietnam is a unit under the Office of the Investigative Police Agency of the Ministry of Public Security, with the function of guiding and monitoring the performance of professional activities on crime prevention and control with foreign elements; is the focal point in international cooperation in crime prevention and control activities of the People's Public Security force and Vietnam's police force in particular within the framework of cooperation with the International Criminal Police Organization (INTERPOL), Association of Police Commanders of ASEAN Countries (ASEANAPOL) and law enforcement agencies of INTERPOL, ASEANAPOL member countries in the work of preventing and combating transnational and international related crimes regarding Vietnam.

#### ***4.3.4. Other competent institutions***

These other competent institutions have responsibility in combating money laundering in Vietnam as follows:

i) The Supreme People's Procuracy (SPP): This is the prosecutorial agency in Vietnam. The investigating agency of the SPP is responsible for investigating crimes

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<sup>32</sup> The 2022 Law on AML, Article 49

<sup>33</sup> The 2013 Law on Anti-Terrorism, Article 40

infringing on judicial activities, crimes related to corruption and breach of positions that occur in judicial activities, where the offender is an official or civil servant of the investigating agency, court, procuracies, law enforcement agency, or a person competent to conduct judicial activities.<sup>34</sup> However, it is not permitted for the SPP's investigating agency to investigate crimes involving money laundering and terrorism financing. If a money laundering offense is discovered, the SPP investigating agency may undertake a preliminary inquiry but must subsequently transmit these cases to the MPS and MOD investigating agencies for further investigation. This transfer must be finished within seven days.

ii) The Supreme People's Court (SPC): This is the highest court of the Socialist Republic of Vietnam. The SPC is one of the two institutions at the apex of the judicial system of Vietnam, with the other body SPP of Vietnam. The SPC is responsible for providing leadership to the Vietnamese court system, supervising the judicial process, and recommending bills to the National Assembly as appropriate under law. The SPC is responsible for judging cases of money laundering, terrorism, terrorist financing and other crimes in conformity with the Criminal Code.<sup>35</sup>

iii) The Government Inspectorate: The Government Inspectorate is a ministry-level agency in Vietnam that is in charge of state administration of inspection, citizen reception, complaint and denunciation settlement, and anti-corruption work all over Vietnam. It does inspections, settles complaints and denunciations, and fights corruption in accordance with the law. An Inspector-General is in charge of the Government Inspectorate.

iv) Ministry of Justice (MOJ): Vietnam's Ministry of Justice is in charge of state administration for the development and implementation of laws and regulations, the post-review of legal normative documents, the monitoring of administrative operations, and legal dissemination and education. In addition, it regulates the execution of civil and administrative judgments, judicial-administrative activities, judicial affairs support, state compensation and execution of judgments, and other justice works on a national scale, as well as the implementation of laws and regulations governing the handling of administrative violations. MOJ is the designated competent authority managing and supervising the implementation of AML/CFT measures for lawyers, law practice organizations, notary public and notary service provider organizations.

v) Ministry of Finance (MOF): The MOF is the part of the Vietnamese government that is in charge of the country's finances. It is also in charge of the national budget, tax

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<sup>34</sup> The 2015 Criminal Procedure Code, Article 163 (3)

<sup>35</sup> National Assembly, (2015). Law No80/2015/QH13 on Promulgation of Legislative Documents, Article 21

money, state assets, national financial reserves, and the finances of state corporations. In addition, MOF is in charge of the work of national accounting, state borrowing, stock market activities, and the Department of Customs. Regarding AML/CFT regime, MOF is the designated competent authority for managing, supervising and inspecting the implementation of AML/CFT measures for securities, insurance, investment services, accounting services; and casinos and prize game businesses.

The MOF is also the licensing authority for securities and fund management companies, insurance companies, casinos and prize-winning electronic game organizations, and specialised accounting services for organizations and individuals.

vi) State Securities Commission (SSC): is an agency under the MOF assisting in the state management of securities and securities market, and directly managing and supervising securities activities and the stock market.

vii) Department of Insurance Management and Supervision (DIMS): DIMS is the unit within the MOF and manages and supervises the implementation of AML/CFT measures in the insurance sector.

viii) Department of Finance of Banks and Financial Institutions (DFBFI): DFBFI is a unit under the MOF, with the function of advising and assisting the Minister of Finance in managing the financial market and finance services under the state management of the MOF; conducting financial state management of the SBV. It coordinates, monitors, inspects and manages violations of the law in terms of prize-winning electronic game for foreigners, casinos and certificates of eligibility for casino businesses.

ix) The General Department of Customs (GDC): GDC is within the MOF and manages functions of inspecting and controlling cross-border goods and transport vehicles; preventing and combatting cross-border smuggling and illegal goods transportation of goods; implementing tax regulation on imports and exports and state management policies and measures on import and export activities. The Agency also manages the compliance of cross border cash customs declaration.

x) Ministry of Defence (MOD): MOD is responsible for managing issues related to UN Security Council resolutions (UNSCRs). Since November 2019, MOD is the designated focal point for coordination on combating arms proliferation-related issues and proliferation financing.<sup>36</sup> The investigation authorities of the People's Army are responsible for investigating all crimes falling into the jurisdiction of a military court,<sup>37</sup> which includes any

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<sup>36</sup> Decree No. 81/2019/ND-CP on combating proliferation financing, Article 10

<sup>37</sup> The 2015 Criminal Procedure Code, Article 163



crime committed by military personnel, against military personnel, involving military secrets, on military property or under martial law.<sup>38</sup> This investigation include money laundering predicate offences related to money laundering and terrorist financing.

In November 2019 Vietnam issued Decree No.81/2019 on the prevention of proliferation of weapons of mass destruction (WMD), which makes the MOD the lead agency to coordinate at both the policy and operational levels and sets out a number of policy and operational coordination mechanisms to combat the financing of proliferation of WMD. The MOD cooperates with both the standing body of the NCC on Anti-Terrorism and the NCC on AML.<sup>39</sup>

xi) The Ministry of Foreign Affairs (MOFA) is responsible for overseeing the activities of foreign non-governmental organizations and carrying out Vietnam's commitments under international treaties and conventions, such as the UNSCRs. Along with SPP and MPS, MOFA is also involved in processing requests forwarded through diplomatic channels and, in some circumstances, coordinating between the designated central authority and its foreign counterpart.

xii) Ministry of Planning and Investment (MPI): Under the Enterprise Law, MPI is in charge of company incorporation as well as the registration, administration, and oversight of commercial companies in conjunction with its provincial local authorities.

xiii) The Ministry of Construction (MOC) is in charge of managing, overseeing, and inspecting the application of AML/CFT regulations in the real estate industry. Real estate middlemen are licensed by the MOC.

xiv) The Ministry of Industry and Trade (MOIT) is in responsible of regulating the wholesale, import, and export of precious metals, with the exception of retail traders in precious metals or stones. MOIT is the supervisor for precious metals and valuable stones, including gold.

xv) Ministry of Home Affairs (MOHA): MOHA is responsible for state management of organizations and activities of foundations including inspections and supervision.

xvi) The Foreign Non-Governmental Organization Affairs Committee: This Committee aids the Vietnamese Prime Minister in directing and resolving issues concerning foreign NGOs in Vietnam..

xvii) People's Committees at all levels: These Committees are in charge of enforcing and directing the dissemination and education of AML laws at the local level; coordinating

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<sup>38</sup> The 2015 Criminal Procedure Code, Article 272

<sup>39</sup> Decree No. 81/2019/ND-CP on combating proliferation financing, Article 13

with competent state agencies to implement AML guidelines, policies, strategies, and plans; and detecting, promptly, and strictly dealing with violations of AML regulations as determined by relevant committees.

#### **4.4. Summary of the Chapter**

AML regime has two basic pillars, prevention and enforcement.<sup>40</sup> The goal of the preventive pillar is to make it less likely that criminals will use financial institutions to launder money gained via illicit activity. The purpose of enforcement is to impose consequences on offenders who have successfully laundered their earnings. CDD, reporting, regulation and supervision, and punishments are the four pillars that make up the prevention pillar. A list of predicate offences, an investigation, prosecution, and punishment, and confiscation all make up the enforcement pillar.<sup>41</sup>

Since the beginning of renovation policy 1986, Vietnam's market has been subjected to considerable modifications. Over the past few decades, Vietnam's legal framework to combat money laundering and terrorist financing has undergone significant reform to conform to international norms.

In 1997, the National Assembly passed the Law on Credit Institutions, which is a key piece of legislation for the pillar of prevention. The obligations of financial institutions with respect to illegally obtained funds are spelled forth in this statute. In the early phases of international economic integration, the 1997 statute on Credit Institutions helped perfect the legal framework and the State's administration and control over the activities of credit institutions, even if the phrase "money laundering" was not used in this statute. Then, on June 7 of same year, the government approved Decree No.74/2005/ND/CP to combat and prevent money laundering. Money laundering refers to the practice of concealing the true ownership of a financial asset in order to make a profit. This landmark statute paves the way for Vietnam to construct a fully functional AML framework.

The Law on AML was passed in 2012 and went into force on 01 January 2013. Comprehensive legislation outlining obligations of agencies, organizations, and individuals in AML; international cooperation to prevent and combat money laundering; and other measures to detect, prevent, and handle organizations and individuals involved in money laundering. As of 01 March 2023, the Law on AML 2022 will take the place of the Law on AML 2012. This is the latest version of the Anti-Money Laundering Law.

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<sup>40</sup> Levi, M., & Reuter, P. (2006). Money laundering. *Crime and justice*, 34(1), 289-375, p.298

<sup>41</sup> Ibid.

With regards to the enforcement pillar, in December 1999 the Vietnamese National Assembly approved the Criminal Code, which includes provisions in Articles 250 and 251 criminalizing the conduct of money laundering. Several sections of the Criminal Code of 1999 were revised and expanded upon by Law No.37/2009/QH12, which was passed by the National Assembly in June 2009. Article 251, previously titled "Crime of legalizing money and property obtained from the crime," has been renamed "money laundering" and now explicitly defines the types of conduct that constitute this new crime. Apparently, money laundering was not made a crime in Vietnam until 2009. The Criminal Code No.100/2015/QH13 was passed by the Vietnamese National Assembly on November 27, 2015. The crime of "money laundering" was included as an offense in Article 324 of the Criminal Code in 2015. Article 324 makes it illegal for both individuals and businesses to engage in money laundering, with its main legal precedents being the Vienna and Palermo Conventions.

In Vietnam, the government, financial institutions, and law enforcement authorities all work together to uphold the law and combat money laundering. The SBV is responsible for formulating and submitting to competent authorities for approval and promulgation a national strategy and plan on AML, as well as promulgating legal documents guiding the implementation of legal provisions on AM. It also takes primary responsibility for periodic assessments of money laundering risks in Vietnam and coordinates with concerned ministries and branches. The SBV is tasked with conducting AML inspections and providing overall customer activity supervision as part of its specialized management duties. This report's focus is on the government agency in charge of managing a country's official currency, banking operations, and international trade.

The Vietnam FIU is the AMLD. The AMLD is governed by the SBV's Banking Supervision Agency (BSA). In 2005, the State Bank of Vietnam (SBV) became the sole entity responsible for receiving and processing information relating to transactions and other information. To lead and coordinate the identification and investigation of AML/CFT and related predicate offences, MPS is the designated money laundering and terrorist financing investigation authority.

## CHAPTER 5: MONEY LAUNDERING SITUATION IN VIETNAM

### 5.1. General Background of Vietnam

#### *Geographic environment*

The Socialist Republic of Vietnam is situated on the Indochina peninsula in Southeast Asia. It has a 4,550 km long land border with China to the north, Laos and Cambodia to the west, and the Pacific Ocean's Eastern Sea to the east and its total land area is 331,344 square kilometers. The country's total length is 1,650 km from the northernmost point to the southernmost point. From the Eastern coast to the Western border, its breadth is approximately 500 km at its widest point, and 50 km at its narrowest. Vietnam is an attractive place for foreign investment because of its convenient location and abundant human capital.<sup>42</sup>

#### *Legal and political environment*

Vietnam was invaded by France in 1858. In 1887, it was annexed to French Indochina. Despite Vietnam's declaration of independence after WWII, France maintained control of the country until its defeat in 1954 at the hands of Ho Chi Minh's communist forces. Vietnam was split in half between communist North Vietnam and anti-communist South Vietnam after the Geneva Accords of 1954. In an effort to support up the administration in South Vietnam in the 1960s, the US increased its economic and military help to the region; but, once a ceasefire was signed in 1973, American soldiers withdrew from Vietnam. North Vietnamese communist soldiers invaded the South and reunified the country two years later. While peace returned in 1975, conservative government policies and growing international isolation caused the economy to stall for more than a decade.<sup>43</sup>

The Communist Party of Vietnam (CPV) is the sole legal political organization in Vietnam. Vietnam is governed centrally by a strong unitary state. The Constitution of Vietnam, Article 4, declares the CPV to be the "force assuming leadership of the State and society." The National Assembly serves as the country's highest lawmaking and policymaking body. The Government is the legislative branch's executive branch. In Vietnam, the SPP is the prosecuting institution in charge of keeping judicial order, and the People's Courts are the judicial authorities that actually do the judging.

#### *Economic environment*

Since launching the "Doi Moi" strategy (which literally means "renovation" in

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<sup>42</sup>GSO, (2020). Available at <https://www.gso.gov.vn/en/population/>. Accessed 01 March 2023

<sup>43</sup> VNexpress, (2020). 75 nam nen kinh te lot xac (English: 75 years of economic transformation). Available at <https://vnexpress.net/75-nam-nen-kinh-te-lot-xac-4155833.html>. Accessed 01 April 2023

English) in 1986, the Vietnamese government has been dedicated to further economic liberalization and the structural reforms necessary to modernize the economy and create more competitive, export-driven sectors. It was a significant step in the direction of switching from the "central planning model of socialism" to a "market-oriented, state-guided socialist economy".<sup>44</sup> Due to the nation's rapidly declining poverty, increased political openness, and increase in cultural diversity, which made the economy of the nation "a source of interest and attention for investors and businesspeople worldwide," there have been many positive changes in the educational and social welfare landscape of the nation."<sup>45</sup>

In Vietnam, the cash economy still rules. Cash is sometimes required for luxury items, investment properties, and other significant purchases. While 23% of people made electronic transactions in 2017 and 31% of people had access to a transaction account, 69% of individuals continued to pay their bills with cash.<sup>46</sup> As part of its efforts to stop dollarization, the SBV has modified its rules on the issuance of loans in foreign currencies to residents of Vietnam. Furthermore, substantial sums of money can be transferred from outside into Vietnamese financial institutions without minimal oversight or notification of the money's source.<sup>47</sup>

Threats of money laundering come in many forms in Vietnam. Vietnam's exposure to illicit money is growing and is likely to continue to do so in the future as a result of the country's expanding economy, greater foreign trade, and porous land border. According to estimates by Global Financial Integrity, the total value of illegal funds flowing into and out of Vietnam in 2015 was more than USD 9 billion.<sup>48</sup>

## **5.2. Money Laundering Methods**

- Money laundering through a shell or front company
- Money laundering through real estate sector
- Money laundering through banking sector
- Money laundering through stock market
- Money laundering through virtual currencies and virtual assets

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<sup>44</sup> Beresford, M. (2008). Doi Moi in review: The challenges of building market socialism in Vietnam. *Journal of Contemporary Asia*, 38(2), 221-243.

<sup>45</sup> Nguyen-Tran, H. Q. (2004). Vietnam's national renovation program, "Doi Moi": Evaluation of economic performance, educational improvement, and standard of living of the Vietnamese. University of La Verne.

<sup>46</sup> The World Bank, (2020): Universal Financial Access.

<sup>47</sup> IMF, (2019). Vietnam: Article IV Consultation; Press Release; Staff Report; and Statement by the Executive Director for Vietnam

<sup>48</sup> Global Financial Integrity, (2019). Illicit Financial Flows to and from 148 Developing Countries: 2006-2015

- Money laundering through insurance companies
- Money laundering through money remittance and foreign currencies exchange

### **5.3. Money Laundering Activities Arising from Major Predicate Offences**

Sharman and Chaikin agreed that money laundering does not occur unless and until a predicate offense has been committed.<sup>49</sup> In other words, the commission of a predicate offense is necessary for money laundering to take place.

Vietnam's first "National Risk Assessment on Money Laundering and Terrorism Financing" (NRA) was finished in April 2019. The NRA Working Group was established by the SBV in September 2016 with participation from 16 ministries and agencies. The World Bank-developed risk assessment tool was used to conduct the NRA. Information and statistics were acquired from relevant public and private sector organizations, including 32 e-prize winning gaming corporations, 26 banks, 18 insurance companies, and 6 casinos. The Prime Minister approved the NRA's findings, which were then distributed to the public and private sectors. The NRA has a "Medium-High" risk rating for money laundering and a "Low" risk rating for financing terrorism in Vietnam.<sup>50</sup>

In the NRA, Vietnam's law enforcement authorities assessed the risks of money laundering posed by 17 predicate crimes and illicit revenues coming from abroad. The predicate offenses are as follows:

- a. Embezzling.
- b. Receiving bribes.
- c. Abusing positions and/or powers to appropriate property.
- d. Gambling.
- e. Organizing gambling or running gambling-dens.
- f. Illegally stockpiling, transporting, trading in or appropriating drug.
- g. Tax evasion.
- h. Appropriating property through swindling.
- i. Abusing trust in order to appropriate property.
- j. Breaching regulations on the protection of precious and rare wild animals.
- k. Illegal cross-border transportation of goods and/or currencies.
- l. Human trafficking.

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<sup>49</sup> Sharman, J. C., & Chaikin, D. (2009). Corruption and anti-money-laundering systems: putting a luxury good to work. *Governance*, 22(1), 27-45, p.29.

<sup>50</sup> SBV, (2019). National Risk Assessment on Money Laundering and Terrorism Financing

- m. Making, storing, transporting and/or circulating counterfeit money, treasury bills and/or bonds.
- n. Smuggling.
- o. Manufacturing, stockpiling, transporting and/or trading in banned goods.
- p. Manufacturing and/or trading in fake goods.
- q. Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means.

The NRA identified corruption, illicit gambling, drug trafficking, tax evasion, wildlife trafficking, fraud, money and commodity smuggling, and human trafficking as the greatest threats. The NRA has deficiencies as it does not evaluate all FATF-designated violation categories. Other categories of predicate offenses were not analyzed because they do not exist in Vietnam or because there were insufficient data. However, the NRA still provides Vietnam with a fundamental comprehension of its money laundering situation.

Predicate offenses are part of more serious crimes. Predicate offenses may generate monies or assets that can be laundered to conceal the illicit origins. For instance, drug trafficking can produce revenue and conceal the illegal source of the funds through placement, layering, and integration, allowing the drug trafficker to utilise the cash without suspicion.<sup>51</sup> Predicate offenses are the criminal activities that generate the illegal monies that are used in money laundering. Therefore, the issue of predicate offenses and the origins of the illicit monies must be taken into account while analyzing the money laundering situation.

#### **5.4. Summary of the Chapter**

Because of its central location and large labor force, Vietnam is appealing to international investors. There is a high potential for money laundering due to the prevalence of the cash economy in Vietnam. Money laundering through a shell or front firm, the banking system, the stock market, virtual currencies and virtual assets, and insurance companies are all potential options in Vietnam. In addition, money laundering can occur through the conversion of foreign currencies and money remittances

The commission of a predicate offense is necessary for money laundering to take place. In other word, money laundering cannot occur without the commission of a predicate felony. National Risk Assessment of Vietnam reveals that corruption, illegal gambling, drug trafficking, tax evasion, wildlife trafficking, fraud, and human trafficking among the country's top money laundering threats.

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<sup>51</sup> FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF

## CHAPTER 6: THE CONTROL OF MONEY LAUNDERING IN PRACTICE

### 6.1. Identifying Suspicious Cases

#### 6.1.1. The “Know Your Customer” requirement and report keeping

##### *Understanding of anti-money laundering obligations*

In the case of Vietnam, financial institutions are required to undertake CDD when:

- “a) The customer opens an account for the first time or establishes a relationship with a financial institution;
- b) Customers make irregular transactions with a value equal to or exceeding the prescribed level; conduct an electronic money transfer transaction without information about the originator's name, address, account number or transaction code in case the originator does not have an account;
- c) Suspecting the transaction or the parties involved in the transaction are related to money laundering;
- d) Doubts about the accuracy or completeness of previously collected customer identification information.”<sup>52</sup>

“Financial institutions are also prohibited from opening or maintaining anonymous accounts or accounts using false names.”<sup>53</sup>

##### *Application of customer due diligence measures*

In Vietnam, reporting entities follow these rule when gather CDD information and associated documentation as part of their client onboarding process, and have rejected a customer if CDD is incomplete. The CDD records are retained for at least five years, and there are additional methods for risk profiling consumers, which are then used to decide the level of ongoing monitoring and whether management approval is required to accept customers.

Banks tend to update customer data at different rates depending on the customer's perceived level of risk, with high-risk customers receiving annual updates and medium- and low-risk customers receiving updates every two years. Any trigger events, such as when banks receive new information or when suspicion is raised about a customer or transaction, can also affect how often information is updated. Financial institutions employ tracking

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<sup>52</sup> The 2022 Law on AML, Article 9 (2)

<sup>53</sup> The 2022 Law on AML, Article 8 (2)



mechanisms to keep tabs on all their transactions. More sophisticated procedures are used by institutions that are majority owned by shareholders from overseas.

Financial institutions require customers who are legal persons to document the legal persons' establishment, including information about the shareholders, directors, and persons authorized to conduct transactions on their behalf. CDD on beneficial owners across all organizations is difficult, especially when foreign ownership is involved. Customers who are parties to a foreign trust and get trust deeds during CDD are familiar to securities firms. The biggest remittance companies have implemented CDD and record-keeping procedures. Every transaction is subject to CDD, which is mostly based on identifying documents. Records are preserved for at least five years, with certain remitters keeping electronic records.

### ***6.1.2. Suspicious transactions report***

#### *Suspicious Transactions Report from reporting entities*

Reporting entities are required by Vietnam law to submit STRs to the SBV via AMLD where they suspect that funds are derived from criminal activities or are related to money laundering.<sup>54</sup>

Basic suspicious signs include:

1. Customers refuse to provide information or provide inaccurate, incomplete or inconsistent customer identification information.
2. The client convinces the reporting object not to report the transaction to the competent state agency.
3. The customer cannot be identified according to the information provided by the customer or the transaction involves an unidentified party.
4. The phone number provided by the customer cannot be reached or does not exist after opening an account or making a transaction.
5. Transactions are made according to orders or authorized by organizations and individuals included in the alert list.
6. Transactions where, through customer identification information or through consideration of the economic and legal basis of the transaction, it is possible to determine the connection between the parties to the transaction with criminal activities or have related to organizations and individuals included in the warning list.

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<sup>54</sup> The 2022 Law on AML, Article 26

7. Organizations and individuals participating in transactions with large amounts of money are not suitable for business activities and income of this organization or individual.

8. The client requests the reporting subject to perform the transaction not in accordance with the order and procedures as prescribed by law.<sup>55</sup>

Article 37 of the same law provides the time limit for reporting as follows:

1. Reporting entities must report large-value transactions that must be reported as prescribed in Article 25 and electronic money transfer transactions specified in Article 34 of this Law within 01 working day from the date of transactions in the case of electronic data reporting; within 02 working days from the date of transaction in case of written report.

2. The reporting entities must submit STRs specified in Article 26 of this Law within 03 working days from the date of transaction or within 01 working day from the date the reporting entities detect suspicious transactions.

3. In case a suspicious transaction requested by a customer is detected with signs related to a crime, the reporting entities must report it to a competent state agency and the SBV within 24 hours. from the time of discovery.

The AMLD is responsible for receiving, analysing and then disseminating information to the authorised investigating bodies where there are reasonable grounds to suspect that transactions are related to money laundering or money laundering acts aimed at terrorist financing.<sup>56</sup> These requirement are also stated in Article 2 of Decision No.1367/2019 of the SBV, as amended by Decision No.2393/2019 of the SBV.

Banks, insurance providers, financial firms, and money transfer services are just few examples of reporting businesses that find the STR reporting procedures sufficient. Eighty-one percent of STRs are submitted by banks, sixteen percent by remittance businesses, three percent by insurers, and less than one percent by DNFBPs and other financial organizations such non-bank credit institutions and money changers. The AMLD is hampered in its ability to gather and disseminate economic data in these fields. Moreover, the bulk of reporting enterprises across all sectors appear to submit STRs based on a threshold of substantial transactions and/or high frequency transactions rather than suspicious behaviors, which may not always be in line with the risk profile in Vietnam.<sup>57</sup>

*Suspicious Transactions Report requested and received by competent authorities*

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<sup>55</sup> The 2022 Law on AML, Article 27

<sup>56</sup> The 2022 Law on AML, Article 42

<sup>57</sup> APG. (2022). Anti-money laundering and counter terrorist financing measures - Vietnam, Third Round Mutual Evaluation Report, APG, Sydney

The AMLD is Vietnam's FIU and serves as the national hub for receiving suspicious transaction reports (STRs) and other information from reporting entities, processing and analyzing the data, and disseminating the findings to law enforcement agencies (LEAs). Both computerized and handwritten reports are accepted by the AMLD, albeit the former is much more common. The AMLD may face difficulties in later retrieval and analysis if STR is received manually, which is a time-consuming procedure. The AMLD is not part of the Egmont Group of FIUs at this time.

Furthermore, STRs filed may not have enough relevant information, and STRs are reported from a restricted range of reporting, both of which could reduce the quality of the financial information that AMLD gets. The AMLD does not analyze the STRs or other data extensively before passing it on to law enforcement. The AMLD is given restricted direct access to the databases of the GDC, Tax, Criminal Records, Immigration, and other government agencies. As a result, the credibility of any subsequent reporting is significantly compromised.

With the help of aggregated STR data, the AMLD has developed various strategic intelligence products that take into account money laundering tendencies and associated predicates. From 2015 to 2018, a total of four strategic analysis studies were completed, each focusing on a different aspect of the payment system: cash withdrawal, bank cards, remittances, and payment intermediaries. Four additional strategic analysis reports on gambling, international money transfer, internal AML/CFT regulations, and financial institution audits were prepared by the AMLD in 2020-2021. From 2013 to 2018, the AMLD fielded 760 inquiries from relevant agencies. The AMLD has received a large number of STRs, the most majority of which have been referred to the MPS because they relate to predicate offenses. There were only three convictions for money laundering based on these disclosures between 2011 and 2021.<sup>58</sup>

Because of the MOUs in place, the AMLD and the police are allowed to share data with one another. There are delays in dissemination and data security concerns due to the manual nature of information interchange and engagement with law enforcement authorities. Given Vietnam's risk level and environment, the number of outbreaks is excessive. This is due to the AMLD's poor output, law enforcement's inability to devote sufficient resources to investigating cases of money laundering and financial crime, and prosecutors' tendency to give lower priority to cases involving money laundering. The AMLD forwards numerous

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<sup>58</sup> The US Department of State, (2022), International Narcotics Control Strategy Report. Volume II. Money laundering p.201

STRs received from the reporting firms directly to law enforcement agencies rather than providing value through operational and strategic analysis.

## **6.2. Investigating Money Laundering Cases**

### ***6.2.1. Investigative authority***

FATF suggests that law enforcement agencies should be assigned the task of conducting financial investigations into possible cases of money laundering, predicate offenses, and terrorism funding.<sup>59</sup> In the case of Vietnam, both the Criminal Procedure Code of 2015 and the Law on the Organization of Criminal Investigation organizations of 2015 detail the duties of Vietnam's several criminal investigation organizations. To the extent that an offense does not fall under the purview of the People's Army or the SPP, the Criminal Procedure Code of 2015 assigns all investigative authority for money laundering, predicate offenses, and terrorist funding to the MPS.<sup>60</sup>

The Law on AML 2022 designates MPS as responsible for:

1. Collecting, receiving and processing information on the fight against money laundering crimes.
2. Notify the results of processing information related to suspicious transactions to the State Bank of Vietnam.
3. To assume the prime responsibility for, and coordinate with relevant agencies, organizations and individuals in preventing, detecting, investigating and handling money laundering crimes.
4. Exchange of information and documents on new methods and tricks of domestic and foreign money laundering with the SBV.
5. To assume the prime responsibility for making a list of organizations and individuals involved in terrorism and terrorist financing.
6. To provide mutual legal assistance in money laundering prevention and combat within the scope of their functions and tasks.
7. Cooperate with the SBV in conducting the national risk assessment on money laundering.<sup>61</sup>

In addition to MPS, the investigation authorities of the People's Army are responsible

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<sup>59</sup> FATF Recommendation 30

<sup>60</sup> Thai, H. V. (2023). Anti-money laundering and countering financing. *Essays of Faculty of Law University of Pécs, Yearbook of 2021-2022*, 203-216.

<sup>61</sup> The 2022 Law on AML, Article 49

for investigating all crimes falling under the jurisdiction of a military court, including crimes committed by or against military personnel, involving military secrets, on military property, or under martial law.<sup>62</sup> This may include money laundering, predicate offenses, and financing of terrorism.

The SPP is another investigative body with jurisdiction over crimes committed by officials and employees of investigation authorities, courts, procuracies, and people with the authority to engage in judicial activities, including but not limited to violations of judicial activities, corruption, and breach of position within the justice sector.<sup>63</sup> However, the SPP are not permitted to look into cases of money laundering or terrorism funding. The SPP can only look into "predicate offenses" that involve corruption. If the SPP suspects money laundering, it must notify the MPS or People's Army.

In their respective areas of responsibility, a variety of other agencies are responsible for conducting certain investigative operations.<sup>64</sup> These agencies include border guard agencies, the Government Development Council, forest protection offices, marine police agencies, fisheries surveillance, People's Public Security Offices, and other People's Army offices. However, if they detect money laundering or terrorist financing, they must notify the MPS or the People's Army, depending on the applicable jurisdiction, and transmit the case file to them within seven days for evaluation. Other Criminal Investigation Bodies are only permitted to conduct investigations into predicate offenses that fall within their respective areas of jurisdiction.

### ***6.2.2. Investigative power***

All relevant documents and information should be made available to competent authorities so they can use it in their investigations of money laundering, associated predicate offenses, and terrorism funding.<sup>65</sup> In order to investigate and prosecute cases of money laundering, law enforcement agencies in Vietnam have a wide range of authority and responsibility under Vietnamese law.

Criminal Procedure Code 2015 from Articles 179 to 228 detail the authorities and procedures that can be used to investigate any type of crime, including questioning a suspect, searching their home, place of business, or vehicle, seizing electronic media and data, mails,

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<sup>62</sup> The 2015 Criminal Procedure Code, Article 163

<sup>63</sup> The 2015, Criminal Procedure Code, Article 163

<sup>64</sup> The 2015, Criminal Procedure Code, Article 164

<sup>65</sup> FATF Recommendation 31

telegraphs, postal packages, seizing documents and items during a search, analyzing a crime scene, and using some specialized methods of investigation. The primary motivations behind these rules are to aid in criminal investigation and to gather information for the purpose of prosecuting decisions.

Article 88 of the Criminal Procedure Code 2015 allows investigating authorities to request information from entities, including account information, while Article 168 requires reporting entities to comply. This system is used to identify if accounts are owned or controlled by natural or legal persons as part of the evidence-gathering process.

MPS is in charge of communicating with SBV via AMLD.<sup>66</sup> The current method of information transmission between AMLD and MPS is manual and dependent on sending written requests. SBV is also in possession of cross-border reporting data, which is made available in a monthly report. However, AMLD lacks direct access to the computerized information-sharing systems or databases used by law enforcement authorities.

### ***6.2.3. Investigation in practice***

Investigations into money laundering can be started in a variety of ways, including the dissemination of STRs, criminal inquiries into underlying offenses, and referrals from other agencies. All MPS investigations must be supervised and approved by the SPP before they can begin. The MPS must inform the SPP of the investigation's start and provide justification. If the MPS request is denied by the SPP, the MPS will either end its investigation or submit new information for the SPP's review.

According to the provisions of Process No.4885/QT-C03-P13 dated 30 October 2019 of the Department of Criminal Investigation on Corruption, Economy, and Smuggling within MPS, each type of predicate offence has a different investigation method, appropriate to the area affected by crime and the functions and duties of each police force. However, when organizations receive information, there are grounds to suspect money laundering, the following activities should be carried out:

- At the initial investigation stage, the investigation agencies must collect and then check the initial information on offences; and then give evaluation on the information sources and direct subsequent investigation activities.
- At the next stage of investigation, the investigation agencies make the plan for the investigation of the each case, clearly defining the issues to be proved for the money

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<sup>66</sup> The 2022 Law on AML, Article 49

laundering; apply necessary measures to track down or monitor and prevent subjects from fleeing, causing difficulties for investigation activities. At the same time, the police force investigate and verify information about legal entities suspected of participating in money laundering activities; financial investigation, cash flow verification of individuals or legal entities involved in money laundering; asset tracing and recovery; coordinate with the People's Procuracy and People's Court in investigating, prosecuting and adjudicating money laundering.

- At the end of the investigation, based on the collected documents and evidence, the investigation agencies shall make a written investigation report to propose the prosecution or stop the investigation of the case and transfer the file to the People's Procuracy of the same level together with objects and documents seized during the investigation of the case in accordance with law.<sup>67</sup>

In reality, criminal investigations in Vietnam are primarily concerned with proving guilt. Although the MPS seems to be able to look into and prosecute a variety of offenses that generate proceeds, such as drug trafficking and corruption, it appears that the MPS is unaware of money laundering investigations and the importance of "following the money." Asset freezing and seizure to stop distribution may not get the necessary attention during the criminal inquiry. Due to this, there are numerous instances when assets were distributed before a confiscation order was obtained, leaving little or no property accessible for seizure.<sup>68</sup>

Instead of focusing on money laundering, MPS investigates predicate offenses. In Vietnam, a person's predicate offenses might include any illegal act. But it appears that Vietnam's law enforcement agencies lack the means to investigate and punish money laundering for the proceeds of even the vast majority of predicate offenses perpetrated in Vietnam.<sup>69</sup> Furthermore, if parallel financial investigations are opened, their main goal is to find the assets that were utilized to commit the crime. The low volume of money laundering investigations conducted in Vietnam has probably been influenced by the absence of parallel financial investigations. In Vietnam, predicate offense or money laundering investigations are not conducted jointly by law enforcement agencies and relevant authorities. Cooperation only

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<sup>67</sup> MPS, (2019). Process No.4885/QT-C03-P13

<sup>68</sup> Huyen, D. T., & Giao, V. C. (2018). Asset recovery in the fight against corruption in Vietnam: problems and perspective. *Jindal Global Law Review*, 9, 57-74.

<sup>69</sup> Chat, L. N. (2014). International anti-money laundering standards and their implementation by Vietnam, Phd thesis, p105

occurs during investigations when law enforcement agencies and competent authorities exchange information.<sup>70</sup>

However, there is a typical obstacle prevents investigators from acquiring banking information when conducting financial inquiries. Financial information are important, but the current law makes them difficult to obtain by investigation agencies.<sup>71</sup> In general, banking institutions forbid disclosing details of consumer financial transactions.<sup>72</sup> Financial institutions are only permitted to provide information about customer transactions to investigators under the terms of Decree No.70/2000/ND-CP of the Government on Keeping Secret, Storing, and Providing Information Related to Customers' Deposits and Assets if a state body has made a written request for such information during an inspection, investigation, prosecution, court trial, or judgment execution that is within the scope of that body's legal authority.<sup>73</sup> Papers pertaining to the investigation, such as a decision to pursue a case, the offender, or other papers demonstrating that an investigation is being performed in respect to the consumers, must be submitted with this request.<sup>74</sup> On 01 November 2018, Decree No.117/2018/ND-CP, which has the main goal of protecting the customer information of credit institutions and foreign bank branches, replaced Decree No.70/2000/ND-CP. The new Decree continues to state that credit institutions may only give competent authorities the information they need on their customers in exchange for papers like prosecution verdicts or other comparable records.<sup>75</sup>

It can be seen from the NRA's result that Vietnam's risks and threat profile does not align with its investigation and prosecution of money laundering activity. There have been little money laundering investigations and prosecutions in Vietnam, despite the high volume of possible proceeds-generating offenses and the comparatively high volume of financial intelligence products sent to the MPS.

It is important to note that, there are no specialized teams investigating money

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<sup>70</sup> Nguyen Le, C. (2013). The growing threat of money laundering to Vietnam: The necessary of intensive countermeasures. *Journal of Money Laundering Control*, 16(4), 321-332.

<sup>71</sup> Tran, T. T. H., & De Koker, L. (2021). Confiscation of proceeds of crime in Vietnam: improving the legal framework. *Journal of Money Laundering Control*

<sup>72</sup> Huyen, D. T., & Giao, V. C. (2018). Asset recovery in the fight against corruption in Vietnam: problems and perspective. *Jindal Global Law Review*, 9, 57-74, p69

<sup>73</sup> Government, (2000). Decree No.70/2000/ND-CP on Keeping Secret, Storing and Providing Information Related to Customers' Deposits and Assets, Article 5 (4)

<sup>74</sup> Tran, T. T. H., & De Koker, L. (2021). Confiscation of proceeds of crime in Vietnam: improving the legal framework. *Journal of Money Laundering Control*

<sup>75</sup> Government, (2018). Decree No.117/2018/ND-CP on on keeping confidential and providing customer information of credit institutions. foreign bank branch, Article 9 (2)



laundering cases and conducting parallel investigations, and there is a dearth of training in money laundering investigative procedures, financial investigations, and asset tracing. The low level of money laundering investigations also raises some worries about the AMLD's ability to create high-quality financial intelligence products, and the AML legislative framework is not being implemented properly. One probable explanation for the hesitancy and lack of action is that Vietnamese authorities have not appropriately considered the harm that money laundering may do to society.<sup>76</sup> Other potential explanations include a lack of a suitable administrative framework and political considerations about the costs and advantages of possibilities.<sup>77</sup> Furthermore, the lack of combined agency taskforces in Vietnam limits law enforcement agencies' ability to effectively collaborate on money laundering investigations.

### **6.3. Confiscation**

Vietnam joined the APG in 2007 after making a political commitment to comply with FATF regulations. Vietnam faces scrutiny from its peers to ensure it is following FATF rules now that it is a member. The first such compliance evaluation in the country was conducted by the APG in 2009. The investigation uncovered a plethora of significant gaps in Vietnam's AML/CFT regulations. According to the findings of the inquiry, Vietnam's legislature does not provide for the temporary freezing and preservation of items for confiscation in the context of proceeds of crime. In addition, there was no express legislation that allowed for the tracing and identification of criminal proceeds or safeguards that prohibited contractual agreements from delaying property seizures. Enough progress has been made since then. The Vietnamese government is currently seeking the forfeiture of assets associated with a wide variety of predicate offenses. Conviction of a "predicate offense" or money laundering is required before confiscation procedures can begin against a criminal defendant. The freezing, seizure, or constraint of the assets of criminal defendants may come from judgments against them for predicate offenses..

The MPS and SPP, the principal authorities involved in confiscation, face challenges in identifying and locating property linked to complex and sophisticated criminal types. Authorities have found it challenging to track down and seize the assets of those accused of corruption because of the prevalence of high-profile and well-resourced defendants in such instances. Another element that slows down investigations and the recovery of assets is the use of front companies or friends and family to hide the true owners of a piece of property.

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<sup>76</sup> Chat, L. N. (2013). The growing threat of money laundering to Vietnam: The necessary of intensive countermeasures. *Journal of Money Laundering Control*, 16(4), 321-332

<sup>77</sup> Croissant, A., & Barlow, D. (2007). Following the money trail: Terrorist financing and government responses in Southeast Asia. *Studies in Conflict & Terrorism*, 30(2), 131-156.

Identification of assets and beneficial proprietors is complicated by the widespread use of cash in criminal operations and the corresponding proceeds of crime, which can be used to purchase high-value assets. Furthermore, the usage of cash allows illegal gains to be swiftly transferred into the bank accounts of coconspirators or across international borders. Despite the seriousness of the money laundering danger in Vietnam, law enforcement agencies lack the capacity and resources to track down and seize assets that are either unrelated to the crime or are being concealed in a sophisticated fashion.

#### **6.4. National Cooperation and Information Sharing between Related Agencies**

The framework for national coordination and cooperation, at the policy level, is well-organized and effective. The Deputy Prime Minister established the National Coordinating Committees on AML (NCC on AML) in April 2009 to oversee the coordination of AML policy. The NCC is made up of many government agencies working together to help the Prime Minister and coordinate AML efforts between different departments and municipalities. The SBV Governor and the MPS Chief are the NCC on AML's Deputy Chairs. The SPP, SPC, GO, MOFA, MHA, MOF, MPI, and MOD also have notable representatives serving as members. The NCC is well-established legally and shows political leadership and dedication to AML/CFT initiatives.

The MPS, SPP, and SPC have issued Joint Circular No.02/2023/TTLT-BCA-VKSNDTC-TANDTC on coordination of information exchange between agencies in conducting investigations of money laundering and terrorist financing to ensure timely coordination and direction from central to local levels, remove difficulties and obstacles in the investigation, prosecution, and adjudication of such crimes, and strengthen the responsibility and efficiency of competent agencies. The effective operational level collaboration on AML problems has been bolstered by the regulation on coordination regarding the exchange of information for investigation, prosecution, and adjudication of money laundering cases among the MPS, SPP, and SPC.

To speed up the investigation, prosecution, and adjudication of money laundering offenses and predicate crimes, ministries and agencies often arrange inter-ministerial meetings to discuss specific topics. The SBV is in charge of coordinating the sharing of information between government entities during the investigation, prosecution, and conviction processes related to money laundering.<sup>78</sup> Each ministry and agency has its own memorandum of understanding (MOU) to facilitate information sharing. The principles of coordination, the information to be shared, the means by which it will be shared, the parties involved, the

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<sup>78</sup> Decree No.116/2013, Article 21

authorities sharing the information, the obligations of each party, and the length of time the MOU will remain in effect are all specified in the MOU. On top of that, Vietnam has announced five plans of action, all of which have been reviewed and revised on a regular basis. These plans of action serve as national policies and guide the work of the appropriate departments at the national level.

## **6.5. International cooperation**

### ***6.5.1. Legal framework and rules for international cooperation***

Vietnam has a comprehensive framework for international cooperation formed primarily by the Criminal Procedure Code 2015, the Mutual Legal Assistance Law 2007 and conventions, treaties and MOUs. Notably, Article 12 of the Constitution Law states that:

“The Socialist Republic of Vietnam consistently implements the foreign policy of independence, self-reliance, peace, friendship, cooperation and development; multilateralization and diversification of relations, proactive and active integration and international cooperation on the basis of respect for independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, and equality, mutual benefit; comply with the Charter of the United Nations and international treaties to which the Socialist Republic of Vietnam is a signatory; a reliable partner and a responsible member in the international community for the sake of the nation, contributing to the peace, national independence, democracy and social progress in the world.”<sup>79</sup>

This is an important legal basis for the State and competent agencies, including the police force, to carry out international cooperation in the fight against crimes, including money laundering.

### ***6.5.2. International cooperation in mutual legal assistance***

Article 4 of Vietnam's MLA Law of 2007 states that, so long as it does not violate Vietnamese law and is in compliance with international law and practice, Vietnam may provide legal assistance to a foreign country that has not signed a treaty with Vietnam on the basis of reciprocity. International cooperation between law enforcement agencies is permitted by law, bilateral and multilateral agreements, international conventions, the concept of reciprocity, and the fact that many such agencies are members of international organizations

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<sup>79</sup> National Assembly, (2013). The Constitution Law, Article 12.

like INTERPOL and ASEANAPOL. The MPS works closely with its international colleagues on a regular basis, typically through INTERPOL.

However, the AMLD's efforts to increase international collaboration in line with Vietnam's risk profile have severe flaws. The FIU lacks safe portals for information exchange while law enforcement agencies have such methods and channels. Since Vietnam is not an Egmont member, AMLD is unable to make advantage of the Egmont Secure Web. But SBV, on behalf of AMLD, has signed MOUs on the exchange of AML/CFT related information with counterpart FIUs, and also exchanges information and intelligence without an MOU based on the concept of reciprocity. AMLD published Decision No. 68/2019 defining the procedure for handling international requests for AML/CFT information to ensure the security of information exchange. Per the terms of the Decision, AMLD will only provide sensitive material via diplomatic channels and special delivery methods, such as encrypted faxes and registered mail. MPS sends and processes requests through INTERPOL's I24/7 system.

SPP is the primary authority in the case of mutual legal assistance (MLA), and it is in charge of submitting, receiving, and managing MLA requests.<sup>80</sup> Service of documents, gathering and providing evidence to aid in the investigation and resolution of criminal cases, exchanging and providing information related to the activities of taking witness and suspect testimonies, address verification, identification of witnesses, suspects, and victim identification are among the contents of the requirements proposed by the foreign party related to money laundering.

The grounds for refusal of requests are set out in Article 21 of the Law on MLA 2007, these include:

- a) Not in accordance with international treaties to which Vietnam is a contracting party,
- b) Causing harm to national sovereignty and security;
- c) Relating to the prosecution of a person for penal liability for an offense for which he or she has been convicted, declared not guilty or is granted a special amnesty in Vietnam;
- d) Relating to an offense for which the statute of limitations for criminal liability examination has expired according to the provisions of the Vietnamese Criminal Code;
- e) Relating to an act that violates the law but does not constitute a crime according to the provisions of the Vietnamese Criminal Code.<sup>81</sup>

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<sup>80</sup> The 2015 Criminal Procedure Code, Article 439

<sup>81</sup> The 2007 Law on MLA, Article 21

In the six years from 2014-2019, Vietnam received 151 MLA requests. Of these 24 related to money laundering and 127 related to predicate offences,

In general, the low number of requests connected to money laundering compared to the significantly higher numbers of requests linked to the predicate crime indicates a lack of proactive money laundering investigation and prosecution.

### ***6.5.3. International cooperation in freezing, confiscation, extradition***

According to Article 507 of the Criminal Procedure Code 2015, competent Vietnamese authorities must work with foreign competent authorities to locate, seize, detain, freeze, confiscate, and handle assets obtained through criminal activity in order to support criminal investigations, prosecutions, decisions, and execution of judgments - so long as these actions adhere to Vietnamese law. In order to restrain assets, freeze accounts, seize or forfeit unlawful assets, collaboration with foreign authorities is allowed, according to Article 91 of the 2018 Law on Anti-Corruption. The tracking, freezing, seizure, and confiscation of criminal proceeds and their related tools of the trade are permitted by the MLA Treaties between Vietnam and other nations as well as the ASEAN MLA Treaty. The legal basis for confiscation in Vietnam is a criminal verdict. Vietnam is unable to carry out forfeiture orders based on non-convictions, but it may be able to help in other ways.

The MPS has developed policies on how extradition requests should be prioritized and carried out. If the extradited individual meets one or more of the following criteria, their case will be prioritized: (1) the extradited individual is from a country with which Vietnam has an extradition treaty; (2) the extradited individual is likely to flee to a third country; (3) the request is related to crimes of terrorism, money laundering, terrorist financing, drugs, human trafficking, corruption, property appropriation, and fraud; or (4) the request is related to China, Lao PDR, Cambodian, or These countries were selected as top priorities because of their proximity to Vietnam or because they host sizable communities of Vietnamese immigrants. As a result, inquiries can be dealt with more rapidly.

In practice, the work of negotiating and signing bilateral international treaties on crime prevention and control, MLA, extradition, mutual information exchange and protection of confidential information have some obstacles. When there is a document drafted by the foreign side, the Vietnamese competent agencies must conduct research and compare with relevant Vietnamese laws, consult ministries, branches, relevant units, develop a draft of the Vietnamese side from which to propose the competent authority to decide to allow negotiation and signing. Usually, due to the conflict of laws, the draft prepared by the foreign party is not

always fully consistent with Vietnamese law or vice versa, causing delays, even sometime there is no agreement among parties. Some information is exchanged of poor quality, or the time to conduct verification is long, in some cases, when receiving information, criminals have left heavy consequences, no longer able to overcome.

The causes of these limitations and shortcomings are:

Firstly, the domestic legal basis governing international cooperation in the AML of the Vietnamese police force is still lacking and inconsistent. Currently, in addition to decisions on functions, tasks, powers and organizational structure of units, there is no highly effective legal document on regulations international cooperation in the fight against money laundering of the police force, therefore it has not yet created an effective coordination mechanism between law enforcement agencies and foreign counterparts

Secondly, the mechanisms and forms of international cooperation are still monotonous, mainly through the INTERPOL, ASEANAPOL channel and in a passive way, that is, only when the counterparts requests it to cooperate to solve it, there is no the initiative to exchange information with foreign countries or actively collect information, especially in countries where Vietnam has not signed international treaties or agreements.

Thirdly, at present, most of the staff of the law enforcement agencies working in international cooperation in the fight against crimes also have many other tasks concurrently, while many officers have not received intensive training in AML. Furthermore, the limitation in foreign language ability and the ability to conduct advisory tasks or understanding international regulations also contribute to the difficulty in international cooperation.

Fourthly, at present, science and technology is developing rapidly and is widely applied in various fields, especially electronic payment and inter-bank services. However, the facilities for international cooperation in prevention and control of crime in Vietnam are still limited and outdated, and there is no separate budget for external activities and international

Overall, it can be affirmed that the foreign affairs and international cooperation of the police force has been gradually enhanced, expanded, proactive, continuing to affirm its voice and position in the law enforcement community. laws of countries in the region and in the world, contributing to improving the effectiveness of prevention and combat against crimes with foreign and transnational elements in general and money-laundering crimes in particular.

## **6.6. Summary of the Chapter**

The major financial institutions in Vietnam, including banks, insurance, and securities firms, have a relatively sound understanding of money laundering and terrorist financing risks and demonstrate adequate implementation, but this varies widely across sectors.

Regarding investigation and conviction of money laundering offence, in spite of wide range of power provided, the law enforcement agencies, especially police force faces a number of challenges. Although there are guidance on the different investigation method for each kind of predicate offence, the criminal investigations in Vietnam are primarily concerned with proving guilt rather than following the money. Furthermore instead of focusing on money laundering investigation, MPS investigates predicate offenses. The lack of a specialized teams investigating money laundering cases, the difficulty in accessing customer transactions and information plus the lack of a suitable administrative framework are believed to connected to these shortcomings. Moreover, the issue of international cooperation also rises some concerns such as the differences in the legal regulation, the poor or unclear quality of information exchange, or even the lack of officer's professional knowledge, in some case, cause delays and take a lot of time to response.

The next chapter presents the conclusion and give some recommendations to enhance the role of the police force in the combat against money laundering and terrorist financing.

## **CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS**

### **7.1. Conclusion**

By comparing the Vietnamese AML regulation to global norms, this thesis looks at how money laundering is handled in Vietnam. The study analyzed the current system, including its rules and regulations, financial institutions, and competent bodies, and their respective roles and responsibilities. Vietnam has joined the international community in its fight against money laundering and terrorist financing by criminalizing money laundering and the financing of terrorism. However, there are still some obstacles that prevent Vietnam from fully meeting its international obligations in this area of control and combat.

The coordination mechanism between police agencies, Customs, the AMLD of the SBV, and other related agencies is still loose and insufficient, and in some cases fails to keep up with the true nature and actuality of the criminal situation. These issues are also the prerequisites for the growth of crime in general and money laundering in particular. In some areas, law enforcement agencies involved in the combat against crime have not received basic and specialized training and are hampered by a lack of adequate facilities and equipment.

The thesis has comprehensively studied the theory and practice of money laundering crime in Vietnam, the role of the police force in the fight against money laundering in Vietnam. It has also assessed the current situation of the investigation of money laundering crimes in Vietnam, pointing out both the achieved results and shortcomings. The results of the thesis contribute to enriching the theoretical and practical aspects of money laundering in Vietnam, contribute to perfecting the theory of money laundering, prevention of money laundering, the work of investigation and handling by the authorities, the development of legal regulations in the prevention and combating money laundering and terrorist financing, constructing secured and safety regulations in the financial and banking sector in particular.

### **7.2. Suggestions to improve**

- Improving legal system and rising obligation awareness
- Create a specialized investigative team
- Staff training program
- Enhancing national cooperation and quality of information exchange
- Enhancing international cooperation in combating money laundering
- Improving economic and social policy./.