



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

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requirement for the degree of Doctor of Philosophy**

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Declaration

I Thai Ha Van, hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university.

Date:

Signature:

Acknowledgement

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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. The Literature Review

Money laundering is a complex problem. International experts have shown a growing interest in investigating global AML standards, their implementation and efficacy, as well as the roles of key parties. This thesis includes references to previous work in these areas. This section summarizes the significant studies on each of these categories, including the international AML framework and its efficacy, the scale of money laundering, the role of actors and their relative significance in controlling money laundering, the money laundering situation in Vietnam, and the role of the police force.

1.3.1. Research on anti-money laundering framework and its effectiveness

There is a growing body of literature on the AML frameworks and regulations.¹ Scholars have taken an interest in the efficiency of the AML regime as well as its impact on illegal activities such as money laundering, financial terrorism, and the prevention and detection of crime. According to He, money laundering can be accomplished in a number of different ways, some of which are uncomplicated, such as the transportation of cash, while others are more complex, such as the use of financial institutions, real estate, or gaming. It can also be accomplished through operations involving both legal and illegal activities, including

¹ Tiwari, M., Gepp, A., & Kumar, K. (2020). A review of money laundering literature: the state of research in key areas. *Pacific Accounting Review*, p.273

international trade, covert financing, and shell corporations.² Both the domestic financial administration and supervision system and the financial administration and supervision systems of other jurisdictions may contain vulnerabilities that money laundering schemes can exploit.³ Sometimes, those attempting to launder money will exploit lawyers or accountants.⁴ Moreover, because digital currency and the internet are so pervasive, criminals prefer to launder money through online transactions as opposed to in-person transactions.⁵ Money laundering is unquestionably a global phenomenon due to the fact that it operates within diverse financial and legal systems across the globe. The justice system is crucial in the fight against money laundering.⁶ To make the process of combating money laundering more successful and effective, it is essential to uncover information regarding money laundering.

In the 2015 report, Huang provided a thorough assessment of the AML regulations that are currently in force in the United States (the US), addressing both their prevalence and the justification for their adoption.⁷ According to this, the 1970 Bank Secrecy Act, the 2001 Patriot Act, the Money Laundering Control Act, and the Office of Foreign Assets Control are the primary US laws governing AML.⁸ The research concluded that adhering to US AML regulations will result in improved money laundering detection and prevention. Despite the conclusion of the study that compliance with US AML regulations will improve the detection and prevention of money laundering, the study also found that fear of noncompliance and lawbreaking has negative social and economic consequences.

Research has also been conducted in other legal systems. For example, in order to combat money laundering and the financing of terrorism, Gil Soriano compared the new Spanish Act of Financial Ownership file to the models used in France and Germany.⁹ According to the study's findings, financial ownership data and identifiers could be an

² He, P. (2010), "A typological study on money laundering", *Journal of Money Laundering Control*, Vol. 13 No. 1, pp. 15-32.

³ Kemal, M. U. (2014). Anti-money laundering regulations and its effectiveness. *Journal of Money Laundering Control*, 17(4), p.416-427.

⁴ He, P. (2006). Lawyers, notaries, accountants and money laundering. *Journal of Money Laundering Control*, 9(1), 62-70.

⁵ Albrecht, C., Duffin, K. M., Hawkins, S., & Morales Rocha, V. M. (2019). The use of cryptocurrencies in the money laundering process. *Journal of Money Laundering Control*, 22(2), 210-216.

⁶ Gilmore, W. C. (1992). International efforts to combat money laundering. *Commonwealth Law Bulletin*, 18(3), 1129-1142.

⁷ Huang, J. Y. (2015). Effectiveness of US anti-money laundering regulations and HSBC case study. *Journal of Money Laundering Control*, 18(4), 525-532.

⁸ Ibid

⁹ Gil Soriano, A. (2016). Spain: financial ownership file and money laundering prevention. *Journal of Money Laundering Control*, 19(3), 238-248.

effective tool in the battle against money laundering by making it easier to track down and identify the assets that are used to fund illegal activities. However, as they impose more reporting requirements on financial institutions, questions have been raised about the necessity and proportionality of the financial ownership files.

Nyitrai investigated the link between organized crime and money laundering. He argued that the structure of organized crime is similar to the framework of any other organization, with the exception of its unlawful activity.¹⁰ To prosper, organized crime must engage in money laundering activities such as corruption acts, which are common in many parts of the world such as Europe, Hungary, and China.¹¹ The perpetration of organized crime poses a far greater threat to society than individual criminality.¹² The existence of accomplices and their knowledge may boost the offender's determination if there are more offenders. Nyitrai concluded that combating money laundering is closely linked to combating organized crime,¹³ which is only achievable with organized law enforcement resorts.¹⁴

Aurasu and Aspalella compared Malaysian AML rules to those of the United Kingdom (the UK), emphasizing the forfeiture provisions of both. The goal of this research is to investigate the effectiveness of the current forfeiture statute in both jurisdictions against money laundering. The findings show that Malaysia and the UK have both taken initiatives to combat money laundering. In addition, according to this research, both the types of offences covered and the burden of proof in Malaysia appear to be lower than in the UK.¹⁵

Pellegrina and Masciandaro point out in another study that different countries' laws penalize money laundering in different ways.¹⁶ These disparities in national legislation can be found all around the world. They propose that one method to help make AML legislation

¹⁰ Nyitrai, E. (2015). Money laundering and organised crime. *Journal of Eastern-European Criminal Law*, 2015(2), 94-100.

¹¹ Gál, I.L (2014). Economic Bribery as a Part of Economic Criminal Law and a Concomitant of Political Corruption. *Journal of Eastern European Criminal Law*, (01), 23-32

¹² Toth, D., Gal, L., & Kohalmi, L. (2015). Organized crime in Hungary. *Journal of Eastern-European Criminal Law*, 2015(1), 22-27, p.23

¹³ Nyitrai, E. (2015). Money laundering and organised crime. *Journal of Eastern-European Criminal Law*, 2015(2), 94-100, p.98

¹⁴ Toth, D., Gal, L., & Kohalmi, L. (2015). Organized crime in Hungary. *Journal of Eastern-European Criminal Law*, 2015(1), 22-27, p.27

¹⁵ Aurasu, A., & Abdul Rahman, A. (2018). Forfeiture of criminal proceeds under anti-money laundering laws: A comparative analysis between Malaysia and United Kingdom (UK). *Journal of Money Laundering Control*, 21(1), 104-111..

¹⁶ Pellegrina, L, D. & Masciandaro, D. (2009). The risk-based approach in the new European anti-money laundering legislation: a law and economics view. *Review of law & economics*, 5(2), 931-952.

more effective is to reduce the likelihood of regulatory variations between countries being exploited.

Ferwerda investigated whether or not AML regulations affect on crime rates. In order to provide an explanation for criminal conduct within the rational choice framework, he employed an extension of the "economics of crime" basic model that included money laundering. His theoretical paradigm shows how criminals are deterred from engaging in both money laundering and other illegal activities as a result of anti-money laundering legislation. His data show that countries with stricter anti-money-laundering laws, especially those that place an emphasis on international cooperation, have lower crime rates.¹⁷

The authors of "Money Laundering Risk from Emerging Markets: The Case of Vietnam," Ba and Huynh, estimate the risk contribution of each customer in the Vietnamese banking system, primarily using data from a survey conducted in Vietnam's South East region, with a focus on Ho Chi Minh City, and employing frameworks developed by Christopher Price in 2008 and the HSBC Money Laundering Risk Procedures in 2016. The Money Laundering Risk Score for each commercial bank customer in Vietnam is calculated using survey data and Christopher Price's improved measurement approach.¹⁸

Tran and Rose look at how money laundering offences can be pursued in Vietnam in another study. The study examines the risk variables for money laundering in Vietnam and contrasts the high-risk level of money laundering with the low number of money laundering prosecutions. This demonstrates that there are issues with the way AML prosecutions are handled. They demonstrate that the law is deficient in dealing with crimes committed overseas or by businesses, as well as a lack of legal safeguards against unjust enrichment.¹⁹

In light of Vietnam's obligations to adhere to the Financial Action Task Force (FATF) standards on money laundering and terrorist financing as well as other pertinent international conventions that Vietnam has ratified, Tran and De Koker analyze Vietnamese laws and practices pertaining to the confiscation of criminal proceeds.²⁰ Huyen and Giao carry out additional research into asset confiscation. They look at the legal framework and results of asset recovery during the last few years in Vietnam. This study demonstrates the

¹⁷ Ferwerda, J. (2009). The economics of crime and money laundering: does anti-money laundering policy reduce crime?. *Review of Law & Economics*, 5(2), 903-929.

¹⁸ Ba, H., & Huynh, T. (2018). Money laundering risk from emerging markets: the case of Vietnam. *Journal of Money Laundering Control*.

¹⁹ Tran, T. T. H., & Rose, G. (2022). The legal framework for prosecution of money laundering offences in Vietnam. *AUSTRALIAN JOURNAL OF ASIAN LAW*, 22(1), 35-51.

²⁰ Tran, T. T. H., & De Koker, L. (2021). Confiscation of proceeds of crime in Vietnam: improving the legal framework. *Journal of Money Laundering Control*, 24(2), 215-233.

shortcomings of Vietnam's legal processes and procedures for the recovery of plundered property. It does so by using official government figures and comparing them to the standards of the United Nations Convention against Corruption (UNCAC).²¹

1.3.2. Research on magnitude of money laundering

Numerous international and national organizations have attempted to quantify organized crime and money laundering in relation to their respective areas of expertise, and their findings are frequently made public. Money laundering can take place through physical transfers or online transfers. According to research, money laundering is the world's third largest industry, just after the oil trade and foreign exchange.²² Furthermore, the Managing Director of the International Monetary Fund (IMF) estimates that money laundering activities contribute between 2 and 5% of global GDP.²³

Walker, an Australian economist and consultant for AUSTRAC (Australian Transaction Reports and Analysis Centre), is one of the most influential researchers in this discipline. This researcher made the first significant endeavor to quantify the money laundering problem. His research indicates an annual total of \$2.85 billion is laundered, with a primary focus on European and North American markets.²⁴

However, some people think Walker overstates the amount of money that was laundered. As noted by Reuter and Greenfield, "knowing the value of drug exports from Mexico to the US is USD 1-3 billion rather than USD 10-20 billion may be very important" when deciding how to deploy resources for money laundering investigations or even implementing money laundering laws in Mexico.²⁵ These disparities are partly responsible for the inability to quantify the magnitude of money laundering. Nazar and his colleagues conducted a quantitative estimate of the scope of money laundering using data collected from 77 nations over a 15-year period between 2005 and 2019. They discovered that annual money laundering amounts to 1.23 per cent of global gross domestic product (GDP) and shows no

²¹ 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.

²² Leong, A. V. M. (2016). *The disruption of international organised crime: an analysis of legal and non-legal strategies*. Routledge. p.41

²³ 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, p.2

²⁴ Walker, J. (1999). How big is global money laundering?. *Journal of Money Laundering Control*, 3(1), 25-37.

²⁵ Reuter, P., & Greenfield, V. (2001). Measuring global drug markets. *World economics*, 2(4), 159-173, p.171

indications of abating.²⁶

It is believed that annually between \$5 billion and \$15 billion is laundered in Canada, and between \$500 billion and \$1 trillion is laundered globally.²⁷ Due to the anonymous nature of money laundering, its true scale is unknown.²⁸

1.3.3. Research on the role of actors

Numerous previous studies have examined the roles of many individuals involved in the money laundering process, including those who launder money for themselves, those who launder money on behalf of others, and those who attempt to prevent money laundering. The research conducted by He, for instance, investigated the role of professionals such as lawyers, notaries, and accountants in the battle against money laundering as a method of crime prevention.²⁹

Historically, criminals have utilized financial institutions to facilitate the process of money laundering. Since the 1980s, when the fight against money laundering began, the most prominent global documents on the subject of its prevention have all reached the conclusion that financial institutions should play a significant role in the prevention of money laundering.³⁰ These agreements emphasize how important it is for financial institutions to fulfill their responsibilities, which include the identification of customers, the maintenance of records, and the reporting of suspicious transactions.³¹ Since the late 1990s, there has been a steady increase in the number of instances in which professionals such as lawyers, notaries, accountants, and others have been implicated in schemes involving the laundering of money.³² It is critical that the importance of these professions' contributions to AML be recognized. They should assume AML duties anytime they engage in financial or corporate law operations. Furthermore, it is recommended that, in order to protect the sensitive

²⁶ Nazar, S., Raheman, A., & Anwar ul Haq, M. (2023). The magnitude and consequences of money laundering. *Journal of Money Laundering Control*.

²⁷ Brennan, S., & Vaillancourt, R. (2011). *Money laundering in Canada, 2009*. Ottawa: Statistics Canada (Juristat Bulletin, Statistics Canada catalogue No. 85-005-X).

²⁸ Simser, J. (2012). Money laundering: emerging threats and trends. *Journal of Money Laundering Control*, 16(1), 41-54.

²⁹ He, P. (2006). Lawyers, notaries, accountants and money laundering. *Journal of Money Laundering Control*, 9(1), 62-70.

³⁰ Cox, D. (2014). *Handbook of anti-money laundering*. John Wiley & Sons.

³¹ Chat, L, N. (2018), "Preventing the use of financial institutions for money laundering and the implications for financial privacy", *Journal of Money Laundering Control*, Vol. 21 No. 1, pp. 47-58

³² Compin, F. (2008). The role of accounting in money laundering and money dirtying. *Critical Perspectives on Accounting*, 19(5), 591-602.

relationship that exists between these professions and their clients, they disclose any suspicions of a money laundering crime to self-regulatory organizations rather than law enforcement authorities.

In their research, Jozan and Kohalmi pay close attention to the role that lawyers play in the AML system.³³ They assumed that in order to balance the interests of the client, who may or may not be the culprit, and to comply with the legal requirements for the role of lawyers in combating AML, there might be a certain amount of conflict in the lawyer's position. The study came to the conclusion that the principle of "equality of arms" would be significantly endangered if Hungarian law required lawyers to perform their reporting obligations, which would limit the accused's alternatives for defense. From a legal standpoint, it is also troublesome if the lawyer's position and role are insecure since investigators or prosecutors may remove lawyers from their positions if they find the lawyer to be inconvenient, even when the lawyer is performing their tasks to a high standard.

Norton examined legal changes in the UK from the standpoint of how the relationship between the auditor and the state is evolving.³⁴ Although auditors are required by law to report suspicious transactions to an internet database, there is no guidance on how to do so. Auditors were discovered to establish information flows that are later reassembled, and their role in preparing such reports is often modest. The implications suggest that, in order to accurately define terms and reduce the volume of submissions clogging the system, professional organisations should provide their members with clear, consistent, and explicit instructions.

In a separate investigation, Bell provided investigators with a checklist and directory of various types of money launderers. The type of money launderer involved in any particular case is determined by a number of factors, including the size of the criminal enterprise, the type of crime committed, the degree of organization within the criminal organization, and the criminal's own educational, professional, and business background.³⁵ This protocol is beneficial for streamlining and optimizing the investigation process.

³³ Jozan, F., & Kohalmi, L. (2016). Lawyers and money laundering. *Journal of Eastern-European Criminal Law*, 2016(2), 130-136.

³⁴ Norton, S. D. (2018). Suspicion of money laundering reporting obligations: auditor compliance, or sceptical failure to engage?. *Critical Perspectives on Accounting*, 50, 56-66.

³⁵ Bell, R. E. (2002). An introductory who's who for money laundering investigators. *Journal of Money Laundering Control*, 5(4), 287-295.

1.3.4. Research on money laundering and the role of the police force in Vietnam

Money laundering, AML regulations, and the adoption of global AML standards have all been the subject of a number of studies in the Vietnam context. Each of these studies has its own focus, and therefore there are limitations. For example:

Despite its concentration on the subject of Vietnam's execution of UN drug control treaties, Hoa's PhD thesis is one of the early studies that provide some insights into Vietnamese law with regard to AML requirements and suggests remedies for these flaws.³⁶ Another notable study on AML laws in Vietnam is Chat's thesis, titled "International Anti-Money Laundering Standards and their Implementation by Vietnam."³⁷ This study, however, primarily focuses on legal regulation and the implementation of AML standards into Vietnam legal framework.

When calculating the risk contribution that each individual customer poses to the banking system in Vietnam, Ba and Huynh utilized the methodology that had been created by Christopher Price in 2008. According to the findings of the study, Vietnam's banking system and laws have not been fully developed and ensured; the quality of education and social life in the country is still startlingly bad; and as a consequence, the potential for money laundering is still high, with a trend toward increasing complexity.³⁸

In another study, Huu examines how foreign direct investment (FDI) flows have affected trade-based money laundering by evaluating data on 66 Vietnam's trading partners from 2000 to 2019. The study also looks into whether the relationship between FDI and trade mis-invoicing has been tempered by institutional quality. The FDI-fueled capital flight theory is supported by a positive association between FDI flows and trade mis-invoicing. The study suggests several policy consequences. While foreign direct investment (FDI) is critical for growing economies, the Vietnamese government must be attentive in monitoring incoming FDI from low- and middle-income countries due to the potential that it would be used to launder money or finance criminal activity. Because FDI has a bigger influence on export under-invoicing than import over-invoicing, exporting firms that engage in FDI should be subject to stricter anti-money laundering regulations. Finally, the Vietnamese government

³⁶ Hoa, P. T. N. (2008). Legislative implementation by Vietnam of its obligations under the United Nations drug control conventions. *PhD thesis, University of Wollongong*.

³⁷ Chat, L, N. (2014). International anti-money laundering standards and their implementation by Vietnam. *PhD thesis, University of Wollongong*.

³⁸ Ba, H., & Huynh, T. (2018). Money laundering risk from emerging markets: the case of Vietnam. *Journal of Money Laundering Control*, 21(3), 385-401.

should take steps to strengthen its institutions.³⁹

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.⁴⁰ 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.

³⁹ Huu Toan, B. (2022). Effects of foreign direct investment on trade-based money laundering: The case of Vietnam. *Cogent Social Sciences*, 8(1), 2132672.

⁴⁰ Bryman, A. (2012). *Social research methods*. Oxford, England: Oxford University Press.

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.⁴¹ 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.

But there are some potential hazards as well. Data obtained for one reason may need to be analyzed for another in this context. The fact that secondary data wasn't gathered with the intention of answering the researcher's precise questions is a big drawback. This means that the data may lack the necessary detail, which limits its utility.⁴² It is important to review a secondary data collection thoroughly to ensure that it has all of the essential data, that the data are specified and coded in a way that allows for the desired analysis, and that the researcher will be granted access to the data.⁴³

There are certain difficulties and restrictions in gathering supporting evidence for this thesis. Due to the sensitive nature of money laundering crimes, it is notoriously difficult to gain access to the complete details of criminal proceedings in Vietnam. Moreover, the author has had to translate a number of excerpts himself, using some earlier translations from different sources, because there has been no official English version of the Vietnamese laws mentioned in this thesis.

In terms of addressing the crime of money laundering, the thesis also made comparisons to Hungarian law. One of the nations with the earliest legal and judicial cooperation ties to Vietnam is Hungary. The Treaty on Mutual Legal Assistance in Criminal Matters was signed by the two nations in 2016. In order to successfully combat criminal activities, particularly transnational organized crime, the Treaty serves as the foundation for law enforcement agencies of the two nations to increase their mutual assistance in the investigation, prosecution, and trial of criminal crimes. Additionally, Hungary has a wealth of experience dealing with the harmonization of domestic legal requirements with EU laws as well as with international agreements to which Hungary is a party in all areas of law, from

⁴¹ Church, R. M. (2002). The effective use of secondary data. *Learning and motivation*, 33(1), 32-45.

⁴² Cardno, C. (2018). Policy Document Analysis: A Practical Educational Leadership Tool and a Qualitative Research Method. *Educational Administration: Theory & Practice*, 24(4), 623-640.

⁴³ Boslaugh, S. (2007). *Secondary data sources for public health: A practical guide*. Cambridge University Press.

civil to criminal.⁴⁴ Therefore, it is very helpful to grasp Hungarian money laundering law.

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 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

⁴⁴<https://vov.vn/chinh-tri/ky-ket-hop-tac-giua-hai-bo-tu-phap-viet-nam-hungary-giai-doan-2022-2023-post953076.vov>. Accessed 01 March 2023

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.

1.6. Summary of the Chapter

Money laundering is a complex issue. An increasing number of international experts are investigating global AML standards, their implementation and effectiveness, as well as the duties of key parties. This chapter provides a general picture of the topic of money laundering. It then examines some of the literature on money laundering offence in different aspects, such as the works on AML frameworks and their effective, money laundering magnitude, and combating against it. This chapter also highlights how the study was designed and the means by which data were collected and analyzed.

Criminals and terrorists can use the money-laundering process to conceal the origin of the funds and spend the money as they see fit. Authorities have been working to increase the difficulty of the money laundering process. Policies must be created to curb this criminal activity. Money laundering is a global problem that can only be solved by a global response. In the next chapter, we look at the measures taken by the international community to combat this crime.

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.⁴⁵ Although "money laundering" is a relatively recent term, some authors contend that its practice is not.⁴⁶ Researchers, national and international organizations, and law enforcement agencies each have their own definitions of money laundering.⁴⁷ The origin of the term "money laundering" has not been agreed upon globally. According to some researchers, the term first appeared in the media during the Watergate scandal,⁴⁸ while others claim it was first used by American police in the 1920s in reference to Al Capone and other Chicago gangsters.⁴⁹

According to the Australian Institute of Criminology, money laundering is the practice of passing the proceeds of crime through a series of transactions to make it appear as if the money came from a legal and legitimate source when in reality it is the proceeds of crime.⁵⁰ Simser defined money laundering as a tactic used by criminals to conceal the true source of unlawful financial gain in order to obtain their "cleansed" assets without interference from authorities or competitors in his research on emerging trends and threats in Canada.⁵¹

In 1970, the Bank Secrecy Act, also known as the Currency and Foreign Transactions Reporting Act, which instituted recordkeeping and reporting requirements for individuals, banks, and other financial institutions, introduced the term "money laundering" in an effort to prevent criminals from using financial institutions to conceal or "wash" their illicit assets in the US.⁵² However, money laundering was not defined as a criminal act until 1986, when a

⁴⁵ 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

⁴⁶ Naylor, R. T. (2004). *Wages of crime: Black markets, illegal finance, and the underworld economy*. Cornell University Press.

⁴⁷ 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.

⁴⁸ Lilley, P. (2003). *Dirty dealing: the untold truth about global money laundering, international crime and terrorism*. Kogan Page Publishers, p.5.

⁴⁹ Schneider, F., & Windischbauer, U. (2008). Money laundering: some facts. *European Journal of Law and Economics*, 26, 387-404.

⁵⁰ Graycar, A., & Grabosky, P. (Eds.). (1996). *Money Laundering in the 21st Century: Risks and Countermeasures* (pp. 3-23). Canberra: Australian Institute of Criminology.

⁵¹ Simser, J. (2012). Money laundering: emerging threats and trends. *Journal of Money Laundering Control*, 16(1), 41-54.

⁵² Council, F. F. I. E. (2005). *Bank secrecy act anti-money laundering examination manual*. Federal Financial Institutions Examination Council.

law was enacted to regulate the money laundering process..⁵³ In other research, Buchanan defined money laundering as “a financial crime that often involves a series of transactions and numerous financial institutions across many financial jurisdictions.”⁵⁴

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.”⁵⁵

Following this, in March 1990, the European Committee Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime adopted a broader definition of money laundering which involved money earned through all kinds of organized criminal activities as well as drug trafficking. It defined money laundering as:

“i) The conversion or transfer of property, knowing that such property is proceeds derived from a serious crime, 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 the predicate offence to evade the legal consequences of his actions; and,

ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is proceeds derived from organized crime.”⁵⁶

⁵³ Gurule, J. (1995). The money laundering control act of 1986: creating new federal offense or merely affording federal prosecutors an alternative means of punishing specified unlawful activity. *American Criminal Law Review*, 32(3), 823-854.

⁵⁴ Buchanan, B. (2004). Money laundering—a global obstacle. *Research in International Business and Finance*, 18 (1), 115–127, p.115.

⁵⁵ UN. (1988). The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 3b

⁵⁶ European Committee. (1990). Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, Article 6

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 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.”⁵⁷

In 2000, the UN Convention against Transnational Organized Crime expanded the definition of money laundering and started to include the proceeds of all serious crimes, such as participation in organized criminal groups and corruption. It states money laundering as

“(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;”⁵⁸

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.”⁵⁹ 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

⁵⁷ 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

⁵⁸ UN. (2000). The UN Convention against Transnational Organized Crime and the Protocols Thereto, Article 6 (1)

⁵⁹ 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

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.⁶⁰

Criminals engage in money laundering to ensure secure ownership of the proceeds, which serve as their source of income, and to conceal the proceeds from suspicion, investigation, and seizure. In order to achieve these objectives, a highly sophisticated process for money laundering has been developed, which is typically described as having three main sequential stages: placement, layering, and integration.

Some money laundering processes may involve additional or fewer steps than the three listed above.⁶¹ These stages can be distinct and distinct, but more often than not, they occur concurrently or overlap.⁶² Money laundering operations may employ a variety of mechanisms and typologies, including currency, gold, precious metals, and precious stones contraband, banking sector, alternative remittance system, stock market, and trade-based money laundering.⁶³ Clearly, "hiding" filthy money is different from "laundering" it; a criminal cannot use his dirty money until it has been laundered.⁶⁴

2.2. The Process of Money Laundering

The typical criminal faces a number of difficulties after amassing large profits from illegal activities, including the need to convert those funds into an anonymous and reasonably portable form of cash, currency, or other monetary instruments, the need to convert the bulk cash so as to leave no evidentiary trails back to him or his criminal activities, and the need to ensure that the criminals he uses to launder his cash don't rip him off or turn him in.⁶⁵

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.⁶⁶ Each stage of the process of money laundering is described in detail below.

⁶⁰ 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.

⁶¹ Levi, M., & Van Duyne, P. C. (2005). *Drugs and money: Managing the drug trade and crime money in Europe*. Routledge.

⁶² Hopton, D. (2009). *Money laundering: a concise guide for all business*. Gower Publishing, Ltd..

⁶³ He, P. (2010). A typological study on money laundering. *Journal of Money Laundering Control*.

⁶⁴ Richards, J. R. (1998). *Transnational criminal organizations, cybercrime, and money laundering: a handbook for law enforcement officers, auditors, and financial investigators*. CRC press.

⁶⁵ Lilley, P. (2003). *Dirty dealing: the untold truth about global money laundering, international crime and terrorism*. Kogan Page Publishers.

⁶⁶ Buchanan, B. (2004). Money laundering - a global obstacle. *Research in International Business and Finance*, 18(1), 115-127.

2.2.1. Placement

The initial phase of money laundering is known as placement. During placement, illegal funds are converted into a form of currency that is more readily transportable and less suspicious before being introduced into the regular financial system. The proceeds of the crime are divided into smaller deposits and distributed among several institutions.⁶⁷ It is possible to mix illicit funds with legal deposits and pass them off as a company's profits.⁶⁸

Bauer and Ullmann state that this is done during the placement phase to conceal the unlawful origins of the funds. Money from the drug trade, for example, typically consists of cumbersome, weighty bills with small denominations. Businesses that deal extensively in cash, such as restaurants, hotels, vending machine companies, casinos, and car washes, are often used as fronts to convert small bills into larger amounts, cashier's checks, or other negotiable monetary instruments.⁶⁹

The criminal economy consists primarily of cash.⁷⁰ It is not only simple to conceal income from organized crime out of tax authorities, but it also helps to hide the criminal origin of the funds. Another advantage of cash transactions is the nature of anonymity.⁷¹ However, it is argued that most illegal activity generates profits in the form of cash, which is bulky, difficult to conceal, and, when in a large of quantities, very noticeable and visible to the average bank officers or casino employee, is the most difficult and vulnerable step.⁷² The placement process requires finding a solution to the issue of how to convert illegally generated cash into a more manageable form for introduction into the financial system. At this stage, the primary objective of the money launderer is to remove or relocate the cash as far as possible from its source in order to avoid suspicion and draw the attention of law enforcement officials. There are an infinite number of ways that large amounts of cash can be introduced into the financial system, from directly putting the cash into an account to utilizing front

⁶⁷ Savona, E. U., & De Feo, M. A. (1997). International money laundering trends and prevention/control policies. *Responding to Money Laundering: International Perspectives*, Harwood Academic, Amsterdam, 9.

⁶⁸ Richards, J. R. (1998). Transnational criminal organizations, cybercrime, and money laundering: a handbook for law enforcement officers, auditors, and financial investigators. CRC press.

⁶⁹ Bauer, P., & Ullmann, R. (2000). Understanding the wash cycle. *Economic Commentary*, (Sep).

⁷⁰ Riccardi, M., & Levi, M. (2018). Cash, crime and anti-money laundering. *The Palgrave handbook of criminal and terrorism financing law*, 135-163.

⁷¹ Canard, S., & Gouget, A. (2008). Anonymity in transferable e-cash. In *Applied Cryptography and Network Security: 6th International Conference, ACNS 2008, New York, NY, USA, June 3-6, 2008. Proceedings 6* (pp. 207-223). Springer Berlin Heidelberg.

⁷² Gilmour, N., & Ridley, N. (2015). Everyday vulnerabilities—money laundering through cash intensive businesses. *Journal of money laundering control*, 18(3), 293-303.

corporations like jewelry stores or check-cashing enterprises to changing the cash into more easily tradable forms like cashier's checks, money orders, or traveler's checks.⁷³

2.2.2. Layering

The second of three stages in the process of concealing the origin of dirty money is “layering”. The term "layering" refers to a process where multiple transactions are conducted that all appear to be legitimate financial activity but are actually part of a larger scam. In other words, layering is to the practice of moving money via many accounts in a banking or financial system so as to hide its original origin.⁷⁴ The vast majority of multilayer transactions involve wire transfers of funds through offshore tax havens. The layering process includes transforming cash into monetary instruments and subsequently converting actual items purchased with cash.⁷⁵ The money launderer here disguises the source of the criminal monies as legitimate. This is done to avoid the need for a trial and is mostly accomplished through digital techniques.

In addition, funding can be further convoluted by using shell corporations and other strategies, such as counter-balancing loans.⁷⁶ The sheer volume of wire transfers makes it extremely challenging to track down the original source of the funds. The success of a layering operation may depend on the number of different countries involved in the layering transactions. Physical and digital means, as well as organizational structures including entities from multiple countries, are all viable options for achieving this goal. According to Buchanan, the financial transactions involved in money laundering generally span numerous countries and legal systems. The minimum number of jurisdictions required for effective layering is two, with three being optimal.⁷⁷ Recently, the use of non-bank financial enterprises by money launderers such as bureau de change, check cashing services, insurers, brokers, and traders is on the rise. Daley pointed out that the bank secrecy rules of various offshore havens, technological improvements, and the globalization of the banking system all work against the

⁷³ Lilley, P. (2003). *Dirty dealing: the untold truth about global money laundering, international crime and terrorism*. Kogan Page Publishers.

⁷⁴ Banks, J. (2016). *Online gambling and crime: Causes, controls and controversies*. Routledge.

⁷⁵ Wright, A. (2013). *Organised crime*. Routledge.

⁷⁶ Calafos, M. W., & Dimitoglou, G. (2023). Cyber Laundering: Money Laundering from Fiat Money to Cryptocurrency. In *Principles and Practice of Blockchains* (pp. 271-300). Springer, Cham.

⁷⁷ Buchanan, B. (2004). Money laundering—a global obstacle. *Research in International Business and Finance*, 18(1), 115-127, p.117

efforts of law enforcement agencies to prevent money laundering.⁷⁸ The anonymity of the money launderers and the recipients makes it extremely challenging to follow down such activities.

2.2.3. Integration

In the last stage, named “Integration”, the criminal proceeds look to be lawful because the revenues from the crime have been deposited into the legitimate financial system.⁷⁹ There are various financial instruments that can be used to layer money and integrate it into the mainstream financial system, including letters of credit, bonds, stocks, bank notes, bills of lading, and guarantees.⁸⁰ The money launderer transfers the 'cleaned' funds to the client, invests in other assets, or continues to invest in illicit activities on the client's behalf. During the stage of integration, offshore banking performs a vital role. When integration fails and the entire account or accounts are seized, the amount of money laundered is frequently enormous as Bauer and Ullmann stated "The integration stage is the big payoff for the criminal."⁸¹ In reality, these three phases are not independent of one another; rather, they frequently overlap.

In conclusion, there is a wide spectrum in the complexity of money-laundering schemes, from very straightforward attempts to those involving global organizations and banks. One popular strategy is secretly send the stolen money abroad. Casino tokens, travelers checks, and international money orders are all alternatives to carrying cash overseas. Extremely complex money laundering transactions and activities involve banks, many front businesses, real estate deals, and non-bank financial entities like currency exchanges. Facilitators, such as lawyers, accountants, and financial planners, use their expertise to aid in the procedure. The sheer complexity and difficulty of tracing the origins of money that has been laundered internationally illustrate the scale of the money laundering problem.⁸²

The diagram 2.1 summarizes the three stages of the money laundering process

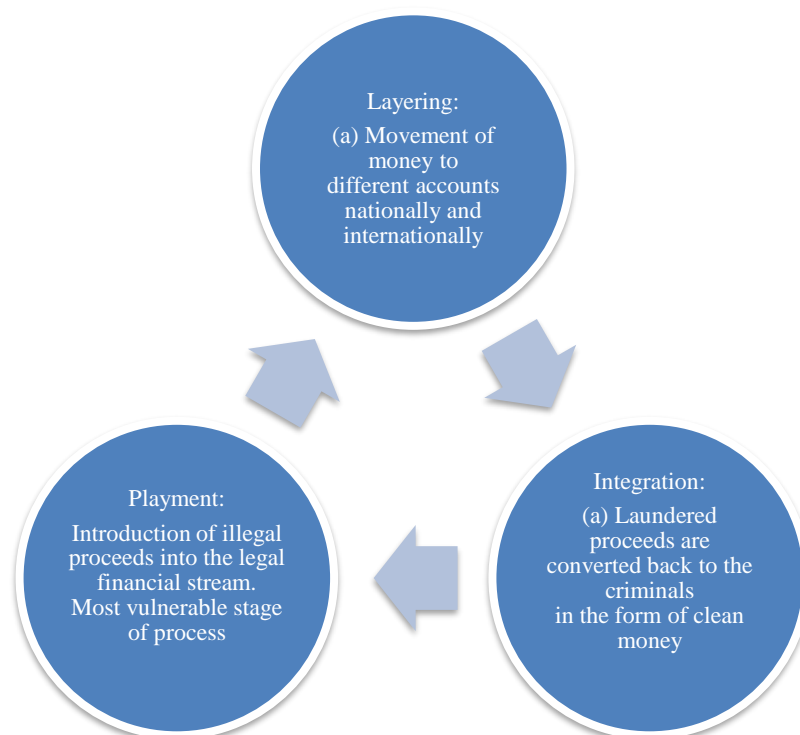
⁷⁸ Daley, M.J. (2000) Effectiveness of United States and International Efforts to Combat International Money Laundering. *Saint Louis- Warsaw Transatlantic Law Journal.*, pp.175-204, p178

⁷⁹ Unger, B. (2007). The scale and impacts of money laundering. In *The Scale and Impacts of Money Laundering*. Edward Elgar Publishing.

⁸⁰ Gee, S. (2014). *Fraud and Fraud Detection, + Website: A Data Analytics Approach*. John Wiley & Sons.

⁸¹ Bauer, P. W., & Ullmann, R. (2000). Understanding the wash cycle. *Economic Commentary*, (Sep).

⁸² Daley, M.J. (2000) Effectiveness of United States and International Efforts to Combat International Money Laundering. *Saint Louis- Warsaw Transatlantic Law Journal.*, pp.175-204, p179



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.⁸³ It's hard to calculate a price for the damage that money laundering does to a country, but it's undeniably detrimental.⁸⁴ Nations in the world aims to take actions to combat money laundering in order to protect their economies, businesses, and societies from the various dangers and consequences that money laundering may pose.⁸⁵ The section below discusses some of the major negative consequences of money laundering.

2.3.1. Economic effects

It is believed that money laundering hinders the government's ability to regulate economic policy and plans.⁸⁶ If a cartel of money launderers gains control of significant portions of the economy, they may attempt to increase their political control as a means of advancing their objectives and preventing the government from implementing stricter anti-

⁸³ Leong, A. V. M. (2016). The disruption of international organised crime: an analysis of legal and non-legal strategies. Routledge, p.41

⁸⁴ 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.

⁸⁵ McDowell, J., & Novis, G. (2001). The consequences of money laundering and financial crime. *Economic Perspectives*, 6(2), 6-10.

⁸⁶ Gál, I. L. (2006). Some Thoughts about Money Laundering. *Studia Iuridica Auctoritate Universitatis Pecs Publicata*, 139, 167-174, p.171

money laundering controls.⁸⁷ These objectives can be accomplished through dishonesty, bribery, or even meddling in national elections, which would undermine the fundamental foundation of the democratic procedure.⁸⁸ In addition, globalization's effects extend to international monetary systems and, depending on the extent of money laundering, may have a negative impact on global currencies and economies.⁸⁹

Money laundering has an effect on emerging markets in such regions as well. Emerging economies are more vulnerable to the consequences of money laundering than established and strong markets because established and strong markets attract more attention from financial regulatory agencies. For instance, cross-border trade may be a developing market if relations between the bordering countries have only recently developed peacefully and agreements of economic cooperation and trade development have been reached. Smugglers, drug lords, and even terrorists stand to gain by transferring their illicit finances, illegal commodities, and weapons across the border to fund their criminal operations there if the promotion of commerce surpasses the regulation of trade. Money laundering thus has an impact on both the macro and micro economies.⁹⁰

Money laundering also has a negative influence on a country's economy by harming the lawful private sector. Money launderers frequently utilize front companies to gather payments in order to hide their criminal gains. They can significantly lower the cost of their services or goods by raising a large sum of money, which will assist them in breaking into the market. When competitors are unable to match their prices, they gain a competitive advantage. Because smaller businesses often lack the capital to withstand the full brunt of price competition, severe competition can be catastrophic to current small and medium-sized private organizations.⁹¹

Money laundering may also cause banks and other financial institutions to fail. For example, if a large sum of money is transferred to that bank and then quickly transferred to another bank, the bank's financial assets may encounter a liquidity crisis. When consumers

⁸⁷ Unger, B., Siegel, M., Ferwerda, J., De Kruijf, W., Busuioic, M., Wokke, K., & Rawlings, G. (2006). The amounts and the effects of money laundering. *Report for the Ministry of Finance*, 16, p.94

⁸⁸ Tanzi, V. (1997). Macroeconomic implications of money laundering. *Responding to Money Laundering, International Perspectives*, 91-104.

⁸⁹ McDowell, J., & Novis, G. (2001). The consequences of money laundering and financial crime. *Economic Perspectives*, 6(2), 6-10.

⁹⁰ Qureshi, W. A. (2017). An overview of money laundering in Pakistan and worldwide: Causes, methods, and socioeconomic effects. *U. Bologna L. Rev.*, 2, 302.

⁹¹ McDowell, J., & Novis, G. (2001). The consequences of money laundering and financial crime. *Economic Perspectives*, 6(2), 6-10.

realize that a large sum of money has been removed from a bank by money launderers, they may contact the bank to withdraw their savings, perhaps causing the bank to fail.⁹²

Money laundering damages financial organizations' reputations as well as the national economy as a whole. This is particularly true when money laundering also serves as a cover for financial crimes like embezzlement.⁹³ Investor interest in the local market falls in this scenario as market confidence declines.

Furthermore, speculation regarding the market's poor reputation will reduce the chance of foreign direct investment.⁹⁴ As a result, the economy's local and global economic potential is decreased. As a result, economic development slows, making it more difficult to stimulate the economy. Money laundering can harm the reputation of a country's financial institutions, which can then have an impact on other economic variables and indicators, such as the interest rate, which can affect inflation and the value of the country's currency. This may cause financial instability and have an impact on the country's commodity prices.⁹⁵

2.3.2. Political and social impacts

Money laundering results in many expenses and issues for society and politics, even in extreme cases, money laundering can speed the demise of democratic institutions.⁹⁶ The reputation of a country abroad is impacted if it appears that its financial institutions may be involved in money laundering. A country's population may be exposed to or inspired to participate in unlawful activities like drug trafficking. Additionally, in order to conceal their illicit funds from law authorities, they must employ money laundering techniques. Money laundering thus gives criminals and terrorists a place to hide their illegally acquired funds and encourages others to join the criminal underworld since they may see any of its methods as a promoter and cover for their illegal activities. Crime will spread in society as a result of the fact that it has become more global in scope, having both local and global effects.⁹⁷

⁹² Alldridge, P. (2001). The moral limits of the crime of money laundering. *Buffalo Criminal Law Review*, 5(1), 279-319.

⁹³ Bartlett, B. L. (2002). The negative effects of money laundering on economic development. *Platypus Magazine*, (77), 18-23.

⁹⁴ Walker, J. R., & Stamp, J. (2007). The Extent of Money Laundering in and through Australia in 2004. John Walker.

⁹⁵ Qureshi, W. A. (2017). An Overview of Money Laundering in Pakistan and Worldwide: Causes, Methods, and Socioeconomic Effects. *University of Bologna Law Review*, 2(2), 300-345, p.317

⁹⁶ Gál, I. L. (2021). New Hungarian Legislation on Money Laundering from 2021. *Journal of Eastern European Criminal Law*, (01), 29-47.

⁹⁷ Qureshi, W. A. (2017). An overview of money laundering in Pakistan and worldwide: Causes, methods, and socioeconomic effects. *U. Bologna L. Rev.*, 2, 302, p318

Money laundering is believed to make it easier for criminals to commit new crimes, enable them to profit from their illegal activities, and jeopardize the stability of the financial system.⁹⁸ A country that is perceived as a secure haven for money laundering will attract criminals and increase corruption. A weak AML regime, ineffective penalties, particularly stringent seizure requirements, and a limited number of precursor offenses for money laundering all contribute to the rise in criminal activity.⁹⁹ When money laundering is prevalent in a country, corruption and other offenses become more prevalent. To guarantee the success of their money laundering efforts, criminals also increase bribes paid by the country's major institutions.¹⁰⁰ Financial institution personnel and management, attorneys and accountants, legislators, oversight agencies, police officers, prosecutors, and courts are among the institutions most susceptible to bribery. Countries that employ prompt and effective measures can significantly reduce the financial profits of criminal activities and deter criminal behavior.

In addition, as a consequence of technological advancement, the emergence of cybercrime, such as cyber laundering has become more prevalent and poses new challenges for all areas of criminal law. New offenses, such as those involving information systems or non-cash payment instruments, appear in substantive criminal law. Investigating or seizing electronic evidence can be problematic. Cybercrime also provides terrorists with a new source of funding.¹⁰¹

2.4. Financing of Terrorism

The UN has made various efforts, primarily through international conventions, to combat terrorism and the terrorism financing. The UN had in place the International Convention for the Suppression of the Terrorist Financing in 1999, which mentioned:

“1. Any person commits an offense within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willingly, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: a. An act which constitutes an

⁹⁸ Schott, P. A. (2006). Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism: and Supplement on Special Recommendation IX. The World Bank Group, p.2

⁹⁹ Mackrell, N. (1996). Economic consequences of money laundering. *Research and Public Policy Series*, (2), 29-35.

¹⁰⁰ Thai, H. V. (2021). Combating money laundering in Vietnam. *I-II. Konferenciakötet A pécsi jogász doktoranduszoknak szervezett konferencia* (pp. 177-187). Pécs: Pécsi Tudományegyetem Állam- és Jogtudományi Kar

¹⁰¹ Tóth, D., & Gáspár, Z. (2020). Jurisdictional Challenges of Cybercrime. *Journal of Eastern European Criminal Law*, Vol 2, 101-118.

offence within the scope of and as defined in one of the treaties listed in the annex; or
b. Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking any active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act.

2. ...

3. For an act to constitute an offense set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offense referred to in paragraph 1, subparagraph (a) or (b)".¹⁰²

For each nation, the definition of terrorism is a challenge.¹⁰³ Not every nation that ratified the treaty agrees on the precise definition of which actions constitute terrorism. Due to significant political, religious, and national repercussions that differ from nation to nation, the definition of terrorism is not generally accepted.¹⁰⁴ Less straightforward, however, is terrorism's definition, as the term may have significant political, religious, and national implications in different countries. There appears to be no universal agreement on the definition of terrorism, which remains a topic of debate on the international agenda.

Terrorism is defined in the US Code of Federal Regulations as “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives”.¹⁰⁵

Depending on the origin, foundation, and objectives of the terrorist group, the US Federal Bureau of Investigation (FBI), further categorizes terrorism as either domestic or international:

“(i) Domestic terrorism is the unlawful use, or threatened use, of force or violence by a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction committed against persons or property to

¹⁰² UN. (1999), International Convention for the Suppression of the Financing of Terrorism, Article 2

¹⁰³ Kóhalmi, L. (2016). Terrorism and human rights. *Journal of Eastern European Criminal Law*, (01), 159-165.

¹⁰⁴ Nagy, M., & Toth, D. (2019). The Types of Terrorism-With Special Attention to Cyber and Religious Terrorism. *Jura: A Pecsí Tudományegyetem Állam-és Jogtudományi Karának tudományos lapja*, 413.

¹⁰⁵ The Code of Federal Regulations (CFR), Section 0.85 (CFR is a codification (arrangement of) the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the Federal Government).

intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives.

(ii) International terrorism involves violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state. These acts appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping. International terrorist acts occur outside the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.”¹⁰⁶

In its nine Special Recommendations on Terrorist Financing drafted after the attacks on 11 September 2001 in the US, the FATF, widely regarded as the international standard setter for efforts to combat the financing of terrorism (CFT), does not define the phrase financing of terrorism. However, FATF strongly recommends that nations immediately ratify and fully implement the UN International Convention for the Suppression of the Financing of Terrorism in 1999 and all related UN resolutions on the prevention and suppression of financing for terrorism,¹⁰⁷ most notably UN Security Council Resolution 1373.¹⁰⁸ Thus, the above definition is the one most countries have adopted for purposes of defining terrorist financing.

As previously discussed, money laundering is the act of disguising the illicit origins of the proceeds from a criminal act. Similarly, the financing of terrorism is a fundamentally straightforward concept, that is any form of financial support for terrorism or those who inspire, organize, or commit terrorism.¹⁰⁹

2.5. The Money Laundering and Financing of Terrorism Connection

¹⁰⁶ FBI, Terrorism 2003-2005. Available at <https://www.fbi.gov/stats-services/publications/terrorism-2002-2005>. Accessed 10 April 2023

¹⁰⁷ FATF, Special Recommendation I

¹⁰⁸ Resolution 1373 of the UN Security Council, adopted unanimously on 28 September 2001, is a counter terrorism measure issued in response to the September 11 terrorist attacks on the US. The resolution sought to impede terrorist organizations in a variety of methods. Member states of the UN were encouraged to share intelligence on terrorist organizations in order to combat international terrorism. In addition, the resolution urges all nations to amend their national laws in order to ratify all existing international conventions on terrorism. The resolution constituted the Counter Terrorism Committee of the Security Council to oversee state compliance with its provisions.

¹⁰⁹ Schott, P. A. (2006). Reference guide to anti-money laundering and combating the financing of terrorism. World Bank Publications, p.I-1

Money laundering and financing of terrorism are often done in similar ways, mostly because they both need to be hidden.¹¹⁰ In many cases, money laundering is committed as a means to support terrorist financing.¹¹¹ However, it is important to realize that money laundering and terrorism financing are not the same thing. Money laundering's purpose is to make it appear as if the monies did not come from a criminal operation. Terrorist financing, on the other hand, is the gathering or distribution of funds for terrorist activities. Money laundering differs from terrorist financing in that the monies involved might come from both legitimate and criminal sources; nonetheless, money laundering always involves money that comes from an illegitimate source.¹¹² Gifts or grants of money or other assets made to foundations or charities that ultimately fund terrorist organizations or terrorist actions are examples of legitimate sources. The major purpose of persons or organisations participating in terrorism financing is thus not required to conceal the source of the money, but rather to conceal both the financing and the nature of the sponsored action. If the source can be hidden, it will be available for future terrorist financing. Similarly, terrorists must conceal the usage of funds in order for the fundraising activity to go unnoticed.¹¹³ Funds are being withheld and purposefully kept from authorities in both situations. Terrorist financing overlaps with money laundering, and money that has been laundered may then be used to finance terrorism.

FATF is a global organization with AML-related responsibilities. Although the original intent of FATF recommendations was to prevent money laundering, their authority has grown over time. As a result, the FATF extended the application of its standards to encompass terrorism financing in 2001, expanding its mandate. FATF has recommended that each nation criminalize the financing of terrorism, terrorist acts, and terrorist organizations for these reasons. Countries should guarantee that such offenses are designated as predicate offenses for money laundering.¹¹⁴ FATF has concluded that the combination of the Forty Recommendations on money laundering and the Nine Special Recommendations constitutes

¹¹⁰ Schott, P. A. (2006). Reference guide to anti-money laundering and combating the financing of terrorism. World Bank Publications, p.I-2

¹¹¹ Thai, H. V (2021). The Development of the European Union Legislative Framework Against Money Laundering and Terrorist Financing in the Light of International Standards. *Technium Social Sciences Journal*, 18, 185-193.

¹¹² Mitsilegas, V., & Gilmore, B. (2007). The EU legislative framework against money laundering and terrorist finance: a critical analysis in the light of evolving global standards. *International & Comparative Law Quarterly*, 56(1), 119-140.

¹¹³ Schott, P. A. (2006). Reference guide to anti-money laundering and combating the financing of terrorism. World Bank Publications, p.I-2

¹¹⁴ FATF, Special Recommendation II

the fundamental framework for preventing, detecting, and suppressing money laundering and terrorism financing.

2.6. Summary of the Chapter

Money laundering has become a global issue in the last several decades due to its cross-border nature. Criminals use money laundering to protect their profits and evade suspicion, investigation, and seizure. Money laundering is a global hazard to economies, political institutions, and social security, yet it is difficult to quantify.

Criminal organizations and terrorists might use money laundering to conceal the origin of their funds and spend them with impunity. To reduce criminal behavior, the government must target its causes and the means by which criminals might spend their earnings. Law enforcement is making it more challenging to eliminate the opportunity to disseminate the money, which reduces the incentive for this crime. The generated cash is undeniably the most compelling incentive. That's why legislators have been working so hard to make it harder to spend or transfer the money without being spotted.

In the following chapter, we'll examine the various regional and international organizations' efforts to prevent money laundering and terrorism financing through legislation and regulation.

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.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷

These measures now cover both the public and private sectors and operate on both an international and domestic scale. The initiatives include the adoption of new AML regulations, the strengthening of existing laws, the development of specialized financial investigative training, the strengthening of ties between law enforcement and the financial sector, and the cooperation of nations through bilateral and multilateral agreements to eradicate money laundering.

Combating money laundering and the financing of terrorism has emerged as a significant issue for governments around the world and in the region. The fundamental objectives of this multinational endeavor are to prevent the collapse of the international financial system, deprive terrorists of funding, and make it harder for criminals to benefit from their activities. This chapter will look at the enormous efforts being made at the global and regional levels to prevent money laundering. The chapter is divided into two sections:

The first section examines the international initiatives and efforts to combat money laundering, such as The Basel Committee on Banking Regulations and Supervisory Practices, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The Vienna Convention 1988), the Convention on Laundering, Search, Seizure, and Confiscation

¹¹⁵ 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.

¹¹⁶ Barone, R., & Masciandaro, D. (2011). Organized crime, money laundering and legal economy: theory and simulations. *European journal of law and economics*, 32, 115-142.

¹¹⁷ Gilmore, W. C. (1992). International efforts to combat money laundering. *Commonwealth Law Bulletin*, 18(3), 1129-1142.

of the Proceeds from Crime (the Strasbourg Convention 1990), The UN Convention for the Suppression of the Financing of Terrorism 1999, the UN Convention against Transnational Organized Crime and the Protocols Thereto (the Palermo Convention 2000), the UN Convention against Corruption (UNCAC). The section also includes the role of the Financial Action Task Force (FATF) in the development and promotion of national and international policies to combat money laundering. This section also discusses the reasons for the creation of the international police force – INTERPOL - and its role in the fight against money laundering.

The second part covers the regional efforts that have been introduced in order to combat the money laundering problem. In this section, the focus is on the efforts of the European Union (EU), the Asia/Pacific Group on Money Laundering (APG) and The Association of Southeast Asian Nations (ASEAN) in their fight against money laundering.

3.1. International Initiatives

Anti-money laundering policies have become a significant front in the fight against crime in the majority of the world, particularly in developed nations.¹¹⁸

3.1.1. The Basel Committee on Banking Regulations and Supervisory Practices

The Basel Committee, formerly known as the Committee on Banking Regulations and Supervisory Practices (BCBS), was founded at the end of 1974 by the central bank governors of the Group of Ten (G10) countries in the aftermath of significant disruptions in international currency and banking markets.¹¹⁹ The Committee was established at the Bank for International Settlements in Basel with the goals of bolstering international financial stability through enhanced banking supervision and providing a forum for regular member-country collaboration on banking supervisory issues. The first meeting of the Committee took place in February 1975, and subsequent meetings have occurred three to four times annually.¹²⁰

The Basel Committee was formed in response to the globalization of financial and banking markets. The primary objective of the Basel Committee is to assist national banking and financial markets supervisory organizations in adopting a more unified, global approach to regulatory issues. Since its inception, the Basel Committee's membership has expanded from the G10 to 45 institutions from 28 countries. Beginning with the 1975 Basel Concordat,

¹¹⁸ Fanta, F., & Mohsin, H. (2010). Anti-Money Laundry regulation and Crime: A two-period model of money-in-the-utility-function.

¹¹⁹ Penikas, H. (2015). History of banking regulation as developed by the Basel Committee on Banking Supervision 1974-2014. *Estabilidad financiera*. N° 28 (mayo 2015), 9-47, p.11

¹²⁰ <https://www.bis.org/bcbs/history.htm>. Accessed 01 March 2023

which has been revised several times since then, the Committee has established a series of international standards for bank regulation, most notably its seminal publications of the capital adequacy accords known as Basel I (1988), Basel II (2004), Basel III (2010), and most recently Basel IV (2017).¹²¹

The first Basel Accords, known as Basel I, were finalized in 1988 and implemented, at least in part, by the G10 countries by 1992. To ensure that financial institutions can weather economic storms, it established minimum capital requirements and developed a system for assessing credit risk based on the value of a bank's assets. By outlining key guidelines for customer identification that all financial institutions should follow, as well as for compliance with legal requirements, conformity with high moral standards and local laws and regulations, and full collaboration with national law enforcement authorities, to the extent possible without jeopardizing client privacy, this was a significant step toward preventing the banking industry from being used for money laundering.¹²²

The First Basel Accord refers to the capital standards imposed on credit institutions and provided the definition of capital, the determination of risk weights of bank assets, and the capital adequacy. However, Basel I remained some shortcomings such as: the lack of risk sensitivity, the limited recognition of collateral, the incomplete coverage of risk sources, no recognition of diversification and term structure of credit risk, the inadequate assessment of risks and effects of the use of new financial instruments, as well as risk mitigation techniques.¹²³

The Committee proposed a new capital adequacy framework to replace the Basel I in June 1999. As a result, a revised capital structure was published in June 2004. The updated framework, commonly referred to as Basel II, consisted of three pillars:

- Minimum capital requirements, which aimed to improve and broaden Basel I basic norms.
- A supervisory examination of the internal assessment process and capital adequacy of an institution; and
- The effective use of transparency as a tool to boost market discipline and promote ethical banking practices.

The Basel II Accord adds new elements to Basel I, such as an expansion of the risk

¹²¹ See more at https://www.bis.org/basel_framework/.

¹²² Hopton, D. (2006). *Money laundering: a concise guide for all business*. Routledge. P8-9

¹²³ Shakdwipee, P., & Mehta, M. (2017). From Basel I to Basel II to Basel III. *International Journal of New Technology and Research (IJNTR)*, 3(1), 66-70.

weights range, diversification of credit risk mitigation instruments through the use of derivative financial instruments based on ratings to assess clients, and internal models developed to determine the expected loss value given the risk profile.¹²⁴

Too much leverage and insufficient liquidity buffers in the banking sector leading up to the financial crisis made it obvious that the Basel II framework needed to be significantly tightened. Inadequate governance, risk management, and incentive systems all played a role in these failings. The dangers of this convergence were made clear by the mispricing of credit and liquidity concerns, as well as the excessive expansion of credit. As part of its efforts to strengthen the Basel II capital framework, the Committee released a fresh set of documents in July 2009, focusing on the treatment of some complex securitization positions, off-balance sheet vehicles, and trading book exposures. These changes are part of a bigger initiative to better regulate and supervise banks with foreign operations in response to weaknesses shown by the financial market crisis.¹²⁵

In September 2010, the Group of Governors and Heads of Supervision announced tighter global minimum capital criteria for commercial banks. This followed a decision on the Basel III capital and liquidity reform package as a whole. In 2010, the Committee published its proposed criteria. The expanded Basel framework improves upon and refines the three pillars of Basel II, among other things. The Committee then looked into improving the process of identifying urgent capital needs. The risk-based capital requirements created by the Basel II framework now include provisions for banks' exposures to central counterparties, margin requirements for non-centrally cleared derivatives, and capital requirements for banks' stock in funds. Other alterations include a more solid framework for determining the riskiness of a bank's equity in funds and a standardized method for measuring counterparty credit risk exposures, both of which enhance previous methodologies for assessing the counterparty credit risk associated with derivatives transactions.¹²⁶

The Basel Committee finalized significant revisions to Basel III in 2017, informally known as Basel IV. The scale of the shifts eventually warranted their classification as a new theoretical foundation. Basel IV was intended to fortify the banking industry against future crises and is the final phase of the Basel III reform process. It went into effect on 1 January 2023, but complete adoption is not projected until 2025 and will occur in varying stages depending on the country. The goal of these changes is to make it easier to compare banks'

¹²⁴ Ibid.

¹²⁵ Lall, R. (2009). Why Basel II failed and why any Basel III is doomed (No. 2009/52). GEG working paper.

¹²⁶ <https://www.bis.org/publ/bcbs189.htm>. Accessed 01 March 2023

capital ratios..¹²⁷ Capitalization estimates for all categories of risk are drastically revised under Basel IV.

Basel IV's implementation will complete the regulatory framework's global revision and have significant financial ramifications for banks.¹²⁸ First, they will have to decide whether to request the supervisory authority to utilize the internal modelling techniques and whether to modify their business models, strategies, and asset portfolios in response to shifting risk weights. Second, they will have to decide whether to raise fresh capital or use retained earnings to achieve their regulatory capital ratios.

3.1.2. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988

The 1988 adoption of the Vienna Convention, also known as the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, is considered a turning point in the development of a concerted international response to international money laundering. The 1961 Single Convention on Narcotic Drugs¹²⁹ and the 1971 Convention on Psychotropic Substances¹³⁰ serve as the foundation for the 1988 Vienna Convention. The 1988 Vienna Convention, which has been in effect since 11 November 1990, urged signatory states to share information¹³¹ and uphold domestic AML laws using these two accords as models. The Convention, which acknowledged money laundering as a domestic offense, was a law enforcement accord. In addition, the Vienna Convention permits confiscation of assets,¹³² extradition,¹³³ and general cooperation between law enforcement agencies.¹³⁴ The Convention is enforced by the International Narcotics Control Board, which reports to the Commission on Narcotic Drugs of the Economic and Social Council of the UN. There are 34

¹²⁷ Feridun, M., & Özün, A. (2020). Basel IV implementation: a review of the case of the European Union. *Journal of Capital Markets Studies*, 4(1), 7-24, p.8

¹²⁸ BCBS. (2017), High-level Summary of Basel III Reforms, December 2017, available at: https://www.bis.org/bcbs/publ/d424_hlsummary.pdf. Accessed 1 March 2023.

¹²⁹ The purpose of this 1961 Convention is to take international, concerted action against drug misuse. There are two complementary modes of management and action. As a first step, it would restrict all drug activity except for that which is necessary for medical or scientific research. Second, it works to deter and discourage drug traffickers by coordinating efforts around the world to do so.

¹³⁰ The Convention establishes a global regulatory framework for psychoactive substances. It responded to the diversification and expansion of the spectrum of drugs of abuse by implementing regulations over a number of synthetic drugs based on their potential for abuse on the one hand and their therapeutic value on the other.

¹³¹ The 1988 Vienna Convention, Resolution 1

¹³² The 1988 Vienna Convention, Article 5

¹³³ The 1988 Vienna Convention, Article 6

¹³⁴ The 1988 Vienna Convention, Article 9, 10

articles in the entire Convention. It imposed a strict requirement that participating nations criminalize a wide range of drug trafficking-related activities, as well as the requirement that drug-related money laundering be made illegal.

Article 3 of the Vienna Convention is crucial for drug trafficking and money laundering. It requires that each party state establish a comprehensive inventory of international drug trafficking-related or related activities as criminal offenses under its domestic law. Each Party shall take any necessary steps to define the following as crimes under its domestic law when knowingly committed:

“(i) The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in i) above;

iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

v) The organization, management or financing of any of the offences enumerated in i), ii), iii) or iv) above.”¹³⁵

In addition, the Convention specifically criminalizes drug-related money laundering, including the conversion or transfer of property derived from the offense, as well as the concealment or disguise of its true nature and source. In this regard, money laundering offenses are described as follows:

“- The conversion or transfer of property, knowing that such property is derived from any offense or offenses established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any

¹³⁵ The 1988 Vienna Convention, Article 3 (1) (a)

person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions;

- The concealment or the disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offense or offenses.”¹³⁶

Party states are required by Article 5 of the Convention to implement domestic legislation that allows for the "confiscation" (i.e., freezing, seizing, and forfeiting) of any types of assets, money, or instruments used in or derived from covered offenses. The earnings of the crime, narcotics, psychoactive substances, materials, equipment, and other instruments are all included in this property:

“Parties are required to take necessary steps (i.e., adopt legislation or administrative rules) to enable their authorities to identify, trace, freeze or seize property, proceeds, instrumentalities or any other objects as preliminary steps toward the eventual confiscation of that property.”¹³⁷ Importantly, the Convention requires party states to enable their courts or other competent authorities to order the production or seizure of bank, financial or commercial records necessary to trace, identify, seize and forfeit proceeds and instrumentalities of drug trafficking.¹³⁸

Article 5 also emphasizes the importance of international cooperation in forfeiture proceedings by requiring party states to assist in taking measures to identify, trace, and freeze or seize proceeds, property, instruments, or any other objects for eventual confiscation, either by the requesting party or its own authorities, upon the request of another.¹³⁹

Article 7 of the Vienna Convention emphasizes the necessity of reciprocal legal assistance between member nations in the struggle against drug trafficking and money laundering. It specifies a broad treaty obligation to provide other party nations with the greatest degree of mutual legal assistance in investigations, prosecutions, or other judicial proceedings pertaining to Article 3 (1) offenses. Such help consists of:

- Taking evidence or statements from persons;
- Effecting service of judicial documents;

¹³⁶ Ibid, Article 3 (1) (b)

¹³⁷ Ibid, Article 5 (2)

¹³⁸ Ibid, Article 5 (3)

¹³⁹ Ibid, Article 5 (4)

- Executing searches and seizures;
- Examining objects and sites;
- Providing information and evidentiary items;
- Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
- Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.”¹⁴⁰ Other forms of mutual legal assistance may be granted if permitted by the domestic law of the party requesting assistance.¹⁴¹

In addition to mutual legal assistance under Article 7, party states are obligated under Article 9 to provide other, less formal forms of law enforcement assistance, cooperation, and training. This assistance includes:

- Establishing direct channels of communication between law enforcement authorities;
- Assisting in particular inquiries concerning the identity and location of suspects, the import or export of drugs, or the movement of proceeds of drug transactions from one jurisdiction to another; and
- Where appropriate and not contrary to domestic law, establishing joint law enforcement teams.¹⁴²

The Vienna Convention of 1988 contains numerous significant and novel provisions for international law enforcement cooperation in combating the drug trade. It permits narcotic profits to be seized and reinvested in international law enforcement operations. Signatories have pledged to share evidence of illicit activity and deport suspected traffickers so that no safe havens remain. The Vienna Convention of 1988 was without a doubt a pivotal and fruitful effort to combat drug trafficking and money laundering.¹⁴³ The most significant and far-reaching provision of the Convention was the prohibition on money laundering and the use of drug trafficking profits.

However, the Vienna Convention's primary flaw was its limited scope and application, meaning that it only addressed money laundering associated with illegal narcotics. This treaty vulnerability permitted the laundering of illicitly obtained funds without violating any AML

¹⁴⁰ Ibid, Article 7 (2)

¹⁴¹ Ibid, Article 7 (3)

¹⁴² Ibid, Article 9 (1)

¹⁴³ Scott, D. (1996). *Money Laundering and International Efforts to Fight It* (No. 11622). The World Bank Group.

measures.¹⁴⁴

3.1.3. The United Nations Convention for the Suppression of the Financing of Terrorism in 1999

The financing of terrorism is considered a crime according to the UN Convention for the Suppression of the Financing of Terrorism. An international treaty intended to stop the funding of terrorist operations was adopted by the UN General Assembly on 9 December 1999. The Convention requires state parties to enact domestic legislation criminalizing the collection of funds for terrorist activities.¹⁴⁵ In addition, individuals donating funds to groups which they know to support terrorist activities would also commit an offence.

Although the term "terrorism" is not defined anywhere in the Convention, its meaning is clear from the description of the behaviors it attempts to prohibit:

“Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”¹⁴⁶

Even though this Convention does not address the criminalization of money laundering, Article 18 requires financial institutions and other professions involved in financial transactions to prevent this type of crime:

“(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial

¹⁴⁴ Levi, M. (2002). Money laundering and its regulation. *The Annals of the American Academy of Political and Social Science*, 582(1), 181-194.

¹⁴⁵ The UN Convention for the Suppression of the Financing of Terrorism, 1999 Article 2 (1)

¹⁴⁶ Ibid, Article 2 (1)

institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.”¹⁴⁷

Governments that have signed this Convention are also encouraged to implement AML regulatory frameworks, such as those for consumer identification, recordkeeping, and the reporting of suspicious transactions. Participating parties will aid their financial institutions and other professions in identifying financial transactions from individuals with open interest accounts by implementing these preventative measures. Immediately report suspicious transactions in which it is suspected that the funds are the result of illicit activity. The parties should also supervise the physical transfer of currency and bearer negotiable instruments across state borders.¹⁴⁸

3.1.4. The United Nations Convention against Transnational Organized Crime and the Protocols Thereto in 2000

The UN Convention against Transnational Organized Crime, or the Palermo Convention adopted by General Assembly Resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by member states at a High-level Political Conference convened for that purpose in Palermo, Italy, in December 2000 and entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: The Protocol to Prevent, Suppress and Punish Trafficking

¹⁴⁷ Ibid, Article 18 (1) (b)

¹⁴⁸ Amrani, H. (2012). The Development of Anti-Money Laundering Regime: Challenging issues to sovereignty, jurisdiction, law enforcement, and their implications on the effectiveness in countering money laundering.

in Persons, Especially Women and Children;¹⁴⁹ The Protocol against the Smuggling of Migrants by Land, Sea and Air;¹⁵⁰ and The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.¹⁵¹ Countries must become parties to the Convention itself before they can become parties to any of the Protocols.¹⁵²

The Palermo Convention aims to achieve two primary things. The first is to eliminate the barriers that various national legal systems have historically erected in the way of international cooperation. The second is to establish guidelines for national laws to follow in the battle against organized crime.¹⁵³

Under the Convention, governments commit themselves to:

- “- Criminalizing offences committed by organised crime groups, including corruption and corporate or company offences;
- Cracking-down on money laundering and the proceeds of crime;
- Speeding up and widening the reach of extradition;
- Protecting witnesses testifying against criminal groups;
- Tightening cooperation to seek out and prosecute suspects;
- Boosting prevention of organized crime at the national and international levels; and
- Developing a series of protocols containing measures to combat specific acts

¹⁴⁹ For the first time, a universally accepted definition of "trafficking in persons" has been established thanks to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, which is an addendum to the UN Convention against Transnational Organized Crime. Its goals include preventing such crime, fighting it when it occurs, and making it easier for countries to work together to do so. In addition, the Protocol emphasizes the dangers of human trafficking and how it can lead to the inhumane, degrading, and even deadly exploitation of trafficked people.

¹⁵⁰ State Parties are obligated to make the smuggling of migrants for financial or other material profit a criminal offense under their national laws, and the term "smuggling" is defined in the Protocol. The Protocol establishes as its primary policy the targeting of smuggling operations rather than migration as the primary target of anti-smuggling efforts. Safeguards regarding the rights, legal status, and safety of unlawful residents and migrants, including those seeking asylum, are included in the Protocol as well. Provisions on general and specific types of cooperation and support for the prevention, investigation, and prosecution of offenses covered by the Protocol and the UN Convention on Transnational Organized Crime are included in the Protocol.

¹⁵¹ The Protocol seeks to deepen and consolidate international cooperation, as well as to create coherent systems to prevent, combat, and destroy the unlawful manufacture and trafficking of guns, parts and components, and ammunition. States commit to adopting a range of anti-crime measures and implementing three sets of normative principles in their domestic legal systems by ratifying or acceding to the Protocol. The first section establishes criminal offenses relating to the illegal manufacture and trafficking of guns based on the Protocol's standards and definitions. The second is a government authorization or licensing system to ensure the legal manufacture and trafficking of guns. The third is about marking and tracing firearms.

¹⁵² UN, (2000). Convention against Transnational Organized Crime and the Protocols Thereto

¹⁵³ Wright, A. (2006) Organised Crime.: Willan Publishing.

of transnational organized crime.”¹⁵⁴

The provision criminalizing money laundering departs from a similar provision in the Vienna Convention of 1988, but goes further by expanding the range of covered predicate offenses.¹⁵⁵ The Convention contains extensive provisions on confiscation, distribution of confiscated assets, and the building of regulatory systems to prevent and manage money laundering.¹⁵⁶

Article 2 of the Convention provided a broader definition of an “organized crime group”:

“Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”.¹⁵⁷

Article 2(b) of the Convention provides the definition of a “serious crime” as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.¹⁵⁸ The Convention also aims to promote international cooperation to prevent and combat transnational organized crime. The scope of this Convention covers the prevention, investigation, and prosecution of participants in an organized criminal group,¹⁵⁹ the laundering of crime proceeds,¹⁶⁰ corruption,¹⁶¹ and obstruction of justice.¹⁶²

However, it is important to stress that these crimes must be of an international nature. Transnational crime is defined by this convention as existing when:

- It occurs in more than one state;
- It is committed in one state, but a significant portion of its preparation, planning, direction, or control occurs in another state;
- It is committed in one state but involves an organized criminal cell that operates in

¹⁵⁴ Ibid, p.193

¹⁵⁵ Vlassis, D. (2000). Overview of the provisions of the United Nations Convention Against Transnational Organized Crime and its Protocols. *UN. Resource Material Series*, (59).

¹⁵⁶ Ibid

¹⁵⁷ The Palermo Convention, Article 2 (a)

¹⁵⁸ The Palermo Convention, Article 2 (b)

¹⁵⁹ The Palermo Convention, Article 5

¹⁶⁰ The Palermo Convention, Article 6

¹⁶¹ The Palermo Convention, Article 8

¹⁶² The Palermo Convention, Article 23

many states; or

- It is committed in one state but has significant consequences in another.¹⁶³

Interestingly, this Convention's formulation of the criminalization of laundering criminal proceeds is identical to that of the Vienna Convention and the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime in 1990 (the Strasbourg Convention). The distinction is found in the predicate crime from which the proceeds were generated in each Convention. For example, the Palermo Convention encourages state parties to consider the broadest range of predicate crimes, including serious crimes, participation in organized criminal groups, corruption, and obstruction of justice. However, the 1988 Vienna Convention restricts the crime of money laundering to laundering the proceeds of drug offenses only, whereas the Strasbourg Convention leaves it up to the state parties to decide and does not relate it to a particular offence.

The Convention requests that state parties establish a system for identifying customers, maintaining records, and reporting suspicious actions through their banks and other financial institutions in order to prevent money laundering.¹⁶⁴ In accordance with the Convention, Financial Intelligence Units (FIUs) must be established as a national hub for the gathering, evaluation, and dissemination of data pertaining to possible money laundering.¹⁶⁵ The Convention also requires state parties to track and detect the transfer of money across their borders..¹⁶⁶ Last but not least, the Convention calls on state parties to foster global coordination between judicial, law enforcement, and financial regulatory bodies.¹⁶⁷

3.1.5. The United Nations Convention against Corruption

Built on a broad international consensus, the UN Convention against Corruption (UNCAC) is the first truly global instrument to prevent and combat corruption.¹⁶⁸ The UN General Assembly adopted the UNCAC in October 2003, and it entered into force in December 2005. The Convention addresses five fundamental areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention also addresses numerous types of

¹⁶³ The Palermo Convention, Article 3 (2)

¹⁶⁴ The Palermo Convention, Article 7 (1) (a)

¹⁶⁵ The Palermo Convention, Article 7 (1) (b)

¹⁶⁶ The Palermo Convention, Article 7 (2) (b)

¹⁶⁷ The Palermo Convention, Article 7 (4) (b)

¹⁶⁸ Argandoña, A. (2007). The United Nations convention against corruption and its impact on international companies. *Journal of Business Ethics*, 74, 481-496, p.482

corruption, including bribery, trafficking in influence, abuse of functions, and private sector corruption.¹⁶⁹

The term "corruption" is not defined in the Convention. Instead, it specifies the kinds of corrupt behavior that every jurisdiction must take into account. Among these are bribery, embezzlement, money laundering, and obstruction of justice. The word "public servant" is used broadly in the Convention to refer to anybody who occupies a legislative, administrative, or executive office or renders a public service (including employees of the private sector employed by the government).

The UNCAC provides for the criminalization of certain corruption-related activities such as: Bribery of national public officials when committed intentionally: “(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”¹⁷⁰; Bribery of foreign public officials and officials of public international organizations,¹⁷¹ and Bribery in the private sector.¹⁷²

Each state member shall make offenses against the embezzlement, misappropriation, or other diversion by a public official of any property, public or private funds or securities, or any other thing of value entrusted to the public official by virtue of his or her position, when committed with intent,¹⁷³ and embezzlement of property in the private sector,¹⁷⁴ trading in influence,¹⁷⁵ abuse of functions,¹⁷⁶ illicit enrichment,¹⁷⁷ concealment,¹⁷⁸ and obstruction of justice.¹⁷⁹

Furthermore, the Convention also criminalizes the laundering of criminal proceeds

¹⁶⁹ <https://www.unodc.org/unodc/en/treaties/CAC/>. Accessed 01 March, 2023

¹⁷⁰ UNCAC, Article 15

¹⁷¹ UNCAC, Article 16

¹⁷² UNCAC, Article 21

¹⁷³ UNCAC, Article 17

¹⁷⁴ UNCAC, Article 22

¹⁷⁵ UNCAC, Article 18

¹⁷⁶ UNCAC, Article 19

¹⁷⁷ UNCAC, Article 20

¹⁷⁸ UNCAC, Article 24

¹⁷⁹ UNCAC, Article 25

derived from such corrupt-activities, when committed intentionally:

“(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.”¹⁸⁰

Because such corrupt behaviors produce substantial sums of illegal money that must be hidden, the punishment of illicit gains made through corruption is crucial. By making the proceeds of crime illegal, state parties are required by the Convention to develop an AML regulatory structure. Although it is a limited tool, the UNCAC already plays a significant part in the efforts of the international community to address the sociological, political, economic, and moral problems brought on by corruption.¹⁸¹

Under the Convention, signatory countries are not required to prosecute certain offenses, including the passive bribery of a foreign public official, trade in influence, the abuse of public office, or illegal enrichment. Furthermore, the lack of a mechanism to punish state members who breach their obligations under the Convention is another critical shortcoming in the Convention.

3.1.6. INTERPOL and anti-money laundering control

The International Criminal Police Organization is an international organization that facilitates worldwide police cooperation and crime control established in Vienna, Austria in 1923.¹⁸² After the Second World War, the organization was reborn under the name of its telegraphic address “INTERPOL” and based in France. In the 1950’s it was again affected by another political conflict, controversy between US and the Eastern Bloc socialist countries on the searching of dissidents as criminals, resulting in the dropout of US from organization.¹⁸³ It was only in 1956, that INTERPOL became formally known as the International Criminal

¹⁸⁰ UNCAC, Article 23

¹⁸¹ Argandoña, A. (2007). The United Nations convention against corruption and its impact on international companies. *Journal of Business Ethics*, 74, 481-496, p490

¹⁸² Deflem, M. (2002). The logic of nazification: the case of the International Criminal Police Commission (“Interpol”). *International Journal of Comparative Sociology*, 43(1), 21-44, p.23

¹⁸³ Fooner, M. (1989). *Interpol: Issues in World Crime and International Justice*. Springer Science & Business Media, p.41.

Police Organization ICPO-INTERPOL.¹⁸⁴ The INTERPOL Constitution adopted in 1956 which was supposed to ban intervening in cases of a “political, military, religious or racial character”. Article 3 of INTERPOL’s Constitution states that:

“It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.”¹⁸⁵

Within the various historical, political, and legal contexts, the text of Article 3 has been interpreted in a variety of ways, some of which directly contradict one another. This has been the case with terrorism in recent years, for instance. INTERPOL has determined for many years that terrorism falls within the scope of Article 3.¹⁸⁶

Many have assumed that terrorism can have political motivations due to the ambiguity surrounding the difference between terrorists and freedom fighters. It wasn't until a series of incidents began in the 1970s that the group became active in terrorism. The General Assembly passed a resolution that will gradually increase the organization's knowledge in this field. In 1985, an internal sub-directorate titled "Public Safety and Terrorism" was set up. A "Declaration Against Terrorism" was issued in 1998 in favor of the decision to intervene in terrorist situations. Following the tragic events of 11 September 2001, INTERPOL became a prominent force in the fight against global terrorism.¹⁸⁷

Originally based in Paris, it moved its headquarters to Lyon in 1989. As of September 2022, it has reached 195 member countries.¹⁸⁸ In order to communicate with INTERPOL's headquarters and other INTERPOL members, each member state maintains what is called a National Central Bureau (NCB), which is typically run by the national police force.

Article 2 of the Constitution of INTERPOL states its aims as follows:

“i) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the ‘Universal Declaration of Human Rights’, and

ii) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary crime crimes.”¹⁸⁹

¹⁸⁴ Schöndorf-Haubold, B. (2009). The administration of information in international administrative law—the example of Interpol. In *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (pp. 229-267). Berlin, Heidelberg: Springer Berlin Heidelberg.

¹⁸⁵ INTERPOL Constitution.(1956). Article 3

¹⁸⁶ Calcara, G. (2020). A transnational police network co-operating up to the limits of the law: examination of the origin of INTERPOL. *Transnational Legal Theory*, 11(4), 521-548, p.542

¹⁸⁷ Ibid

¹⁸⁸ <https://www.interpol.int/en/Who-we-are/Our-history/Key-dates>. Accessed 06 March 2023

¹⁸⁹ INTERPOL’s Constitution, Article 2

Through INTERPOL, police forces all over the world are able to work together to combat crime and apprehend offenders. It collaborates closely with agencies and services dedicated to stopping transnational organized crime.. Article 5 of the INTERPOL's Constitution stipulates the structure of INTERPOL, including:

- “- The General Assembly
- The Executive Committee
- The General Secretariat
- The National Central Bureaus
- The Advisers
- The Commission for the Control of Files.”¹⁹⁰

The Executive Committee is selected by the General Assembly and is responsible for overseeing the General Secretariat and ensuring that the Assembly's resolutions are implemented. The General Secretariat is the governing body of the organization and is responsible for its daily activities. An NCB is appointed by each Interpol member to serve as a point of contact between Interpol, the member, and the rest of the country's law enforcement agencies.¹⁹¹

"I-24/7" is the more widely used acronym for INTERPOL's global communications network. Members of this network have access to numerous INTERPOL databases, including those for DNA profiles, fingerprints, and stolen travel papers, as well as the ability to contact with one another. The General Secretariat of INTERPOL also houses a Command and Coordination Center that is open around-the-clock and helps members with coordination and communication.

The most well-known of INTERPOL's data processing services is the publication of notices at the request of its members. Members of INTERPOL are urged to respond to these alerts. The organization publishes and distributes a wide range of notices. Red Notices are requests for the arrest or temporary detention of certain people for the purpose of extradition. The Blue Notice is a formal request for information that identifies a specific person or their criminal conduct. The Green Notice is a warning issued by the government about previously convicted criminals who pose a high risk of committing other crimes. Those who cannot identify themselves or are underage are prioritized for recovery efforts when a Yellow Notice is issued. Help in determining the identities of deceased people is being sought via the Black

¹⁹⁰ INTERPOL's Constitution, Article 5

¹⁹¹ Ling, C. W. (2010). Policing Interpol: The Commission for the Control of Interpol's Files and the Right to a Remedy. *International Organizations Law Review*, 7(2), 375-404, p.376

Notice. The Orange Notice is a warning issued to law enforcement, public institutions, and international organizations about imminent risk posed by weapons in plain sight, parcel bombs, and other explosive devices. It also provides members with security and catastrophe assistance through the deployment of Incidence Response Teams and the organization of training courses.¹⁹² Members are not obligated to take any action based on these notices. A member's decision on how to respond to an INTERPOL notice is often impacted by its relationship with the requesting member and its own legal system.¹⁹³

It is the responsibility of the General Secretariat to guarantee that any data processed through INTERPOL channels abides by INTERPOL's standards, even if the data was provided by a National Central Bureau (NCB). According to INTERPOL's regulations, members must ensure that any information sent through INTERPOL channels is accurate and compliant before it may be processed. According to the rules, the General Secretariat must periodically remind participants of their legal obligations. That is to say, the General Secretariat has the same responsibilities as the INTERPOL members who handle the necessary data.¹⁹⁴

The following crime categories have received priority attention from INTERPOL: Counterfeit currency and documents, Crimes against children, Cultural heritage crime, Cybercrime, Drug trafficking, Environmental crime, Financial crime, Firearms trafficking, Human trafficking, Illicit goods, Maritime crime, Organized crime, People smuggling, Terrorism Vehicle crime and War crime.¹⁹⁵ Recent years have seen a sharp rise in transnational financial crime, putting the world's financial systems in jeopardy, impeding economic expansion, and costing firms and individuals huge sums of money. INTERPOL created the Financial Crime and Anti-Corruption Centre (IFCACC) in response to the urgent demand for an international response that was coordinated. With the help of this important new criminal endeavor, the government will intensify and coordinate its current efforts to stop financial crimes, illicit money transfers, and asset forfeiture.¹⁹⁶

3.1.7. The Financial Action Task Force and Its Recommendations

The Financial Action Task Force

¹⁹² Ibid, p.377

¹⁹³ Ibid, p.382

¹⁹⁴ Ibid, p.383

¹⁹⁵ <https://www.interpol.int/Who-we-are/What-is-INTERPOL>. Accessed 06 March 2023

¹⁹⁶ Ibid

The Financial Action Task Force (FATF) is an inter-government institution formed by the group of most developed G7 countries and the European Council in 1989. The FATF was given responsibility to examine money laundering techniques and trends, review the action already taken at a national or international level, and to set out measures needed to combat money laundering. In 2001, the FATF expanded its mandate to also combat terrorist financing.¹⁹⁷ The FATF has clearly stated in its mission statement that:

“The FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.”¹⁹⁸

The FATF released its forty recommendations just a year after it was founded. The FATF Recommendations provide a comprehensive list of measures to help countries prevent illicit financial flows. These consist of a robust structure of laws, rules, and operational processes to guarantee that national authorities can act successfully to recognize and stop the money flows that fund crime and terrorism as well as prosecute those who engage in illicit behavior. The forty recommendations are divided into seven distinct groups:

- Anti-money laundering/Combating financing of terrorism (AML/CFT) Policies and coordination;
- Money laundering and confiscation;
- Terrorist financing and financing of proliferation;
- Preventive measures;
- Transparency and beneficial ownership of legal persons and arrangements;
- Powers and responsibilities of competent authorities and other institutional measures;
- International cooperation.¹⁹⁹

The FATF Recommendations are also often referred to as the FATF Standards, which comprise the Recommendations themselves and their Interpretive Notes, together with the applicable definitions in the Glossary. As countries have various legal, administrative, and operational frameworks, as well as varied financial systems, the Recommendations should be tailored to their specific situations.

¹⁹⁷ <https://www.fatf-gafi.org/en/the-fatf/history-of-the-fatf.html>. Accessed 06 March 2023

¹⁹⁸ <https://www.fatf-gafi.org/en/the-fatf/who-we-are.html>. Accessed 06 March 2023

¹⁹⁹ <https://www.fatf-gafi.org/en/topics/fatf-recommendations.html>. Accessed 06 March 2023

The risk-based approach, which highlights the need for governments to identify and understand the money laundering and terrorist financing risks they are exposed to, is the cornerstone of the FATF Recommendations. This guarantees that they may prioritize their resources to reduce hazards in the regions with the greatest risk. The FATF periodically updates and improves its Recommendations so that nations have the most up-to-date tools to pursue offenders. New and emerging threats to the financial system are regularly analyzed by the FATF.

To assist countries in applying its Standards, the FATF regularly publishes best practice papers and guidelines on a wide range of areas. The FATF constantly revises its Recommendations to reflect the experience gathered by public authorities and the private sector over the years, allowing nations to take use of this knowledge and successfully implement the FATF Recommendations in their own unique national settings. This process may include reaching out to stakeholders or holding public consultations to ensure the quality of the final report.²⁰⁰

As in March 2023, The FATF comprises 38 members and FATF suspended membership of the Russian Federation on 24 February 2023.²⁰¹ More than 200 countries and jurisdictions have agreed to adopt the FATF's Standards as part of a concerted international effort to combat corruption, money laundering, and terrorism. Nine FATF Associate Member organizations, together with other global partners like the International Monetary Fund (IMF) and World Bank, conduct assessments of countries and jurisdictions.²⁰² These nine FATF Associate Member organisations are:

- Asia/Pacific Group on Money Laundering (APG)
- Caribbean Financial Action Task Force (CFATF)
- Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)
- Eurasian Group (EAG)
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- Financial Action Task Force of Latin America (GAFILAT)
- Inter Governmental Action Group against Money Laundering in West Africa (GIABA)

²⁰⁰ <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>. Accessed 06 march 2023

²⁰¹ <https://www.fatf-gafi.org/en/countries/fatf.html>. Accessed 06 March 2023.

²⁰² <https://www.fatf-gafi.org/en/the-fatf.html>. Accessed 06 march 2023

- Middle East and North Africa Financial Action Task Force (MENAFATF)
- GABAC.²⁰³

In recent year, FATF continuously updates its AML/CFT methods and standards to reflect emerging concerns including the rising use of cryptocurrencies and virtual assets. Each nation is observed by the FATF to ensure that it is fully and successfully adopting FATF standards, and it is accountable for any noncompliance with them..

The FATF's Recommendations

In April 1990, less than a year after its creation, the FATF issued a report containing a set of Forty Recommendations. These aimed to provide a comprehensive plan of action to fight money laundering. Since then, there are some key development in its operation.

- After the terrorist attack in the US on 11 September 2001, eight Special Recommendations were introduced to deal with the financing of terrorism. Therefore the objectives have been broadened to include establishing standards and promoting the effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other threats to the integrity of the international financial system.

- In June 2003, the FATF comprehensively revised its Recommendations due to the continued evolution of money laundering techniques.

- In October 2004, the FATF published a Ninth Special Recommendation on terrorist financing, further strengthening the FATF standards - the Forty + Nine Recommendations.

- In February 2012, the FATF completed a thorough review of its standards and then published revised FATF Recommendations, to cover issues such as the financing of weapons of mass destruction. The Forty + Nine Recommendations were revised and renamed the FATF 40 Recommendations. The 40 recommendations include all special recommendations. Since then, the FATF has continued to refine and strengthen the Recommendations, to ensure that countries have the strongest possible tools to tackle money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

- In June 2019 the FATF updated its rules to add legally obligatory provisions for the control and oversight of the operations of service providers that deal with virtual assets, or crypto assets.

- In 2022, in order to prevent criminals from concealing their illegal actions and dirty money behind covert corporate structures, the FATF further reinforced the global beneficial ownership requirements in the FATF Standards.²⁰⁴

²⁰³ <https://www.fatf-gafi.org/en/countries/fatf.html>. Accessed 06 March 2023

The FATF Recommendations are universally acknowledged as global AML standards, and numerous countries have committed to apply them into their own legal systems.²⁰⁵

3.1.8. Financial Intelligence Units

Through a FATF initiative, member countries created Financial Intelligence Units (FIUs). The FATF Recommendation 29 has defined FIU “as a national center for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.”²⁰⁶

In its 2004 report, named “Financial Intelligence Units: An Overview”, the IMF proposed four types of FIUs. They are judicial, law enforcement, administrative, and hybrid.²⁰⁷

- The judicial model is when an FIU is established within the judicial branch of government. In this model, disclosures of suspicious financial activity are received by a country’s investigative agencies from its financial sector so the judiciary powers can react (e.g., seizing funds, freezing accounts, conducting interrogations, detaining people, conducting searches, etc.).

- The law enforcement model implements AML measures alongside existing law enforcement systems, supporting the efforts of multiple law enforcement or judicial authorities with concurrent, or sometimes competing, jurisdictional authority to investigate money laundering.

- The administrative model is a centralized, independent, administrative authority, that receives and processes financial sector information and transmits disclosures to judicial or law enforcement authorities for prosecution. It functions as a “buffer” between the financial and law enforcement communities.

- The hybrid model serves as a disclosure intermediary and a link to both judicial and

²⁰⁴ <https://www.fatf-gafi.org/en/the-fatf/history-of-the-fatf.html>. Accessed 06 march 2023

²⁰⁵ Johnson, J. (2008). Third round FATF mutual evaluations indicate declining compliance. *Journal of Money Laundering Control*, 11(1), 47-66.

²⁰⁶ FATF. (2012). Recommendation 29.

²⁰⁷ IMF, (2004). Financial Intelligence Units: An Overview, p.9.

law enforcement authorities. It combines elements of at least two FIU models.²⁰⁸

FATF Recommendation 29 does not prejudge a country's choice of a specific FIU model, as there are several, and applies equally to all of them. In general, a FIU has three functions: Receipt, Analysis, and Dissemination.

In terms of "Receipt," the FIU serves as the central agency for receiving disclosures filed by reporting entities that include, at a minimum, suspicious transaction reports and other information mandated by law.

Regarding "Analysis", the FIU should analyze the information it receives and stores. While all information should be considered, depending on the quantity and type of disclosures received, as well as their intended use after dissemination, the analysis may focus on each individual disclosure received or on a selection of pertinent information. FIUs should conduct either (i) operational analysis with specific targets (such as people, assets, criminal networks, and affiliations) that tracks specific activities or transactions and establishes connections between those targets and potential criminal proceeds, money laundering, primary offenses, or terrorist funding, or (ii) strategic analysis that can be used to identify trends and patterns associated with money laundering.²⁰⁹

Regarding the "Dissemination" function, the FIU should be able to spontaneously communicate information and the results of its analysis with relevant authorities when there are grounds to suspect money laundering, underlying crimes, or terrorist financing. It should also be able to communicate information upon request from authorized authorities.²¹⁰

The Egmont Group is an organization made up of FIUs which was founded in 1995 during a meeting in Belgium. There are currently 166 FIUs that comprise the Egmont Group.²¹¹ The Egmont Group provides a secure platform for FIUs to exchange expertise and financial intelligence in order to combat money laundering, terrorism financing, and associated predicate offenses. The Group has published "Principles of Information Exchange Between Financial Intelligence Units for Money Laundering Cases" to emphasize the importance of information and intelligence exchange between FIUs. In order to improve training opportunities and personnel exchanges, the Group has also developed a model Memorandum of Understanding (MOU) and secure web sites to facilitate the rapid exchange

²⁰⁸ Ibid

²⁰⁹ FATF Recommendation 29, Interpretive Note

²¹⁰ Ibid

²¹¹ <https://egmontgroup.org/about/>. Accessed 06 March 2023

of information.²¹²

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 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.

3.2.1. The European Union

3.2.1.1. The Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime in 1990

As previously mentioned and described, the Vienna Convention was the first international effort to combat the threat to global financial stability posed by massive revenues created by drug trafficking. Following the entry into force of the Vienna Convention on 11 November 1990, the Council of Europe organized their own convention of a similar character. The Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime (the Strasbourg Convention) was a Council of Europe-planned initiative to combat money laundering.²¹³

The Strasbourg Convention was created with the idea that, in order to combat severe crime, which has grown to be an increasingly global issue, it was necessary to adopt a common criminal strategy aimed at securing the safety of society and fostering greater cohesion among its members states.²¹⁴ It demands the application of cutting-edge, efficient techniques on a global scale. In undertaking the confiscation of property obtained by illicit acts, the Convention also acknowledges the requirement for an effective system of international cooperation.²¹⁵

Regarding the criminalization of money laundering, the Strasbourg Convention adopted the formulation from the Vienna Convention:

“Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed

²¹² Veng Mei Leong, A. (2007). Chasing dirty money: domestic and international measures against money laundering. *Journal of Money Laundering Control*, 10(2), 140-156, p.150

²¹³ Vettori, B. (2007). Tough on criminal wealth: Exploring the practice of proceeds from crime confiscation in the EU. Springer Science & Business Media.

²¹⁴ The Strasbourg Convention, Preamble.

²¹⁵ Ibid

intentionally:

- The conversion or transfer of property, knowing that such property is proceeds, 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 the predicate offence to evade the legal consequences of his actions;

- The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system;

- The acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

- Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article”.²¹⁶

The distinction is in the nature of the underlying crimes that give rise to money laundering. The scope of the Strasbourg Convention expanded beyond drug trafficking, that is different from the Vienna Convention.²¹⁷ Individual state parties to this convention must decide whether specific crimes will be considered "predicate offenses" in their own legal systems. Money laundering became an offense that encompassed the proceeds of all severe crimes when the Strasbourg Convention was ratified.²¹⁸ It has proven difficult for individual states to regulate and enforce because of the different local patterns of growth. Because criminal groups operate in a wide range of illegal acts in pursuit of financial gain, the Strasbourg Convention recognized the need for a more comprehensive strategy to limiting organized crime's profits. This was a big achievement in the fight against money laundering.

The Strasbourg Convention came into force on 01 September 1993. Among the important features of this Convention was its stress on the confiscation of the proceeds of crime. Chapter 2 of the Strasbourg Convention set out measures to be introduced at the domestic level to combat money laundering. In this regard, it was stated in Article 3 that each party must adopt measures to enable it to identify and trace property of the proceeds

²¹⁶ Ibid, Article 6

²¹⁷ Amrani, H. (2012). *The Development of Anti-Money Laundering Regime: Challenging issues to sovereignty, jurisdiction, law enforcement, and their implications on the effectiveness in countering money laundering.*

²¹⁸ Gilmore, W. C. (Ed.). (1995). *Mutual assistance in criminal and business regulatory matters (Vol. 8).* CUP Archive.

from crime.²¹⁹ Article 4 further required states to introduce special investigative powers and techniques measures to empower the competent authority in this regard.²²⁰

In the Strasbourg Convention, a fresh development of international cooperation is referred to as "spontaneous information" in Article 10 concerning international coordination.²²¹ In this context, spontaneous information means that a state party may forward information on instrumentalities and proceeds to other parties without prejudice to its own investigations or proceedings if it believes that the disclosure of such information may assist the receiving party in initiating or carrying out investigations and prosecution.

3.2.1.2. *The European Union Directives on Money Laundering Control*

Over the past few decades, the EU has become a leader in financial sanctions. It has also built a successful AML system and an effective framework to stop terrorists from getting money. The EU AML/CFT system began in the late 1980s, when organized crime and money laundering needed new and different ways to be dealt with.²²²

The Committee of Ministers of the Council of Europe adopted the Strasbourg Convention in September 1990. This was a significant move since it indicated that organized criminal groups were not solely focused on one commodity and that the complexity of money laundering needed to be considered.²²³

Later, EU passed a number of Anti-money Laundering Directives (AML Directives) aiming to combat money laundering and terrorist financing. AML Directive is a set of regulatory requirements issued by the EU containing rules to combat money laundering and terrorist financing by EU member states. In Europe, AML rules are issued by the EU Parliament as the EU's AML Directive. Each EU member state then implements this into their legal system. AML refers to the process and procedures that are used to prevent criminals disguising illegally obtained money as legitimate funds. The EU's AML Directive is intended to prevent money laundering and terrorist financing. It establishes a regulatory environment for this that is consistent across all EU member countries.

The EU has issued six Directives on the Prevention of the Use of the Financial System for the Purpose of Money Laundering. The Directives are intended to create a level playing

²¹⁹ The Strasbourg Convention, Article 3

²²⁰ Ibid, Article 4

²²¹ Ibid Article 10

²²² Ganguli, I. (2010). The third directive: Some reflections on Europe's new AML/CFT regime. *Banking and Financial Services Report*, 1-18.

²²³ Secretariat, C. (2005). *Combating Money Laundering and Terrorist Financing*. The Commonwealth of Nations.

field throughout the European Union, and their adoption is a prerequisite for all potential new members. The section below will examine each of these Directives.

i) The First European Union Anti-Money Laundering Directive

Council Directive 91/308/EEC - The First European Directive (1AML Directive) on prevention of the use of the financial system for the purpose of money laundering was adopted by the European Parliament and Council on 10 June 1991, and it had until 1 April 1994, to be transposed into national laws in the member states. All of the member states were obligated under the Directive to alter their national laws to stop the use of their domestic financial systems for money laundering. The Directive acknowledged that money laundering activities could harm not just the specific institutions involved but also the financial system as a whole, and thus the economy of an entire state as well as the EU. The Directive also acknowledged the crucial role that financial institutions play in preventing and detecting money laundering and mandated that all financial institutions in member states implement specific measures to do so.

The FATF presented its initial set of 40 recommendations in April 1990, which had a significant impact on the text of the 1AML Directive. The 1AML Directive centered on the need for member states to punish money laundering, but it also initiated the process of imposing specific AML requirements on elements of the private sector considered best suited to act as "gatekeepers" for the financial system. Like the Forty Recommendations, the 1AML Directive targeted credit and financial institutions as the primary "obligated entities" within the private sector. The Directive required member states to pass legislation to ensure that such obligated entities undertook consistent Customer Due Diligence (CDD) and Know Your Customer (KYC) procedures at onboarding, as well as at regular intervals thereafter, and importantly kept records of the relationship up to five years after it had ended.²²⁴

In the late 1980s, when the 1AML Directive was enacted, Europe finally began to recognize money laundering as a major and consistent policy concern. Its shortcomings, though, became readily evident. Only drug trafficking within the meaning of the Vienna Convention was included by the 1AML Directive.²²⁵ It has become increasingly clear to professionals that the Directive's narrow focus on banks is insufficient, as money launderers place, layer, and integrate illicit funds into the legitimate financial system via a vast array of sectors and enterprises other than the financial industry. Predicate offenses can also involve

²²⁴ The 1AML Directive, Article 4

²²⁵ Hopton D. (2006) Money Laundering: A Concise Guide for all Business. Aldershot: Gower Publishing Limited, p.26

the illegal sale or transfer of weapons.

ii) The Second European Union Anti-Money Laundering Directive

In 1996, the FATF revised its Forty Recommendations with the primary objective of expanding the list of predicate offenses for money laundering, extending preventive duties beyond the financial sector, and revising the customer identification system in light of new technologies. Following the 1996 revision of the FATF Forty Recommendations, the scope of money laundering predicate offenses was broadened and defined, and it was stipulated that suspicious activity must be reported to a national FIU. By expanding the scope of the obligation to include non-bank financial institutions, it was also acknowledged that money launderers did not only use banks to transfer illicit funds.

Directive 2001/97/EC of the European Parliament and of the Council was passed on 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (2AML Directive). The Directive required that any future potential entrant country to the EU must adopt the AML Directives as a condition of entry. Compared to the previous Directive, the non-financial sector businesses brought within the requirements were:

- auditors, external accountants and tax advisors;
- estate agents;
- notaries and other independent legal professions, when they participate in specified functions;
- dealers in high-value goods, such as precious stones or metals, or works of art; auctioneers, whenever payment is made in cash and for amounts of €15 000 or more;
- casinos.”²²⁶

The 2AML Directive broadened the definition of criminal activity to include all forms of organized crime and illegal acts that damage the financial interests of the community, in addition to drug-related operations. In addition, it provided examples of how the community and enforcement authorities of money laundering regulations in member states collaborate to combat fraud and corruption. However, a compromise was reached and the 2AML Directive's scope was not expanded to include professionals such as lawyers. Consequently, lawyers were exempt from disclosing information obtained while defending or representing a client.

iii) The Third European Union Anti-Money Laundering Directive

The Directive 2005/60/EC of the European Parliament and the Council (The 3AML Directive) was introduced on 26 October 2005 as an improvement to the 2AML Directive on

²²⁶ The 2AML Directive, Article 1 (2)

the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The deadline for transposing the 3AML Directive into national law was 15 December 2007.

In 2003, FATF had revised its Recommendations further to take into account new responsibilities as the international standard setter for AML/CFT, creating Nine Special Recommendations on terrorist financing. These new Recommendations shaped the relevant AML/CFT content of the 3AML Directive, including due diligence measures to ensure obligated entities were not providing services to designated terrorists or terrorist groups.²²⁷ The adoption of the 3AML Directive has led to the rise of a new and effective AML/CFT regime in Europe.²²⁸

The 3AML Directive classifies the financing of terrorist activities as a criminal offense, comparable to money laundering, and takes it under its purview. The Directive imposes additional requirements and safeguards for higher-risk situations, such as trading with correspondent banks located outside the EU and more stringent checks on "politically exposed persons" (PEPs).²²⁹ The 3AML Directive introduced the concept of a risk-based approach to EU law, which was another of its most significant modifications.²³⁰ Since its implementation, the 3AML Directive has strengthened the AML/CFT regime in the European Union. Since its implementation, the 3AML Directive has tightened the EU AML/CFT regime.

iv) The Fourth European Union Anti-Money Laundering Directive

On 5 June 2015, Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the 4AML Directive) was published.²³¹ The deadline for implementation by the member states was 26 June 2017. The purpose of the 4AML Directive was to prevent the use of the EU's financial system for the purposes of money laundering and terrorist financing.²³² It seeks to extend and replaces the

²²⁷ Van Den Broek, M. (2011). The EU's preventive AML/CFT policy: asymmetrical harmonisation. *Journal of Money Laundering Control*, 14(2), 170-182.

²²⁸ Koster, H. (2020). Towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework. *Journal of Money Laundering Control*, 23(2), 379-386.

²²⁹ The 3AML Directive, Article 13 (4)

²³⁰ Veng Mei Leong, A. (2007). Chasing dirty money: domestic and international measures against money laundering. *Journal of Money Laundering Control*, 10(2), 140-156, p.147

²³¹ Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

²³² The 4AML Directive, Article 1 (1)

previous Directive that entered into force in 2007. The introduction of the 4AML Directive was mainly driven by revisions to the FATF Recommendations which were adopted in February 2012 to address emerging AML/CTF issues and the outcome of a review of the 3AML Directive, published in 2012, that the European Commission had undertaken.²³³ Notably, the 4AML Directive applies to credit institutions, financial institutions, and trust company service providers in the same manner as previous legislation.

The 4AML Directive also increased the emphasis on the risk-based approach by mandating that required entities make the necessary efforts to detect and assess the risks of money laundering and terrorism financing in each of their unique business contacts and transactions. Under the previous AML Directive, which also mandated a risk-based approach, a catalogue of specific circumstances and their associated money laundering risk was outlined. This essential element is no longer present. The 4AML Directive, on the other hand, places a greater emphasis on risk-based thinking at its core, requiring "Obligated entities" to detect and evaluate the risks of money laundering and terrorism financing in each of their individual business interactions and transactions. Nonetheless, the 4AML Directive specifies a list of topics that must be evaluated as part of the AML assessment. This risk assessment aims to identify and control the risk of money laundering and terrorist financing. Consequently, obligated entities will need to implement rules, controls, and procedures to mitigate the risks identified by their assessments. Importantly, this risk-based strategy will necessitate substantially more detailed internal policies and processes than existing frameworks.

The 4AML Directive will also permit an expansion of the scope of AML legislation requirements, for example by lowering the cash transaction threshold above which businesses that trade in goods qualify as obliged entities and, specifically, are required to identify their customers. This limit will decrease to €10,000 from €15,000.²³⁴

The 4AML Directive expands the extent of entities that must comply. The scope of the 4AML Directive is expanded to include as obliged organizations not only real estate agents engaged in the purchase or sale of real estate properties, but also real estate agents engaged in the rental of such properties.²³⁵ Additionally, the 4AML Directive extends its applicability to gaming service providers, who are now designated as obliged companies. Member States may

²³³ Koster, H. (2020). Towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework. *Journal of Money Laundering Control*, 23(2), 379-386, p.380.

²³⁴ The 4AMLD, Article 2 (1)

²³⁵ Ibid, Article 2 (1)

remove these providers from the list of obliged entities in whole or in part if a low money laundering risk is demonstrated, with the exception of casinos.²³⁶

In terms of PEPs, the 4AML Directive now includes both local and foreign PEPs in the scope of increased vigilance measures.²³⁷ The 4AML Directive also specifies explicitly that obliged entities must implement suitable risk management systems, including risk-based procedures, to determine whether the client or the beneficial proprietor of the customer is a PEP. In the case of business partnerships with PEPs, the steps mandated by law, such as obtaining the consent of senior management to continue the relationship, remain unchanged.

In addition, the 4AML Directive eliminated listed companies, domestic public authorities, and financial institutions subject to AML/CTF regulation from the categories of clients considered to pose a lower risk. Consequently, regulated entities must conduct their own risk assessment to determine if simplified customer due diligence is appropriate and partake in the necessary monitoring to detect suspicious transactions. Before deciding which client connection or transaction is low risk, regulated organizations must evaluate member-state recommendations on lower risk categories under the new method.²³⁸

With the 4AML Directive, the EU is putting into place the FATF's tougher rules and working harder to stop money laundering and the funding of terrorism.

v) *The Fifth European Union Anti-Money Laundering Directive*

On 19 June 2018, “Directive (EU) 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU” was published in the Official Journal of the EU. This legislative act is also referred to as the Fifth AML Directive (5AML Directive). Member States are required to transpose the 5AML Directive by 10 January 2020.

The 5AML Directive essentially aims at enacting the following main changes:

- The 5AML Directive extended the scope of obliged entities subject to AML/CFT obligations.²³⁹ The scope of the 5AML Directive has been enlarged so as to include: Custodian wallet providers;²⁴⁰ Virtual currencies²⁴¹ and fiat currencies exchange service

²³⁶ Ibid, Article 2 (2)

²³⁷ Ibid, Article 3 (9)

²³⁸ Koster, H. (2020). Towards better implementation of the European Union’s anti-money laundering and countering the financing of terrorism framework. *Journal of Money Laundering Control*, 23(2), 379-386, p.381

²³⁹ The 5AML Directive, Article 1 (1)

²⁴⁰ “Custodian wallet provider” are defined under Article 1(2)(d) of the 5AML Directive as “an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.”

providers;²⁴² Traders of works of art or persons acting as intermediaries in the trade of works of art (including where this is carried out by art galleries or auction houses) and persons storing, trading or acting as intermediaries in the trade of works of art, where the transaction or a series of linked transactions amounts to at least EUR10.000; and Auditors, external accountants and tax advisors which are already subject to AML/CFT obligations. any person that undertakes to provide (directly or indirectly or by means of other persons) material aid, assistance or advice on tax matters as principal business or professional activity. In addition, even though it was implicit in the 4AML Directive, the 5AML Directive now explicitly states that estate agents who act as intermediaries in the letting of real estate, in addition to real estate agents, are included in the scope of obliged entities under the 5AML Directive and must therefore comply with all applicable AML/CFT obligations.

- The 5AML Directive lowered certain thresholds pertaining to prepaid cards and electronic money. Concerning electronic money products, the maximum monthly transaction limit below which obliged entities may be exempted from client due diligence requirements has been reduced from EUR250 to EUR150. Additionally, the threshold at which the aforementioned exemption no longer applies for redemption in cash or cash discharge of monetary value has been reduced from EUR100 to EUR50. A new exemption exception has been established for remote payment transactions where the amount paid exceeds EUR50 per transaction. When such thresholds are reached or exceeded, obliged entities are required to implement all customer due diligence measures.²⁴³

- By changing specific customer due diligence requirements, the 5AML Directive improved consumer due diligence standards, particularly in the context of financial transactions involving high-risk third nations. The 5AML Directive specifies that customer identification and verification may also be accomplished through electronic means, such as relevant trust services as defined in Regulation EU No 910/2014,²⁴⁴ or any other secure, remote, or electronic identification process regulated, recognized, approved, or accepted by

²⁴¹ “Virtual currencies” are defined under Article 1(2)(d) of the 5AML Directive as “a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically”.

²⁴² Fiat currencies are referred to under recital 8 of the 5AML Directive as “coins and banknotes that are designated as legal tender and electronic money, of a country, accepted as a medium of exchange in the issuing country”

²⁴³ The 5AML Directive, Article 1 (7)

²⁴⁴ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive

the relevant national authorities.²⁴⁵ In terms of identifying PEPs, Member States are required by the 5AML Directive to issue and keep up to date a list indicating the exact functions that qualify as prominent public functions under their national laws, providing obliged entities with greater clarity as to who should be considered a PEP in a given Member State. International organizations accredited on their respective territories, as well as the Commission, will be subject to the same obligation. This will eventually allow the creation of a single consolidated list at the EU level, which will be made public.²⁴⁶

The 5AML Directive establishes a minimum set of enhanced customer due diligence measures that must be implemented by required entities in relation to business relationships or transactions involving high-risk third countries in order to harmonize the EU approach to these countries and, as a result, reduce the risk of forum shopping. The 5AML Directive also allows Member States to take additional precautions in relation to third-party countries with high levels of risk (for example, prohibiting needed businesses from establishing subsidiaries in such countries). The 5AML Directive also specifies additional mitigating measures that must be implemented by required entities when conducting transactions involving high-risk third countries using a risk-based approach and taking into account the unique circumstances of business relationships or transactions (for example, the restriction of business relationships or transactions with persons from such countries).²⁴⁷

- The 5AML Directive introduced stricter, more stringent transparency controls. In accordance with the 5AML Directive, Member States must now ensure that the public has access to certain information relating to beneficial owners (at the very least, the name, month/year of birth, country of residence, nationality of the beneficial owners, and the nature and extent of the beneficial interest) held in the national register of beneficial owners of corporations and other legal entities.²⁴⁸ Additionally, the required entities must now provide access to the beneficial owners-related information from the registers of beneficial owners of trusts and other similar arrangements as part of their customer due diligence measures, in addition to, among others, anyone who can show a legitimate interest.

- The 5AML Directive gave the FIUs and pertinent supervisory bodies more authority.²⁴⁹ The 5AML Directive has expanded the scope and access to information available

²⁴⁵ The 5AML Directive, Article 1 (8)

²⁴⁶ The 5AML Directive, Article 1 (13)

²⁴⁷ Ibid, Article 1 (11)

²⁴⁸ Ibid, Article 1 (15)

²⁴⁹ Ibid, Article 1 (19)

to FIUs in order to permit FIUs to obtain additional information from required entities and to provide them with timely access to the financial, administrative, and law enforcement information they need to perform their duties effectively, even in the absence of a suspicious activity report. In addition, FIUs have complete and immediate access to information stored in centralized automated mechanisms for banks, payment accounts, and safe deposit boxes, as well as information that enables the prompt identification of any natural or legal persons who own real property, including through registers and electronic data retrieval systems. Last but not least, the 5AML Directive strengthens the framework for collaboration between the financial supervisory authorities of Member States and other AML/CTF-engaged authorities (including tax authorities), as well as the foundation for cooperation between FIUs.

vi) The Sixth European Union Anti-Money Laundering Directive

Shortly after the publication of the 5AML Directive, on October 23, 2018, the EU issued the Sixth AML Directive (6AML Directive) to further its mission. The 5AML Directive updated AML regulations to include innovations such as virtual currency. The 6AML Directive seeks to standardize these regulations across EU member states, increase penalties, and give financial institutions a larger voice in the global fight against money laundering. By harmonizing the definition of money laundering across the EU, the 6AML Directive aims to eliminate any legal loopholes. Cybercrime is now included as a predicate offense in the 6AML Directive for the first time.

The key highlights of the 6AML Directive include:

- 22 predicate crimes all listed together for money laundering: One of the core elements of the 6AML Directive is the harmonization of the definition of what constitutes a money laundering offense. The relevance of this fact is that, as a result of this standardization, the EU will remove some interpretational gaps between the domestic laws of the various Member States, resulting in a more uniform approach to the battle against illicit actors worldwide. 22 predicate offenses, including cybercrime and environmental crimes, will be created by the 6AML Directive. The creation of these offenses shows that the EU is becoming more aware of what is happening within its borders and is acting more proactively.²⁵⁰

- The expansion of the money laundering definition to include “aiding and abetting”: The 6AML Directive expands the list of criminal offenses to include "aiding and abetting" as a new criminal offense. Under the existing framework, those who profit directly from the act of money laundering are targeted for punishment. However, under the 6AML Directive,

²⁵⁰ The 6AML Directive, Article 2 (1)

“enablers” will be held equally accountable.²⁵¹

- The inclusion of legal persons in the criminal liability for money laundering: The 6AML Directive modified the way that criminal liability for the offense is applied while also extending the range of illegal behavior related to money laundering. Prior to the implementation of the 6AML Directive, only specific offenders could be prosecuted for money laundering offenses; however, with the new legislation, legal entities are now also subject to criminal responsibility, making it possible for businesses to be held accountable for offenses committed by the individuals who work for them. If found guilty of money laundering, organizations may be subject to supervision orders or operating bans, among other sanctions.²⁵² The change means that management personnel, in addition to specific individuals, are now accountable for corporate criminal behavior. By extending criminal liability, the EU is sending a message that bigger businesses will be subject to their regulatory regime’s accountability requirements and will be expected to actively participate in the international effort to combat financial crime.

- More severe penalties: The sanctions that will be implemented now demonstrate how seriously the EU is treating this issue. Penalties may include not only prison time but also denial of public assistance or benefits, denial of access to public funding, such as grants and contracts, denial of permission to engage in commercial activity, judicial oversight, winding-up orders, establishment closure, freezing, and confiscation. Prior to the directive, the mandatory minimum prison term for those convicted of money laundering was one year; under the new guidelines, the mandatory minimum penalty has raised to four years, and Member States are being asked to attach additional punishments or measures where they are judged essential.²⁵³

- To facilitate cross-border money laundering prosecutions, there must be a greater exchange of information between member nations, which will lead to a greater level of cooperation. Dual criminality, or the notion that a base crime may occur in a different jurisdiction than where the funds are ultimately laundered, is a subject covered by this Directive. The 6AML Directive establishes particular guidelines for information sharing so that member states can prosecute related offenses. States will work together to centralize legal proceedings by determining where to bring charges based on territory, nationality, country of

²⁵¹ Ibid, Article 4

²⁵² Ibid, Article 7

²⁵³ Ibid, Article 5

residence of the offender, country of origin of the victims, and territory on which the perpetrator was found.²⁵⁴

The 6AML Directive's assistance to member states in the battle against money laundering and terrorism financing benefits both local and regional governments. Additionally innovative is the incorporation of cybercrime and environmental crimes as predicate charges. This demonstrates the EU's determination to adapt proactively to the constantly evolving nature of cybercrime. It serves to close some of the gaps in the 5AML Directive, which is another positive development.

3.2.2. The Europol and anti-money laundering control

Europol's goal is to assist its Member States in preventing and combating all types of severe international and organized crime, cybercrime, and terrorism. Europol is based in The Hague, the Netherlands. Additionally, Europol collaborates with other international organizations and partner nations beyond the EU. The majority of Europol's activity involves solving crimes that call for international collaboration and many nations both inside and outside the EU. The operational efforts of Europol are concentrated on: illegal drugs, human trafficking, assisted illegal immigration, cybercrime, euro counterfeiting, VAT fraud, money laundering and asset tracing, mobile organized crime groups, intellectual property crime, cigarette smuggling, outlaw motorcycle gangs, and terrorism.²⁵⁵ The organization as a whole has more than 1400 employees, 264 Europol liaison officers, and supports thousands of foreign investigations annually. It was officially recognized as an EU agency on 01 January 2010.²⁵⁶

INTERPOL provides technical assistance and training on AML procedures and facilitates cooperation and information sharing between member nations in the investigation of money laundering. As early as 1979, INTERPOL has encouraged its members to seize assets obtained through criminal activity. In 2001, Europol established a counterterrorism unit to combat money laundering and financing of terrorism. This organization works closely with its counterparts in other nations. This specialized counterterrorism team's mission is to "open and expand analysis files" on individuals suspected of committing terrorist offenses. Europol will employ counterterrorism specialists, and liaison officers will work with other forces to

²⁵⁴ Ibid, Article 10

²⁵⁵ <https://www.europol.europa.eu/about-europol>. Accessed 06 March 2023

²⁵⁶ Ibid

share information on suspects, potential witnesses, connections, associates, and informants²⁵⁷

3.2.3. The Asia/Pacific Group on Money Laundering

FATF regional groups, also known as FATF-Style Regional Bodies (FSRBs), play a vital role in promoting and implementing AML/CFT standards in their respective regions. They are modeled after the FATF and, like the FATF, their exclusive focus is on AML/CFT efforts. They encourage the FATF's Forty Recommendations to be implemented and enforced. They also conduct mutual evaluations of their members in order to uncover deficiencies so that the member can take corrective action. Furthermore, the FSRBs inform their members about money laundering trends, tactics, and other advances in their typology reports, which are typically published on a yearly basis. The FSRBs are non-profit organizations that operate on a volunteer basis. Membership is open to any country or jurisdiction within the defined geographic region that is willing to follow the organization's rules and objectives.

Nine FSRBs have been established in total. They are:

- Asia/Pacific Group on Money Laundering (APG) based in Sydney, Australia;
- Caribbean Financial Action Task Force (CFATF) based in Port of Spain, Trinidad and Tobago;
- Eurasian Group (EAG) based in Moscow, Russia;
- Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG) based in Dar es Salaam, Tanzania;
- Central Africa Anti-Money Laundering Group (GABAC) based in Libreville, Gabon;
- Latin America Anti-Money Laundering Group (GAFILAT) based in Buenos Aires, Argentina;
- West Africa Money Laundering Group (GIABA) based in Dakar, Senegal;
- Middle East and North Africa Financial Action Task Force (MENAFATF) based in Manama, Bahrain;
- Council of Europe Anti-Money Laundering Group (MONEYVAL) based in Strasbourg, France (Council of Europe).²⁵⁸

The FATF's Forty Recommendations are the principal standards to combat these

²⁵⁷ Veng Mei Leong, A. (2007). Chasing dirty money: domestic and international measures against money laundering. *Journal of Money Laundering Control*, 10(2), 140-156, p.150

²⁵⁸ <https://apgml.org/fatf-and-fsrb/page.aspx?p=94065425-e6aa-479f-8701-5ca5d07ccfe8>. Accessed 06 March 2023

crimes. However FATF and FSRBs are interdependent partners in the global AML/CFT network.

With the FATF and eight other regional entities, the APG forms a global network to combat money laundering, the financing of terrorism, and the financing of the proliferation of weapons of mass destruction. Since its establishment in 1997, the APG's membership has increased. It has grown from its original 13 founding member jurisdictions to 41 active members.²⁵⁹ In addition, 11 members of the APG are also members of the FATF, including the US, Australia, Canada, India, the People's Republic of China, Hong Kong, China, Japan, Korea, Malaysia, New Zealand, and Singapore.²⁶⁰ APG members must continue to implement the international standards issued by the FATF as part of their legal, financial, and law enforcement strategies to combat money laundering, terrorist financing, and the financing of proliferation. Now, nearly three decades after the APG's formation, the majority of its members have laws, regulations, administrative measures, and other programs to counter these threats.²⁶¹

Under Point 1 of the APG Terms of Reference 2019, the APG is a non-political, technical body, whose members are committed to the effective implementation and enforcement of the internationally accepted standards against money laundering, financing of terrorism and proliferation financing set by the FATF.²⁶² The APG has five primary functions:

- Mutual evaluations: The APG assesses the levels of compliance by its member jurisdictions with the global AML/CFT standards through a mutual evaluation program;
- Technical assistance and training: The APG Secretariat coordinates bi-lateral and donor-agency technical assistance and training in the Asia/Pacific region for its member jurisdictions in order to improve compliance with the global standards;
- Typologies research: the APG plays a key role in the research and analysis into money laundering and terrorist financing methods and trends to assist policy and law makers as well as law enforcement agencies and the general public to identify and respond to new and emerging trends, methods, risks and vulnerabilities;

²⁵⁹ Members of APG: Afghanistan, Australia, Bangladesh, Bhutan, Kingdom of, Brunei Darussalam, Cambodia, Canada, China, People's Republic of, Cook Islands Fiji, Hong Kong, China, India, Indonesia, Japan, Korea, Republic of Korea (South Korea), Lao People's Democratic Republic, Macao, China, Malaysia, Maldives, Marshall Islands, Republic of, Mongolia Myanmar, Nauru, Nepal, New Zealand, Niue, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Sri Lanka, Chinese Taipei, Thailand, Timor-Leste, Tonga, United States of America, Vanuatu, and Vietnam.

²⁶⁰ <https://apgml.org/members-and-observers/page.aspx?p=8c32704a-5829-4671-873c-7b5a23ced347>. Accessed 06 march 2023

²⁶¹ Ibid

²⁶² APG, (2019). Terms of Reference, Point 1

- Global engagement: The APG contributes to international AML/CFT policy development and actively engages with the global network of FSRBs. The APG also participates in a number of FATF working groups and in its plenary meetings; and

- Private sector engagement: This is essential to the overall goals of the APG. To further educate the general public and professionals on international issues relating to money laundering, terrorist funding, and proliferation finance, the APG actively collaborates with financial and non-financial institutions, non-profit organizations (NPOs), training centers, and universities across the Asia/Pacific region.²⁶³

The APG also helps its members set up national coordination frameworks so that resources may be used more effectively to fight money laundering and terrorism financing. In accordance with APG membership regulations, members states agree to participate in a system of mutual peer review to assess their level of compliance with the global AML/CFT standards. These peer reviews are referred to as “mutual evaluations”. A group of experts from APG member states who have received specialized training and qualification in the FATF's assessment methodology make up the team for a mutual review. Legal, financial, and regulatory expertise, as well as law enforcement specialists, including FIU experts, make up the team.²⁶⁴

The APG is currently in its third round of evaluations, following two rounds since 1997. The FATF's revised 2012 standards and 2013 methodology were used for the third round, which began in 2014. The third round has two components, which are as follows:

- Technical Compliance: A desk-based technical compliance analysis evaluates an APG member's compliance with the precise requirements of each of the 40 FATF recommendations - the jurisdiction's applicable legal and institutional framework, as well as the powers and procedures of responsible authorities. These recommendations are the foundation of an AML/CFT system. Prior to an on-site visit of the member being examined, an assessment team conducts a technical compliance analysis.

- Effectiveness Analysis: An effectiveness analysis evaluates the degree to which an APG member achieves a defined set of outcomes that are central to a properly functioning and effective AML/CFT system, with expected results based on the money laundering and terrorist financing risk profile of that jurisdiction. The analysis of effectiveness is not predicated solely on information shared with the assessment team. After exchanging

²⁶³ <https://apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c-9018-8bd1f6869162>. Accessed 06 March 2023

²⁶⁴ <https://apgml.org/mutual-evaluations/page.aspx?p=a901712a-54e4-4b3b-a146-046aefca6534>. Accessed 96 March 2023

information, the team will visit the member under evaluation and conduct interviews with government and private sector officials to obtain a thorough understanding of how the AML/CFT system operates. Participation from the private sector is essential to achieving this comprehension.²⁶⁵

Vietnam became the 34th member of in May 2007. As a member of APG, Vietnam is responsible for complying with FATF recommendations and performing APG's member obligations, including: Implementing necessary actions to combat money laundering and terrorist financing; Taking positive and proactive actions and steps to develop, adopt and enforce AML/CFT legislation and other measures based on international standards; Recognizing the benefits of sharing information and experiences; and Committing to implement the assessment of the APG.²⁶⁶ In November 2019, within the framework of APG's multilateral assessment program on Vietnam's AML/CFT mechanism, APG's assessment team worked with Vietnamese agencies, related organizations. Preliminary assessment results presented in Assessment Report show that, in spite of Vietnam's efforts to prevent money laundering and terrorist financing, the level of compliance and implementation of the recommendations set by the FATF is still limited. This mutual evaluation report was adopted by the APG at its Special Plenary meeting in November 2021.²⁶⁷

3.2.4. The Association of Southeast Asian Nations and anti-money laundering control

Transnational money laundering has been facilitated throughout the last few decades by a number of causes, including the globalization of financial markets and the internationalization of organized crime. It is more difficult to combat money laundering in places where there is a lack of expertise, resources, ability, and a legal framework. Many people who launder money choose to do so in Southeast Asia.²⁶⁸ Money laundering is a growing concern worldwide, and Southeast Asia is seen as one of the hotspots. Money laundering is made easier in this region because of the wide variety of countries found there,

²⁶⁵ Ibid

²⁶⁶ SBV. (2021): Bao cao tong ket thi hanh luat phong chong rua tien (English: Report of implementation of the Law on Prevention and Combat of Money Laundering)

²⁶⁷ APG. (2022). Anti-money laundering and counter terrorist financing measures - Vietnam, Third Round Mutual Evaluation Report, APG, Sydney.

²⁶⁸ Chat, L. N. (2012). Towards the effective ASEAN mutual legal assistance in combating money laundering. *Journal of Money Laundering Control.*, Vol. 15 No. 4, pp. 383-395., p.383

each with its own history, economy, culture, politics, and legal system.²⁶⁹

The founding members of The Association of Southeast Asian Nations (ASEAN) - Indonesia, Malaysia, the Philippines, Singapore, and Thailand - signed the ASEAN Declaration (also known as the Bangkok Declaration) on 8 August 1967 in Bangkok, Thailand. There are currently ten Member States of ASEAN; Brunei Darussalam joined on 7 January 1984, Vietnam on 28 July 1995, Lao People's Democratic Republic and Myanmar on 23 July 1997, and Cambodia on 30 April 1999.²⁷⁰ The Heads of State or Government of the ASEAN Member States make up the ASEAN Summit, the organization's top policy-making body. The ASEAN Summit Meetings will occur twice yearly. The First ASEAN Summit was held in Bali, Indonesia between 23 and 24 February 1976.²⁷¹

Due to criminal conduct that takes advantage of new technologies and regulatory loopholes in the financial and economic sectors, international economic crime is becoming an increasing source of concern.²⁷² International economic crime has repercussions for ASEAN that go beyond monetary loss. Transnational crime has increased in frequency, variety, and sophistication as a result of globalization, technological progress, and the freer movement of people and goods across international borders. Because of this growth, transnational money laundering has appeared as a new type of organized crime. Money laundering, international economic crime, and transnational organized crime as a whole (including terrorism, arms smuggling, illicit drug trafficking, illegal wildlife and timber trades, human trafficking, and cybercrime) are all interconnected in more ways than one, as recognized by ASEAN.²⁷³

Since the early 1970s, ASEAN nations have made coordinated efforts to tackle such crime in reaction to these international crimes. For instance, the Manila-adopted ASEAN Declaration on Transnational Crime from December 1997. The ASEAN Ministerial Meeting on Transnational Crime (AMMTC) was founded the same year and holds yearly meetings in accordance with the aforementioned ASEAN Declaration. The AMMTC will serve as the highest policy-making body for ASEAN in regards to issues involving collaboration and

²⁶⁹ Ibid, p384

²⁷⁰ <https://asean.org/about-asean>. Accessed 06 March 2023

²⁷¹ <https://asean.org/about-asean/asean-summit/>. Accessed 06 March 2023

²⁷² Thai, H. V. (2021). Money Laundering Risks Posed By Mobile Money Services. *Technium Social Sciences Journal*, 15, 253-258.

²⁷³ <https://asean.org/our-communities/asean-political-security-community/peaceful-secure-and-stable-region/international-economic-crime-money-laundering/>. Accessed 06 march 2023

cooperative efforts in combating and preventing transnational crime.²⁷⁴ The AMMTC aims to strengthen and improve cross-sectoral coordination, including information sharing on transnational crime issues with relevant ASEAN sectoral bodies, facilitate and promote cooperation and coordination within ASEAN in the prevention and combat of existing and emerging transnational crime, and enhance cooperation with ASEAN Dialogue Partners and relevant stakeholders. The most recent meeting, the 16th AMMTC, was held by videoconference on September 21, 2022, to explore strategies for enhancing regional collaboration in the fight against transnational crime, particularly in light of the challenges posed by the post-COVID-19 pandemic environment. The 16th AMMTC had the topic "ASEAN A.C.T.: Addressing Challenges Together" and was presided over by the Kingdom of Cambodia.²⁷⁵

Many ASEAN ministerial meetings since the AMMTC's 1999 adoption of the "ASEAN Plan of Action to Combat Transnational Crime" attest to the region's strong political will to combat transnational crime. The illegal drug trade was the initial target of ASEAN's efforts. However, ASEAN has improved its collaboration to combat transnational crime generally, including money laundering.²⁷⁶ On October 1, 2015, in conjunction with the 10th ASEAN Ministerial Meeting on Transnational Crime (AMMTC) in Kuala Lumpur, Malaysia, the ASEAN Ministers responsible for transnational crime prevention and control signed the Kuala Lumpur Declaration in Combating Transnational Crime. The Kuala Lumpur Declaration recognized the emergence of new forms of transnational crime and the continued need for ASEAN Member States to be vigilant and to effectively address in a timely manner the existing and emerging transnational and trans-boundary challenges and threats that have the potential to undermine the stability and well-being of ASEAN Member States and the region. To carry out the goals of the Kuala Lumpur Declaration of 2015, the Association of Southeast Asian Nations (ASEAN) has just formed the "ASEAN Plan of Action in Combating Transnational Crime (2016-2025)". The Plan of Action seeks to strengthen ASEAN's capacity to effectively and promptly handle transnational crimes, and to encourage and facilitate continued close cooperation between ASEAN Member States in this regard.

²⁷⁴ Term of reference of the ASEAN ministerial meeting on transnational crime. Available <https://asean.org/wp-content/uploads/2012/05/ToR-of-the-AMMTC-endorsed-by-SOMTC-and-DGICM-adopted-by-11th-AMMTC.pdf>. Accessed 06 March 2023

²⁷⁵ <https://asean.org/wp-content/uploads/2022/09/01-Adopted-Joint-Statement-16th-AMMTC-on-of-21-Sept-2022.pdf>. Accessed 06 March 2023

²⁷⁶ Chat, L. N. (2012). Towards the effective ASEAN mutual legal assistance in combating money laundering. *Journal of Money Laundering Control.*, Vol. 15 No. 4, pp. 383-395., p.385

Eight types of transnational crime were prioritized in the AMMTC's commitment to fighting them: terrorism, drug trafficking, human trafficking, arms smuggling, maritime piracy, money laundering, international economic crime, and cybercrime.²⁷⁷ Since the global AML system has spread, all ASEAN countries have joined the APG. In the fight against money laundering (AML), financial intelligence units (FIUs) have emerged as indispensable intergovernmental agencies in all governments.

3.3. Summary of the Chapter

Over the past few decades, the world community has taken unprecedented measures to counter the grave danger posed by drug trafficking and the money generated by it. However, it was expanded beyond drug trafficking to cover other major crimes in an effort to weaken the financial system of drug traffickers, organized criminals, and other criminal groups.

Since both money laundering and the financing of terrorism are unquestionably global phenomena, solutions for combating them must incorporate a strong international component. It is imperative that all sectors and nations work together to combat money laundering and the financing of terrorism. The Basle Committee on Banking Regulations and Supervisory Practices, the Vienna Convention in 1988, the UN Convention for the Suppression of the Financing of Terrorism in 1999, and the Palermo Convention in 2000 were all significant steps taken by the international community to combat money laundering. In addition, the international community's dedication to combating transnational organized crime, which includes money laundering, is reflected in the establishment of INTERPOL as an international police force.

The astounding forty recommendations issued by the FATF in 1990 were the organization's most significant achievement. The main goal of these suggestions was to make money laundering illegal and improve the systems in place to catch those who do it. In 1996, 2003, and 2012, these forty suggestions underwent revisions. The new versions have toughened reporting requirements and bolstered international cooperation, as well as expanded the AML role of banks to non-bank financial institutions and professionals like lawyers and notaries. The new versions also extend the scope of the applications of the forty recommendations, such as the criminalization of laundering the proceeds of all serious crimes.

Many regional organizations are also actively engaged in the battle against money laundering, complementing the international community's efforts. This chapter has looked at the work done on a regional level to combat money laundering and terrorist financing by the

²⁷⁷ https://asean.org/wp-content/uploads/2021/01/ASEAN-Plan-of-Action-in-Combating-TC_Adopted-by-11th-AMMTC-on-20Sept17.pdf. Accessed 06 March 2023

European Union, the Asia-Pacific Group, and the Association of Southeast Asian Nations. With the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation from the Proceeds of Crime 1990, the EU Directives on Money Laundering Control, and the establishment of EUROPOL, a European police force charged with the fight against organized crime, the European Union has made significant efforts to combat money laundering.

Efforts to stamp out global money laundering have been assisted by international conventions, which have in turn informed the creation of national laws and regulations in many countries. The tragic events of 11 September 2001 prompted international bodies like the FATF and its members to take action and impose sanctions on non-complying states and non-cooperative jurisdictions around the world. Compliance with international standards was inevitable because of the immense moral and political pressure from the world community for the tight enforcement of AML measures.

In the next chapter, the thesis will examine the AML regulations in Vietnam legal system in the compliance with international AML standards.

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

4.1.1. Decree Number 74/2005/ND/CP on Preventing and Combating Money Laundering

In 1997, the National Assembly of Vietnam passed the Law on Credit Institutions. This law provides for the responsibilities of credit institutions toward funds of illegal origin.²⁷⁸ However the term “money laundering” was not mentioned in this law. The 1997 Law on Credit Institutions contributed to perfecting the legal basis and the State's management and supervision over the activities of credit institutions in the early stages of international economic integration. However, the Law on Credit Institutions has revealed many limitations that need to be adjusted and replaced in accordance with international standards and practices in order to meet the new development requirements of Vietnam after joining the World Trade Organization (WTO) in 2007. Then the Decree No. 74/2005/ND/CP on the prevention and combat money laundering (The Decree No. 74) was passed on 07 June 2005.²⁷⁹ This Decree prescribes the mechanism and measures to prevent and combat money

²⁷⁸ Nation Assembly, (1997), The Law on Credit Institutions.

²⁷⁹ Government, (2005): Decree No.74/2005/ND/CP on the prevention and combat money laundering

laundering in Vietnam in monetary or other asset transactions; responsibilities of individuals, agencies and organizations in the prevention and combat of money laundering; international cooperation in the field of anti-money laundering. This is the first legal document that lays the foundation for the process of establishing and developing the sufficient AML mechanism in Vietnam. In this document, the term “money laundering” was defined as:

“An act of an individual or organization seeking to legalize money and property obtained from crime through the following specific activities:

- a) Participating directly or indirectly in a transaction related to money or property obtained from the crime;
- b) Acquiring, possessing, transferring, converting, using, transporting across borders money and property obtained from crime;
- c) Investing in a project, a work, contributing capital to an enterprise or finding other ways to conceal, disguising or hinder the verification of the origin, true nature or location, movement or ownership of money and property acquired by the crime.”²⁸⁰

This Decree also prescribes the mechanism and measures to prevent and combat money laundering in Vietnam in monetary or other asset transactions; responsibilities of individuals, agencies and organizations in the prevention and combat of money laundering; international cooperation in the field of AML.²⁸¹ The Decree No. 74 and guiding documents have established the basic legal framework for preventing and combating money laundering in Vietnam, basically meeting the requirements of AML in Vietnam with some notable results as follows:

Firstly, for institutional improvement: On the basis of the provisions of Decree No.74, the SBV has issued Circular No. 22/2009/TT-NHNN dated 17 November 2009 guiding the implementation of measures to prevent and combat money laundering;²⁸² The Ministry of Finance (MOF) issued Circular No. 148/2010/TT-BTC dated 34 September 2010 guiding the implementation of measures to prevent and combat money laundering in the fields of insurance, securities and prize-winning entertainment games;²⁸³ The Ministry of Construction (MOC) has issued Circular No.12/2011/TT-BXD dated 01 September 2011 guiding the

²⁸⁰ Ibid, Article 3 (1)

²⁸¹ Ibid, Article 1

²⁸² See more at <https://thuvienphapluat.vn/van-ban/Tien-te-Ngan-hang/Thong-tu-22-2009-TT-NHNN-huong-dan-thuc-hien-cac-bien-phap-phong-chong-rua-tien-97661.aspx>. Access 01 March 2023

²⁸³ See more at <https://thuvienphapluat.vn/van-ban/Tien-te-Ngan-hang/Thong-tu-148-2010-TT-BTC-huong-dan-bien-phap-phong-chong-rua-tien-113237.aspx>. Accessed 01 March 2023

implementation of a number of contents of Decree No.74 on prevention and combat of money laundering for business activities in real estate sector.²⁸⁴

Secondly, in term of state management on prevention and combat of money laundering, the Decree No.74 stipulates the responsibilities of ministries and branches in money laundering prevention and combat.²⁸⁵ In particular, the SBV has the role of presiding over and coordinating with the Ministry of Public Security (MPS) and relevant agencies in formulating and implementing strategies, guidelines, policies and plans for prevention and combat money laundering in the Vietnamese territory; researching and finding solutions to limit cash payments in Vietnam.²⁸⁶ The MPS is responsible for presiding over and coordinating with relevant agencies, organizations and individuals in the fight against crimes related to money laundering.²⁸⁷ Other ministries and branches shall, within the ambit of their tasks and powers, coordinate with relevant agencies in detecting and handling money laundering crimes.²⁸⁸ Together with the Criminal Code, the Decree No.74 contributes to the transparency of the national financial system.

Thirdly, on the implementation of preventive measures:²⁸⁹ Credit institutions in particular and financial institutions in general have developed internal regulations on prevention and combat of money laundering. These internal regulations are an important basis for financial institutions to effectively prevent money laundering and ensure timely detection and reporting of suspicious transactions to the AMLD. In addition to reporting suspicious transactions, reporting institutions also strictly report cash transactions and money transfers in and out of Vietnam to the AMLD. At the same time, financial institutions have allocated sufficient resources to implement regulations and measures to prevent and combat money laundering at each financial institution. In addition, in order to raise awareness and skills for staff dealing with customers and officers in charge of AML, financial institutions synchronously deploy training program on prevention and combat of money laundering.

Fourthly, in term of international cooperation in the field of AML,²⁹⁰ the Decree No.74 creates a legal basis for the negotiation, signing and implementation of international

²⁸⁴ See more at <https://thuvienphapluat.vn/van-ban/Bat-dong-san/Thong-tu-12-2011-TT-BXD-huong-dan-Nghi-dinh-74-2005-ND-CP-phong-chong-rua-tien-128706.aspx>. Accessed 01 March 2023

²⁸⁵ Decree No.74, Chapter 3

²⁸⁶ Ibid, Article 15

²⁸⁷ Ibid, Article 16

²⁸⁸ Ibid, Article 17, 18, 19

²⁸⁹ Ibid, Chapter 2

²⁹⁰ Ibid, Chapter 4

agreements on information exchange related to money laundering between the SBV and other financial institutions or foreign FIUs. Currently, Vietnam is a member of the APG and an observer of the Egmont Group.

However, after several years of implementing Decree No.74 and guiding documents, besides the above results, a number of shortcomings and problems have arisen affecting the effectiveness of the AML activities in Vietnam, specifically:

Firstly, the Decree No.74 is not yet the legal document with the highest legal effect, so it has not been able to resolve some asynchronous regulations between the Decree No.74 with legal documents with higher legal effect. The guiding documents of the ministries and branches have not met the requirements of the time of promulgation and organization of implementation. Secondly, the provisions of Decree No.74 do not fully meet international standards on prevention and combat of money laundering. Thirdly, the issue of AML is a sensitive and complex issue with many special processes and methods, with concepts and terms that have not been popularized among the majority of the population. Some Vietnamese competent authorities lead to the perception that the prevention and combat of money laundering still has certain limitations. Fourthly, the subjects responsible for preventing and combating money laundering have not been extended to trust companies, notaries, accountants and there are also no regulations on shell banking, anonymous accounts, individuals with political influence. Fifthly, the information technology system of most reporting organizations fails to meet and support the prevention and combat of money laundering. The identification of customers of many financial institutions were still conducted manual, reducing the effectiveness of the prevention of money laundering through the financial system.²⁹¹

In light of these shortcomings, the need to pass the Law on AML is an extremely urgent requirement. There are some guiding viewpoints for the development of the Law on AML in order to overcome these above-mentioned shortcomings are:

- The Law on AML needs to be developed in sync with other relevant laws (especially the Criminal Code, the Criminal Procedure Code, the Law on Credit Institutions, and the Law on Mutual Legal Assistance.) and must refer to international standards and practices that Vietnam's commitments to international organizations.

- The Law on AML must have provisions on mechanisms and measures to prevent and combat money laundering applicable to all financial institutions, individuals, organizations,

²⁹¹ MOJ, (2012). De cuong gioi thieu Luat phong chong rua tien (English: Outline of introduction of the Law on AML)

and related non-financial businesses, especially in the fields of banking, securities, real estate to ensure a synchronous and effective mechanism in preventing and detecting, and handling money laundering offences.

- The Law on AML needs to reflect the FATF's recommendations and APG's recommendations to assess Vietnam's AML mechanism, but must ensure national sovereignty and not obstruct legal business activities of organizations and individuals.

- The Law on AML needs to provide detailed, specific and clear provisions on measures to prevent and combat money laundering, especially measures on identifying and updating customer information, suspicious transaction reports, information and record keeping. The Law on AML needs to overcome the shortcomings and problems of the Decree No.74 and guiding documents.

4.1.2. The Law on Anti-money Laundering in 2012

The Law on AML was approved by the Vietnamese National Assembly on 18 June 2012, and come into effect from 01 January 2013. This is a comprehensive legal document that stipulates regulations on measures to prevent, detect, and handle organizations and individuals that commit money laundering offences; responsibilities of agencies, organizations and individuals in AML; international cooperation on prevention and combat money laundering.²⁹² The 2012 Law on AML has 5 chapters, including 50 articles:

- Chapter I: General Provisions:

This chapter consists of 7 articles, from articles 1 to article 7 stipulating the basic contents of: Scope of regulation; Subjects of application; Implement of the Law on AML, relevant laws and international treaties; Definitions; Principles on prevention and combat of money laundering; State policies on prevention and combat of money laundering; and Prohibited acts.

- Chapter II: Measures to prevent and combat money laundering include:

Section 1: Identifying customers and updating information is regulated with 13 articles, from article 8 to article 20 specifically: Customer identification; Information identifying customers; Update customer identification information; Measures to verify customer identification information; Classify customers by level of risk; Foreign customers are individuals with political influence; Correspondent banking relations; Transactions related to new technology; Special monitoring of some transactions; Business activities through

²⁹² National Assembly, (2012). The Law on AML.

referrals; Ensuring the transparency of the legal entity and the authorization agreement; Ensure transparency in the activities of non-profit organizations; and Develop internal regulations on the prevention and combat money laundering.

Section 2: The responsibility to report, provide and retain information is regulated in 10 articles, from article 21 to article 30, specifically: Reports of great value transaction; Suspicious transaction report; Electronic remittance transaction report; Declare and provide information on the transportation of cash, precious metals, gems and negotiable instruments across borders; Means of report; Reporting deadlines; Time limit for keeping records and reports; Responsibility for reporting and providing information; Ensuring confidentiality of information and reporting documents; and Report money laundering to terrorist financing.

Section 3: Collection, processing and transfer of information on prevention and combat of money laundering consists of two article 31 and article 32, namely: Information collection and processing; and Information transfer and exchange.

Section 4: Application of temporary measures and handling of violations from article 33 to article 35, namely: Postponement of transactions; Freezing accounts, sealing or impounding assets; and Handling violations

- Chapter III: Responsibilities of state agencies in preventing and combating money laundering is regulated from article 36 to article 45 respectively:

Responsibility for state management of money laundering prevention and combat; Responsibilities of the SBV; Responsibilities of the MPS; Responsibilities of the Ministry of Finance; Responsibilities of the Ministry of Construction; Responsibilities of the Ministry of Justice; Responsibilities of other Government agencies; Responsibilities of the People's Procuracy and the People's Court; Responsibilities of People's Committees at all levels; and Information security.

- Chapter IV: International cooperation on prevention and combat money laundering:

This chapter includes from article 46 to article 48, namely: General principles of international cooperation; Content of international cooperation on prevention and combat money laundering; Responsibilities of national agencies in international cooperation on prevention and combat money laundering.

- Chapter V: Terms of Implementation:

This chapter includes article 49 on Effectivity and article 50 on Detailed regulations and implementation instructions.

In the 2012 Law on AML, "money laundering" is officially defined as:

"An act of an organization or individual to legalize the origin of the proceeds

of crime, including:

- a) Activities specified in the Criminal Code;
- b) Assist organizations and individuals involved in crimes to evade legal responsibility by legalizing the origin of property obtained through crimes;
- c) Possess property if at the time of receiving the property, it is known that such property was obtained by committing a crime, in order to legalize the origin of the property.”²⁹³

Property within this law includes objects, money, valuable papers and property rights as prescribed by the Civil Code, which may exist in material or non-material forms; movable or immovable property; tangible or intangible; legal documents or instruments proving ownership or interest in the property.²⁹⁴

There are some key contents of the 2012 Law on AML as follows:

i) About subjects of application

Overcoming the previous inadequacies about the concept of money laundering in Decree No.74 which is not consistent with international standards, on the basis of provisions of relevant international conventions, the 2012 Law on AML gives a clear definition “money laundering”. Regarding the subjects of application, the Law on AML stipulates that the subjects of application include:

- (i) Financial institutions;
- (ii) Organizations and individuals engaged in related non-financial business;
- (iii) Vietnamese organizations and individuals; foreigners living in Vietnam or foreign organizations, international organizations, non-governmental organizations operating in the Vietnamese territory, having financial transactions, other assets with financial institutions, individuals, relevant non-financial business organizations; and
- (iv) Other organizations and individuals related to AML.²⁹⁵

Compared with the provisions of the Decree No.74, the 2012 Law on AML has added a number of subjects to be applied which are “organizations and individuals engaged in related non-financial businesses”. The term “organization or individual engaged in related non-financial business” is understood as an organization or individual performing one or several of the following activities:

- (i) Trading in prize-winning games, casino;

²⁹³ The 2012 Law on AML, Article 4 (1)

²⁹⁴ Ibid

²⁹⁵ Ibid, Article 2

(ii) Real estate management services business, real estate brokerage, real estate trading;

(iii) Trading in precious metals and gems;

(iv) Providing notarization and accounting services, legal services of lawyers, law-practicing organizations;

(v) Investment trust services, services for establishment, management and administration of enterprises; services of providing directors and secretaries of businesses to third parties.²⁹⁶

Additionally, according to the provisions of the 2012 Law on AML, “financial institutions” are understood as organizations licensed to carry out one or several activities:

i) Receiving deposits;

(ii) Loans;

(iii) Financial leasing;

(iv) Payment services;

(v) Issuance of negotiable instruments, credit cards, debit cards, money orders, electronic money;

(vi) Bank guarantee and financial commitment;

(vii) Providing foreign exchange services and monetary instruments on the money market;

(viii) Consulting, securities underwriting, securities distribution agency;

(ix) Investment portfolio management;

(x) Managing cash or securities for other organizations and individuals;

(xi) Provision of insurance services; investment activities related to life insurance; and

(xii) Currency exchange.²⁹⁷

ii) About measures to identify customers and update customer information

The verification of a customer, or what is commonly known as the “Know Your Customer” (KYC) requirement, is one of the fundamental principles of the international AML measures that were stipulated in FATF’s Recommendation. For example, FATF Recommendation 10 regarding “Customer due diligence” states that:

“Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names... Financial institutions should be required to undertake customer due diligence (CDD) measures... Financial institutions should

²⁹⁶ Ibid, Article 4 (4)

²⁹⁷ Ibid, Article 4 (3)

be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.”²⁹⁸

Inheriting the provisions of the Decree No.74, the 2012 Law on AML stipulates the cases in which customer identification is required, the content of customer identification information, and methods of information verification, customer classification according to risk level, keeping and updating customer identification information, and enhanced customer identification measures:

- Regarding customer identification, Article 8 of the 2012 Law on AML requires financial institutions to apply measures to identify customers in the following four cases:

(i) when a customer opens an account or sets up an account transactions with financial institutions;

(ii) when a customer makes an irregular transaction of great value or conducts an electronic money transaction without information about the originator’s name, address, and account number;

(iii) when there is a suspicion that the transaction or the parties involved in the transaction are related to money laundering;

(iv) when there is doubt about the accuracy or completeness of previously collected customer identification information.²⁹⁹

At the same time, the 2012 Law on AML also stipulates that organizations and individuals engaged in related non-financial businesses must apply measures to identify customers in the following cases:

(i) Organizations and individuals providing casino and prize-winning games must take measures to identify customers for those carry out with large-value transactions;

(ii) Organizations and individuals providing real estate management services, real estate brokerage and real estate trading floors are responsible for applying measures to identify customers when providing brokerage services, buy and sell and manage real estate for clients;

(iii) Organizations and individuals trading precious metals and gems are responsible for applying measures to identify customers in case customers have transactions of buying and selling precious metals and gems of great value equal in cash;

²⁹⁸ FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation 10.

²⁹⁹ Ibid, Article 8 (1)

(iv) Organizations and individuals engaging in notarial, accounting and legal services of lawyers are responsible for applying measures to identify clients when acting on behalf of their clients in conducting relevant activities; and

(v) Organizations providing investment trust services, services of establishing, managing and operating enterprises, services of providing directors and secretaries of enterprises to third parties are responsible for applying measures to identify customers when providing related services.³⁰⁰

- Regarding the content of customer identification information, the 2012 Law on AML stipulates that customer identification information must include the following three groups of information:³⁰¹

Firstly, customer identification information: (i) For individual customers who are Vietnamese, information includes: full name, date of birth, nationality, profession, position; contact phone number, ID card number or passport number, date of issue, place of issue; address of registered permanent residence and current place of residence. (ii) For individual customers who are foreigners, identification information includes: full name, date of birth, nationality, profession, position, passport number, date of issue, place of issue, entry visa, address of registered residence abroad and registered address of residence in Vietnam; (iii) For organization customers, information includes: full transaction name and abbreviation, address of the head office, phone and fax number, field of activity and business, information about the founder or representative of the organization.

Secondly, information about beneficial owners. These includes: (i) Information identifying beneficial owners and applying measures to identify and update information about beneficial owners; (ii) For a customer who is a legal entity or an authorization agreement service, the information that must be collected is information about ownership to identify the individual having controlling interest and governance over the operation of such legal entity or authorization agreement.

Thirdly, information about the customer's purpose in relation to related financial institutions, organizations and individuals doing business in non-financial industries.

- Regarding the methods of information verification, the 2012 Law on AML stipulates that financial institutions, organizations and individuals engaged in related non-financial businesses are responsible for verifying customer identification information through the use of the following documents and data: (i) For individual customers: identity cards, valid passports

³⁰⁰ Ibid, Article 8 (2)

³⁰¹ Ibid, Article 9

and other papers issued by competent authorities; (ii) For institutional customers: License or establishment decision, decision on renaming, splitting or merging, certificate of business registration, the appointment decision or contract to hire the General Director (or Director), Chief Accountant, (iii) Through other organizations or individuals that already or are having a relationship with the client; or through a management agency or other competent state authorities to collect information and compare it with information provided by customers; or (iv) Hiring other organizations to verify customer identification information.³⁰²

- Regarding customer classification according to risk level, the 2012 Law on AML requires financial institutions, organizations and individuals engaged in related non-financial businesses to establish regulations on customer classification. Based on these classification, these entities may apply measures to identify customers at a lower level with low-risk customers, or apply enhanced assessment measures for high-risk customers.³⁰³ Enhanced assessment measures to high-risk customers will be applied to foreign customers who are PEPs,³⁰⁴ correspondent banking relations,³⁰⁵ transactions related to new technology,³⁰⁶ special transaction,³⁰⁷ business activities through referrals.³⁰⁸

iii) About reporting responsibility, and the type of transaction to report

Regarding reporting responsibilities, the Law on AML in 2012 specifically stipulates the reporting responsibilities of financial institutions, organizations and individuals engaged in related non-financial businesses (reporting entities) when performing large value transactions, suspicious transactions, and large-value electronic money transactions.

Large value transactions under the Law on AML was prescribed by the Prime Minister at the request of the SBV in accordance with the country's socio-economic development in each period. According to the provisions of Decree No.74, the transaction value to be reported was a saving account transaction with a value of VND500 million in cash (approximately USD21,250), foreign currencies or gold of equivalent value, or other transactions valued at VND200 million.³⁰⁹

³⁰² Ibid, Article 11

³⁰³ Ibid, Article 12

³⁰⁴ Ibid, Article 13

³⁰⁵ Ibid, Article 14

³⁰⁶ Ibid, Article 15

³⁰⁷ Ibid, Article 16

³⁰⁸ Ibid, Article 17

³⁰⁹ Ibid, Article 21

The 2012 Law on AML has detailed suspicious transactions according to groups of basic suspicious signs in the fields of banking, securities, insurance, prize-winning games, casino, real estate. When performing a transaction where the reporting entities have doubts or have reasonable grounds to suspect that the assets in the transactions have criminal origins, or are related to money laundering, the reporting entities must take responsibility to report these transaction to the SBV.

iv) About the form of reporting, the time limit for reporting, and record keeping

Regarding the form of reporting, Article 25 of the Law on AML in 2012 stipulates that the reporting entities must report to the SBV in the forms of:

(i) electronic data files or written files to the SBV;

(ii) In case of necessity, the reporting entities may report by fax, phone, or email, but must ensure the safety and confidentiality of the reported information and must re-confirm with one of the two forms (electronic data files or written files); and

(iii) In case of suspicious transaction report, the reporting entities must enclose the account opening file for transactions made through that account, customer identification information, other documents related to suspicious transaction, and preventive measures have been taken.³¹⁰

In term of time limit for reporting, the 2012 Law on AML stipulates that the reporting entities must report to the SBV within the following time limits:

(i) For large value transactions and electronic money transactions, the reporting must be submitted daily in the form of electronic data file submission or within 02 working days from the date of transaction in the form of written report;

(ii) For suspicious transaction, the reporting entities must report within a maximum time of 48 hours from the time of transaction; in case of detecting that the transaction requested by the customer shows signs of being related to a crime, it must immediately report it to the SBV and the competent state agencies.³¹¹

The 2012 Law on AML also stipulates that the reporting entities is responsible for keeping records for at least 5 years from the date of transaction and information about customer identification, accounting documents and reports on large value transactions, suspicious transactions, electronic money transactions with relevant documents from the date of account closing or the end of the transaction.³¹²

³¹⁰ Ibid, Article 25

³¹¹ Ibid, Article 26

³¹² Ibid, Article 27

v) About the application of temporary measures

In order to improve the effectiveness of AML mechanism, the 2012 Law on AML stipulates that the reporting entities can apply temporary measures including:

(i) Deferring transactions for no more than 03 working days when the parties involved in the transaction are blacklisted or have reason to believe that the transaction requested to be performed is related to criminal activity. In this case, the reporting entities must immediately report in written form to the SBV and competent state agencies;

(ii) The reporting entities must block the accounts or apply the measure of sealing or impounding the assets of individuals and organizations when there is a decision of a competent state agency in accordance with the provisions of law.³¹³

On 04 October 2013 the Vietnamese government issued the Decree No.116/2013/ND-CP (the Decree No.116) detailing the implementation of a number of articles of the 2012 Law on AML. The Decree stipulates measures to prevent and combat money laundering, collect, process and transfer information on AML, responsibilities of state agencies and international cooperation. in the prevention and combat of money laundering. Based on these stipulation by the 2012 Law on AML, Vietnam has gradually improved the legal system for AML.

Overall, the 2012 Law on AML is a comprehensive legal document regulating the prevention and combat of money laundering, creating a legal basis to improve the effectiveness of the prevention and combat of money laundering in Vietnam. However, after 10 years of implementation, besides the positive contributions, the 2012 Law on AML has revealed shortcomings and needs to be replaced in order to improve the effectiveness of the prevention and combat of money laundering. Among the shortcomings are:

Firstly, the Law on AML was passed by the National Assembly in 2012. At that time, the provisions of the Law on AML were developed in an appropriate direction, implementation the FATF Recommendations issued before 2012. Since then, the FATF has revised its recommendations eleven times, leading to the fact that a number of provisions in the 2012 Law on AML and its implementing guidelines are no longer consistent with the current FATF Recommendations.

Secondly, regarding the reporting entities, the Law on AML in 2012 include only two groups: (i) financial institutions; and (ii) organizations and individuals engaged in non-

³¹³ Ibid, Article 33, 34

financial businesses (or DNFBPs)³¹⁴ in accordance with the activities of the reporting entities at the time of issuance. However, during the implementation process, some new activities need to be added to the reporting object such as payment intermediary activities. Therefore, it is necessary to legislate this subject into the reporting entities in the new Law on AML. At the same time, in practice, new activities with risks of money laundering may arise, making it necessary to have provisions in the new law to cover these newly arising fields and activities.³¹⁵

Thirdly, the Law on AML in 2012 has no provisions on national risk assessment and for each subject of money laundering reporting, there is no provisions regarding the responsibilities of ministries and sectors in assessing national risk of money laundering. Meanwhile, this is one of the requirements belonging to the group of key and fundamental issues in AML requirements outlined in FATF's Recommendation 1.³¹⁶

Therefore, the need to pass a new law on AML is urgent to overcome the limitations and inadequacies of the Law on AML in 2012, contributing to improve the effectiveness of prevention and combat money laundering; develop a legal system on money laundering prevention and combat in accordance with international requirements and standards.

4.1.3. The Law on Anti-money Laundering in 2022

The 2022 Law on AML was passed by the National Assembly on 15 November 2022, and comes into effect from 01 March 2023, and replaces the 2012 Law on AML. This is the current Law on AML in place. The current Law on AML is structured into four chapters with 66 articles, that has one chapter less but 16 articles more compared to the 2012 Law on AML, with many new updates. These new key changes of the Law on AML in 2022 are:

i) Definition of money laundering

The 2022 Law on AML defines “money laundering” as an act of an individual or an organization to legitimize the origin of property obtained from crime.³¹⁷ The new update in

³¹⁴ DNFBPs comprise of: (i) Casinos; (ii) Real estate agents; (iii) Dealers of precious metals and precious stones; (iv) Lawyers, notaries, other independent legal professionals and accountants; and (v) Trust and Company Service Providers (TCSPs). The last group refers to all persons or businesses that are not covered elsewhere under FATF Recommendations

³¹⁵ Thai, H. V. (2022). An exploration of current regulatory aspects of money laundering. *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 169-184.

³¹⁶ Developing and implementing a national AML/CFT regime requires a thorough understanding of the risks of money laundering and terrorism financing. A risk assessment enables nations to identify, evaluate, and comprehend their money laundering and terrorist financing risks. Once these risks are adequately understood, nations can implement AML/CFT measures proportional to the risk level.

³¹⁷ National Assembly, (2022). The 2022 Law on AML, Article 3 (1)

this regard is that while “property obtained from crime” under the 2022 Law on AML means that any property directly or indirectly obtained from a criminal act and any income, benefit or profit derived from the property obtained from a criminal act,³¹⁸ the Law on AML in 2012 gave no explanation about it.

ii) The scope of reporting entities

The reporting entities is a legal concept under the new Law on AML, being used to refer to organizations and individuals that have obligations to conduct measures against AML and comply with other obligations as required by the Law. According to the 2022 Law on AML, the reporting entities are classified into two groups as follows:

- Financial entities: This group includes entities being licensed to conduct one or more of the following business activities: Receiving deposits; Lending; Financial leasing; Payment services; Intermediary payment services; Issuance of negotiable instruments, bank cards, transfer instruction; Bank guarantee, financial commitment; Providing foreign exchange services and monetary instruments on the money market; Securities brokerage; securities investment consulting, securities underwriting; Managing securities investment funds; securities portfolio management; Life insurance; and money exchange services.³¹⁹

- Non-financial entities: This group includes entities, individuals that conduct one or more of the following activities: Trading in prize-winning games, including: prize-winning electronic games, games on telecommunications networks, the Internet, casino, lottery, place a bet; Real estate business, except for real estate leasing and subleasing and real estate consulting services; Trading in precious metals and gems; Business accounting services; notary services; legal services of lawyers and law-practicing organizations; Providing services for establishment, management and administration of enterprises; providing directorship and secretarial services to third parties, and providing legal agreement services.³²⁰

Compared to the 2012 Law on AML the concept of “reporting entities” under the new Law is regulated in a broader manner covering more business activities. Notably, taking consideration of recent money laundering offences in the country, and the FATF’s Recommendation, entities conducting interim payment services are also included to the reporting entities under the new Law on AML.

iii) New requirement on national money laundering risk assessment and money laundering risk assessment from the reporting entities.

³¹⁸ Ibid, Article 3 (2)

³¹⁹ Ibid, Article 4 (1)

³²⁰ Ibid, Article 4 (2)

The 2022 Law on AML imposes new requirements on the government’s national money laundering risk assessment (the AML Risk Assessment), which must be conducted every five years, with the SBV taking the lead and cooperating with other relevant ministries:

“Every 5 years, the SBV shall take the lead and coordinate with related ministries and branches in conducting national risk assessment on money laundering and submitting to the Government for approval. A national risk assessment for money laundering is carried out for both emerging activities that may present a money laundering risk.”³²¹

The reporting entities must independently undertake the AML Risk Assessment, and the results must be updated annually.³²² If the reporting entity is an organization, the AML Risk Assessment results and any revisions must be approved according to the organization’s internal policies.³²³ The results of the assessment and any pertinent modifications must be made available to the public across all departments or the reporting entity’s system. The reporting entities are required to disclose the AML Risk Assessment results and any necessary modifications to the SBV and the ministries and branches of state agencies that supervise the sector in which they operate. Results must be submitted within 45 days of the AML Risk Assessment completion date for individual reporting entities, and within 45 days of the AML Risk Assessment approval date for organizations.³²⁴ The Governor of the SBV will publish criteria and methodologies for evaluating the money laundering risks of reporting entities.³²⁵

In light of this assessment, the reporting entities must elaborate and update their risk management procedure, which includes provisions on customer classification.³²⁶ Customers are divided into three risk categories: low risk, medium risk, and high risk. For each risk category, a different set of CDD requirements will apply, including simplified CDD requirements for low risk customers, CDD requirements as outlined in Article 9 of the 2022 Law on AML for medium risk customers, and enhanced CDD requirements for high risk customers.³²⁷ The SBV will give information on customer classification.³²⁸

iv) More specific regulations in AML measures.

³²¹ Ibid, Article 7 (1)

³²² Ibid, Article 15 (1)

³²³ Ibid, Article 15 (1)

³²⁴ Ibid, Article 15 (2)

³²⁵ Ibid, Article 15 (3)

³²⁶ Ibid, Article 16 (1)

³²⁷ Ibid, Article 16 (2)

³²⁸ Ibid, Article 16 (3)

In term of KYC information: The new Law broadens the types of customers on which the reporting entities must carry out the KYC, and clarifies the scope of KYC information for each type of customer, which include the following: Vietnamese citizens; Foreign individuals residing in Vietnam with single citizenship; Non-resident foreign individuals with single citizenship; Multiple citizenship individuals; Stateless individuals; and Organizations³²⁹

The new AML Law permits reporting entities to obtain information from national databases, through appropriate authorities, or other organizations, in compliance with the law. It is important to note that the new Law also enables the reporting entities to rely on a third party to implement CDD measures, provided that the third party complies with the Law's requirements. However, the reporting entities continue to have sole authority over the collection, updating, and verification of consumer identification.³³⁰

The 2022 Law on AML expands the definition of PEPs to cover foreign nationals with political power who occupy senior positions in international organizations in addition to senior positions in foreign organizations and bodies.³³¹ The new Law also states that information sources other than the SBV's list may be used to compile the list of PEPs that apply to reporting companies. The 2022 Law on AML also lays out additional requirements that reporting entities must apply to PEPs and anybody connected to them.³³²

For reporting on high value transactions: The new Law on AML requires the reporting entities to report high value transactions (conducted in domestic or foreign cash) to the SBV, much like the 2012 Law on AML did. The Prime Minister will specify the amount of transactions that must be reported. According to Decision 20/2013/QDTTg dated 18 April 2013, the transaction reporting threshold is now VND300 million (approximately USD12,800).³³³

The new Law on AML makes it clear what must be reported in regards to suspicious transactions, including whether the transaction was carried out at the request of the accused, the defendant, or the convicted person and whether the assets involved in the transaction belonged to the accused, the defendant, or the convicted person.³³⁴ In several economic areas, including banking, intermediary payment services, life insurance, securities, the business of

³²⁹ Ibid, Article 10 (1)

³³⁰ Ibid, Article 12 (2)

³³¹ Ibid, Article 17 (1)

³³² Ibid, Article 17 (2)

³³³ Ibid, Article 27, 28

³³⁴ Ibid, Article 26 (1)

games with incentives, and real estate, the new Law on AML continues to build a list of fundamental suspicious signals.³³⁵ Within three working days after the transaction date, or one working day after the reporting entity becomes aware of the suspicious behavior, a suspicious transaction must be notified to the SBV. Suspicious transactions relating to criminal activity must be reported to the relevant authorities and the SBV within twenty-four hours of their discovery.

v) Legal consequences if the reporting entities fail to comply with statutory requirements on AML

Subject to specific violations of AML regulations, the violating entity or individual may face criminal or administrative penalties. According to Decree No.88/2019/ND-CP (as amended by Decree No.143/2021/ND-CP), administrative sanctions for violations of AML regulations may include administrative fines and other remedial measures. The fines will range from VND80 million (approximately USD 3,400) to VND 500 million (approximately USD21,250) for individuals, and VND160 million (approximately USD 6,800) to VND1 billion (approximately USD42,500) for organizations.³³⁶

Regarding money laundering violations that considered as crimes under the amended 2015 Criminal Code, while an offender who is an individual can receive a sentence of 1 to 10 years in prison and additional sanctions (such as a fine of up to VND100 million (or USD 4.250) or a ban on holding a position or conducting a business for 1 to 5 years), a fine ranging from VND1 billion VND to VND20 billion VND (roughly USD 850,000) and a sanction banning from operating in certain areas for up to 3 years shall be applied for an offender being a commercial entity.

4.1.4. The criminalization of money laundering in the Criminal Code

The criminalization of money laundering has been provided in numerous international legal instruments such as the 1988 Vienna Convention,³³⁷ the 2000 Palermo Convention,³³⁸ the UNCAC,³³⁹ and the FATF's Recommendations.³⁴⁰ The FATF's Recommendation 3 mandates that countries should criminalize money laundering on the basis of the Vienna

³³⁵ Ibid, Article 27-33

³³⁶ Government, (2019). The Decree 88/2019/ND-CP 2019 on Provisions on penalties for administrative violations in money and banking, Article 44

³³⁷ The 1988 Vienna Convention, Article 3 (1) (b)

³³⁸ The 2000 Palermo Convention, Article 6

³³⁹ UNCAC, Article 23

³⁴⁰ FATF Recommendation 3

Convention and the Palermo Convention and crime of money laundering should be applied to all serious offences, with a view to including the widest range of predicate offences.³⁴¹ These conventions on money laundering, criminal proceeds, and predicate offenses have become global standards.³⁴² All of these legal instruments impose binding obligations on parties to criminalize acts of money laundering.

Vietnam has taken steps in recent years to engage with international AML regimes by ratifying these conventions.³⁴³ As a consequence of its membership in international organizations, Vietnam has gradually adopted global AML standards and developed its own AML system.

In December 1999, the Vietnamese National Assembly passed the Criminal Code.³⁴⁴ Article 250 and Article 251 of this law stipulates the act of money laundering in the name of offence of “Crime of harboring or consuming property committed by others criminals” and “Crime of legalizing money and property obtained from crime”. However, at that time the law still did not fully describe which socially dangerous behavior is consider as money laundering.

In June 2009, the National Assembly approved the Law No.37/2009/QH12 amending and supplementing a number of articles of the 1999 Criminal Code. The law has changed the crime in Article 251 from “Crime of legalizing money and property obtained from the crime” into new name “money laundering”, and also clearly stipulates what acts are considered money laundering offence in accordance with the international standards.

“Article 251. Money laundering

1. Those who commit one of the following acts shall be sentenced to between one and five years of imprisonment:

a) Participating directly or indirectly in financial, banking or other transactions related to money or property, knowing that it is a crime to conceal the illegal origin of such money or property ;

b) Using money or property that is known to be the result of a crime to conduct business or other activities;

³⁴¹ FATF Recommendation 3

³⁴² Tran, T. T. H., & Rose, G. (2022). The legal framework for prosecution of money laundering offences in Vietnam. *Australian Journal of Asian Law*, Vol 22 No 1, p35-51.

³⁴³ Vietnam ratified the 1988 Vienna Convention, UNCAC, and the Palermo Convention in 1997, 2009, and 2012 respectively

³⁴⁴ National Assembly, (1999). The Law No.15/1999/QH10 The Criminal Code, Article 250, 251

c) Concealing information about the origin, true nature, location, movement or ownership of money or property, knowingly as the origin of a crime, or obstructing the verification of such information;

d) Committing one of the acts specified at Points a, b and c of this Clause with respect to money or property that is known to have been obtained from the transfer, transfer, or conversion of money or property due to a crime.”³⁴⁵

Evidently, Vietnam did not criminalize money laundering until 2009, but according to the FATF's 2009 mutual evaluation report (MER), Vietnam was only partially compliant with these requirements due to a number of problems. The definition of "property" in the 1999 Amended Criminal Code was ambiguous; money laundering was not criminalized in accordance with all requirements of the Vienna and Palermo Conventions. A number of essential categories of predicate offenses, such as terrorist financing, piracy, insider trading and market manipulation, membership in an organized criminal group, and racketeering, had not been criminalized, and legal entities were not liable for AML violations.³⁴⁶

In 2015, the Vietnamese National Assembly approved the Criminal Code No.100/2015/QH13 dated 27 November 2015. The Criminal Code was due to take effect on 1 July 2016 and included new offences. However, on 30 June 2016, the National Assembly voted to delay implementation of the Criminal Code while it considered further amendments. Finally, the National Assembly adopted Resolution No.41/2017/QH14 dated 20 June 2017 which made the 2015 Criminal Code effective since 1 January 2018. This is the current Criminal Code of Vietnam. One of the most significant in this new Law is the requirement of criminal liability for corporate legal entities in 32 offences. Some key offenses include: (i) tax evasion; (ii) fraud in insurance business; (iii) evasion of statutory insurance payment for employees; (iv) competitive regulatory violations; (v) infringement of intellectual property rights; (vi) money laundering; and (vii) terrorism financing.

Under the new Criminal Code, a corporate legal entity shall be subject to criminal liability for such offenses only if the following conditions are satisfied: (i) The criminal offense is committed in the name of the corporate legal entity; (ii) The criminal offense is committed in the interests of the corporate legal entity; (iii) The criminal offense is committed under the instruction or approval of the corporate legal entity; and (iv) The criminal offense is

³⁴⁵ National Assembly, (2009). The Law No.37/2009/QH12 amending and supplementing a number of articles of the 1999 Criminal Code

³⁴⁶ APG, (2022). Anti-money laundering and counter-terrorist financing measures – Vietnam, Third Round Mutual Evaluation Report, APG, Sydney, p.50

committed within the statute of limitation for prosecution.³⁴⁷

The 2015 Criminal Code included a new “money laundering” offence under the Article 324. In May 2019, the Council of Judges of the Supreme People’s Court (SPC) issued a Resolution No.03/2019/NQ-HDTP (Resolution No.03) on “Providing Guidelines for application of Article 324 of the 2015 Criminal Code on money laundering.”³⁴⁸ The Resolution came into effect on 7 July 2019. The Resolution aims to provide additional guidance and clarity to the investigating agencies, the Supreme People’s Procuracy (SPP) and SPC in handling money laundering offence. The key components of the Article 324 are discussed in the following paragraphs.

i) The scope of the offence

Articles 324 criminalizes money laundering by natural and legal persons, largely on the basis of the Vienna and Palermo Conventions. Article 324 covers the activities of “directly or indirectly participating in financial transactions, banking transactions, or other transactions,”³⁴⁹ or “using and concealing the illegal origin of money or property obtained through his/her commission of a crime or obtained through another person’s commission of a crime to his/her knowledge, regardless of value.”³⁵⁰ The 2015 Criminal Code does not contain a definition of these terms.

However, Resolution No.03 further clarifies on what is included under each of these categories. For instance:

“Money” includes Vietnam Dong (VND), foreign currencies in the form of cash or money in bank account;³⁵¹ “Property” includes objects, valuable papers, and property rights as prescribed by the 2015 Civil Code, which may exist in material or immaterial forms; movable or immovable property; tangible or intangible; legal documents or instruments proving ownership or interest in the property.³⁵² However, given the restriction of Article 324 (1) (a) to involvement in “transactions”, it is not clear that all forms of transfer and conversion are covered, as required by the international Conventions, including transfer, sending or delivery, transportation, transmission, and altering. Notably, preparation for the commission of the

³⁴⁷ The 2015 Criminal Code, Article 75

³⁴⁸ SPC, (2019). Resolution No.03/2019/NQ-HDTP (Resolution No.03) on “Providing Guidelines for application of Article 324 of the 2015 Criminal Code on money laundering

³⁴⁹ Ibid, Article 324 (1) (a)

³⁵⁰ Ibid, article 324 (1) (b)

³⁵¹ Resolution No.03/2019, Article 2 (1)

³⁵² Resolution No.03/2019, Article 2 (2)

money laundering offence is also specifically criminalized in this law.³⁵³

As prescribed in Article 2 (d), (e) under UNCAC, in broad terms, “property” refers to assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets; “proceeds of crime” means any property derived from or obtained, directly or indirectly, through the commission of an offence. As prescribed in Article 31 (1a, b), “proceeds of crime” derives from offences established in accordance with UNCAC or property, the value of which corresponds to that of such proceeds; property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention. Besides UNCAC, United Nations Office on Drugs and Crimes (UNODC) has provided further clarification about “proceeds of crime” as follows:³⁵⁴

“Property, equipment of the instrumentalities of crime, which have been used in or destined for use in offences established in the Convention. The alleged purpose for confiscating instrumentalities of crime is to prevent the objects from being further misused. Proceeds have been transformed or converted, as a whole or partially, into other property. UNCAC encourages states to give primacy to the irrevocability of the “taint” irrespective of the iterations of transfer, receipt and conversion. Proceeds of crime have been intermingled with property from legitimate sources. In such a case, without prejudice to any powers relating to freezing or seizure, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled.”

“Money and property obtained through a commission of a crime” is understood as money or property obtained from a criminal activity. When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence. The determination of the offense is based on one of the following documents: the judgment of a Court; or on court documents (e.g. prosecution decisions, investigation conclusions, indictments); or other documents and evidence identifying offences (e.g. documents or evidence from INTERPOL).³⁵⁵ Resolution No.03 also provides that prosecution of money laundering may be conducted simultaneously with prosecution of predicate offences.³⁵⁶

³⁵³ The 2015 Criminal Code, Article 324 (4)

³⁵⁴ UNODC, (2009). Technical Guide to the United Nations Convention Against Corruption

³⁵⁵ Resolution No.03/2019, Article 2 (3)

³⁵⁶ Resolution No.03/2019, Article 3 (2)

“Knowledge that the money or property was obtained via the commission of a crime” is the mental element of the money laundering offence under Article 324 of the 2015 Amended Criminal Code. The rules of evidence that can be used to prove the money laundering offence are regulated under the 2015 Criminal Procedure Code. In line with Article 86 of the 2015 Criminal Procedure Code, Resolution No.03 provides guidelines on when a person is considered to have knowledge of another person’s commission of a crime, including providing examples such as where a crime is reported in the media or a person knows that the other person’s wealth far exceeds their salary.³⁵⁷ For example:

- Offenders know directly that money and property obtained by other offenders (for example, offenders are informed that the source of money or property is money or property acquired by the offender) ;

- Through the mass media, offenders learn that other people commit the source offence (for example, the crime committed by the source of the crime has been reported by newspaper, radio, or television). news coverage);

- By common sense, offenders can know money and property acquired by other offenders (for example, knowing that her husband is an employee of a state agency with a salary of VND08 million/month and has no other source of income, but A still receives from her husband an amount of VND10 billion to contribute capital to the enterprise without asking clearly about the source of the money);

- According to the provisions of the law, the offender is required to know the origin of money and property obtained by another person who commits the crime (for example, A buys B's car without papers for one-tenth of the value price of that car).

In summary, a conviction for money laundering requires the competent authorities to prove or be satisfied of three cumulative components of evidence. First, the accused had money or property obtained via criminal activity; Second, the accused knew or should have known that the money or property came from criminal activity; and Third, the accused engaged in transactions with the money or property or concealed the true nature of its origins.³⁵⁸

ii) List of predicate crimes

The predicate offences for money laundering are any crime as prescribed in the 2015 Criminal Code, which is the sole source of criminal offences and penalties under Vietnamese

³⁵⁷ Resolution No.03/2019, Article 2 (4)

³⁵⁸ Tran, T. T. H., & Rose, G. L. (2022). The Legal Framework for Prosecution of Money Laundering Offences in Vietnam. *Australian Journal of Asian Law*, 22(1), 35-51.

law, and the proceeds obtained from that would be regarded as money laundering. Predicate offenses may be committed by Vietnamese citizens, Vietnamese corporate legal entities, stateless persons permanently residing in Vietnam, conducting inside or outside the territory of Vietnam. It is also considered as a predicate crime for those committed outside the territory of Vietnam, committed by foreign citizens or foreign corporate legal entities which is defines as a crime under Criminal Code or the laws in the country or territory where the crime was committed.³⁵⁹

iii) Penalties for money laundering offence

Under Article 324, the penalty for individuals that commit a money laundering offence ranges from one to five years' imprisonment.³⁶⁰ Sanctions may be increased for aggravating circumstances but no more than fifteen years in prison.³⁶¹ The preparation to commit money laundering offence are punishable by a penalty from ranging between 6 and 36 months' imprisonment.³⁶² In addition, the offender might also be liable to a fine of from VND20,000,000 (approximately USD 850) to VND100,000,000 (approximately USD 4250) or prohibited from holding certain positions or doing certain jobs for one to five years, or have part or all of his/her property confiscated.

Regarding punishment of corporate legal entities, a fine is between VND1,000,000,000 (approximately USD42,500) to a maximum of VND20,000,000,000 (approximately USD850,000), and possible suspension of operations and mandatory winding-up and prohibition of operating in some sector or raising capital.³⁶³ A permanent shut down will be applied for a corporate legal entity's activities in one or some fields in which the corporate legal entity causes damage or possibly harms life, health of many people, causes environmental emergencies, or negatively impact social security or order, and the damage cannot be repaired.³⁶⁴

4.1.5. Terrorist financing offence

In recent years, the global community has paid a lot of attention to the fight against terrorism. Although the war against terrorism has been going on for some time, it was given a

³⁵⁹ Resolution No.03/2019, Article 3

³⁶⁰ Ibid, Article 324 (1)

³⁶¹ Ibid, Article 324 (2), (3)

³⁶² Ibid, Article 324 (4)

³⁶³ Ibid, Article 324 (6)

³⁶⁴ Ibid, Article 79

boost after the events of September 11, 2001. Many efforts have been made on a global scale to make terrorist acts and the funding thereof illegal, with special focus on fostering intergovernmental cooperation to combat terrorism. For instance, FATF issued Nine Special Recommendations as a bare minimum for combating such an infringement. Many countries' domestic laws are merely translations of these. Terrorism and terrorist offenses lack a unifying concept in part because political and legal systems vary widely.

Vietnam is strongly against any terrorist activity and sees it as a threat to international safety and security at this time. In the global war against terrorism, Vietnam is a committed participant. In reaction to terrorist attacks both international and national area, Vietnam has declared its categorical opposition to all forms of terrorism and its willingness to work with the United Nations to tackle the threat.³⁶⁵

The Law No.28/2013/QH13 on Anti-Terrorism (Law on Anti-Terrorism) was adopted by the National Assembly on 12 June 2013, come into effect on 1 October 2013. This law prohibits all acts of terrorism and terrorist financing as well as acts of concealing, harboring or failing to denounce acts of terrorism and terrorism financing. The Law on Anti-Terrorism also requires that money and property related to terrorism and terrorist financing must be suspended from circulation, blockaded, sealed off, temporarily seized, and dealt with in accordance with law.³⁶⁶

i) Definition

In term of terrorism offence, based on Article 299 named “Terrorism” of the 2015 Amended Criminal Code, alongside with the definition of terrorism stipulated in Article 3 of the Law on Anti-terrorism, it is an offence for a person to harm another person’s life or destroy property of another organisation or individual to bring terror to the public or commit any of the following acts: establishing or participating in a terrorist organisation or terrorist financing organisation; forcing, persuading, recruiting, training terrorists, manufacturing or providing weapons for terrorists; or infringing upon bodily integrity, health or appropriating, damaging property of another organisation or individual. These acts also extends to causing death or serious bodily injury for the purpose of compelling a government or international organisation to do or abstain from doing any act. Providing or collecting funds to support such an act is considered preparation for the offence.³⁶⁷ When the purpose of these acts is to oppose

³⁶⁵ MPS, (2022). Vietnam commits to cooperating with UN to fight terrorism. Available at <https://en.bocongan.gov.vn/international-relations-cooperation/vietnam-commits-to-cooperating-with-un-to-fight-terrorism-t8969.html>. Accessed 01 March 2023

³⁶⁶ National Assembly, (2013). The Law No.28/2013/QH13 on Anti-Terrorism

³⁶⁷ The 2015 Criminal Code, Article 299.

the Vietnamese government, Article 113 named “Terrorism to oppose the government” shall be applied.

Terrorist financing is criminalised in Article 300 of the 2015 Criminal Code. According to Article 300, it is an offence for a person to raise or provide money or property, in any shape or form, to a terrorist or terrorist organisations with there is no need for that funds are actually used to conduct a terrorism offence in order to constitute a terrorist financing. This article also specifically criminalizes the activity of preparation to commit the offence.³⁶⁸ Notably, the terrorist financing offence does not require the person alleged to have committed the offence to be in the same country as the terrorist(s) or terrorist organisations(s) is located, or the terrorist act occurred or will occur.³⁶⁹

ii) Punishment

The terrorist financing offence is punishable by between five and ten years imprisonment. In addition, a probation or residence ban for one to five years or confiscation of part or whole property, can be applied for natural persons.³⁷⁰ Regarding criminal liability for corporate legal entity, Article 300 of the 2015 Criminal Code stipulates that a corporate legal entity is subject to financial penalty from VND7,000,000,000 (approximately USD298,000) to VND15,000,000,000 (approximately USD640,000) or temporary or permanent suspension of operation between 6 and 36 months. Where the legal entity’s activities cause damage or possibly harms life, health of many people, causes environmental damages or negatively impacts social security or order and the damage cannot be repaired, or where the legal entity is established for the sole purpose of committing the criminal offence, it will be permanently shut down. In addition, there are another penalties of a fine from VND1,000,000,000 (approximately USD42,500) to VND5,000,000,000 (approximately USD215,000) or a ban from operating in certain fields or raising capital for between one and three years that can also be imposed.³⁷¹

4.2. Hungarian Anti-Money Laundering Regulations

The history of AML measures in Hungary is not too long. Because Hungary's financial system was underdeveloped in the 1970s and 1980s, money laundering was unknown and even impossible prior to the regime change. The reason was that only a small number of firms, largely state-owned, had access to moving money internationally, and the general

³⁶⁸ Ibid, Article 300

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Ibid, article 300 (4)

population was also unable to do so. Banking services were only provided to the general public via savings cooperatives.³⁷²

It was until 1994 when Hungary enacted Law IX on the prevention and suppression of money laundering (the Law on AML) for the first time. Furthermore, the Act XXIV of 1994 Criminal Code included a definition of money laundering and associated penalties.³⁷³ After the passing of the Law IX on AML, the crime of money laundering did not gain much practice in Hungary, with fewer than ten investigations beginning on average each year with a money laundering suspect.³⁷⁴ Hungary was then placed on the FATF's money laundering "back list" as a non-compliant country in June 2001. Following its removal from the list in June 2002, the law underwent a considerable modification.

The Law on AML has been replaced several times by the Law XV on AML in 2003, then the Law CXXXVI on AML in 2007, and the current one is the Act LIII of 2017 on Preventing and Combating Money Laundering and Terrorist Financing. As a result of this, the number of the reported suspicious transactions was significantly increased during the last decade. The current Hungarian AML regulation can be found in two acts: Section 399 and Section 400 of the Criminal Code (Act C of 2012), and in the Act LIII of 2017 on Preventing and Combating Money Laundering and Terrorist Financing. The current system complies with EU Directives, international and European standards, and FATF recommendations.

4.2.1. Act LIII of 2017 on Preventing and Combating Money Laundering and Terrorist Financing

Act LIII of 2017 on Preventing and Combating Money Laundering and Terrorist Financing (the Law on AML 2017) is the main regulation dealing with AML requirements in Hungary. The law covers CDD procedures, the risk assessment process, reporting obligations, and penalties for non-compliant entities. It follows the requirements of the EU AML Directives.

i) About the subjects of application

“Section 1 stipulates the scope of subject of this Act are:

a) credit institution;

³⁷² Gál, I. L. (2007). *A pénzmosás hatályos büntetőjogi szabályozása Magyarországon* (Doctoral dissertation, PhD értekezés PTE-ÁJK Büntetőjogi Tanszék).

³⁷³ Gál, I. L. (2007). *A pénzmosás hatályos büntetőjogi szabályozása Magyarországon* (Doctoral dissertation, PhD értekezés PTE-ÁJK Büntetőjogi Tanszék).

³⁷⁴ Gál, I. L. (2019). The 2018/843 EU Directive on the Prevention of Money Laundering and Terrorist Financing and its Correlation to the Criminal Law Prevention of the Stock Markets.

- b) financial service provider;
- c) institution for occupational retirement provision;
- d) voluntary mutual insurance fund;
- e) entity taking in and delivering international post money orders;
- f) entity engaged in activities related to real property transactions;
- g) entity engaged in auditor activity;
- h) entity carrying out accounting, tax expert, certified tax expert or tax advisory activity based on agency or work relations;
- i) entity operating casinos or card rooms or organising betting not qualifying as remote gambling, remote gambling or online casino games;
- j) trader of precious metals or items made of precious metals;
- k) person trading in goods who accepts a total amount of cash payments of HUF 3,000,000 or more in the course of its activity;
- l) attorney, law office, European Community lawyer, European Community lawyers' office (hereinafter collectively referred to as: "attorney"), registered in-house legal counsel, notary public;
- m) trust;
- n) service provider engaged in exchange services between virtual currencies and legal tenders, or virtual currencies;
- o) custodian wallet provider;
- p) service provider trading or acting as intermediaries in the trade of works of art, antiques, where the value of the transaction or a series of linked transactions amounts to HUF 3,000,000 or more;
- q) service provider storing, trading or acting as intermediaries in the trade of works of art, antiques, when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to HUF 3,000,000 or more; and
- r) registered office service provider established in or having a branch or place of business in Hungary."³⁷⁵

ii) About measures to identify customers and update customer information

There are various circumstances under which companies have to conduct CDD. They include:

- Establishing new relationships
- Executing transactions that exceed HUF 4.5 million.

³⁷⁵ Hungarian Law on AML 2017, Section 1

- Trading in goods that equal HUF 3 million or more
- Betting that exceeds HUF 600.000
- Suspicion regarding data provided by a client.³⁷⁶

The service providers then collect and verify the information from their customers. While the information must be collected for individual includes full name, nationality, place and date of birth, mother's maiden name, residence address, national ID, bank statement, the ones for organization are full and abbreviated name, office's address, fields of its activity, director's information, its registration and tax number.³⁷⁷ Before beginning a business connection, the service providers must verify the client's and the beneficial owner's identities.

iii) About reporting responsibility and record keeping

A Suspicious Activity Report (SAR) should contain pertinent client information, information about suspicious transactions, and explanations of the circumstances and justifications for reporting. After discovering questionable activity, a company has five business days to notify the appropriate authorities. The transaction's execution should be put on hold in the interim. Within four days of the report's submission, the authority must then inspect the matter.

All customer transactions must be kept by businesses for the duration of the client relationship and for eight years. Regulators, however, have the right to ask businesses to maintain records for an additional ten years.

iv) Supervising authority

The Central Management of the National Tax and Customs Administration (NAV), Hungary's FIU, is the main AML supervising body in Hungary. The NAV is responsible for ensuring that affected institutions follow the AML Law, in addition to analyzing and responding to suspicious transaction reports. The NAV also cooperates with the Prosecutor General's Office and the National Courts Office.

While the NAV is the main institution in charge, the AML framework in Hungary allows other governmental organizations to check financial institutions that fall under their jurisdiction. Such governmental bodies include:

- The National Bank of Hungary acting in its capacity as the regulatory body for the system of financial intermediaries;
- The authority charged with overseeing operators of casinos, card rooms, gambling services, and online casino games;

³⁷⁶ Ibid, Section 6

³⁷⁷ Ibid, Section 7 (1) (2)

- The Chamber of Hungarian Auditors regarding auditing service providers;
- In the case of lawyers and legal counsels registered in the bar association, the bar \ association in which the lawyer/legal counsel in question is registered (regional bar association);
- In the case of notary publics, the association in which the notary public in question is registered (regional association of notaries);
- The authority for trade and commerce in regards to dealers in precious metals, dealers in products requiring a cash payment, and service providers trading or acting as intermediaries in the trade of works of art.
- The office established by the Act on Fiduciaries and the Regulations Governing Their Activities pertaining to fiduciary administrators;
- The NAV regarding providers of real estate agency or brokerage services and any related services; bookkeepers, tax experts, tax advisors, providers of exchange services between virtual currencies and legal tenders, providers of custodial wallets, and providers of corporate headquarters services.

4.2.2. Criminalization of money laundering offence.

Money laundering has been granted an individual sections in Act C of 2012 of the Criminal Code.

According to Section 399:

“(1) Any person who, in connection with an asset obtained from any punishable criminal offence committed by others:

a) converts or transfers the asset in question, or performs any financial transaction or receives any financial service in connection with the thing in order to:

aa) conceal or disguise the origin of the asset, or

ab) frustrate the criminal proceedings conducted against the perpetrator of a punishable criminal offence committed by others;

b) conceals or disguises the origin of the asset and any right attached to the asset or any changes in this right, or conceals or suppresses the place where the asset can be found; is guilty of a felony punishable by imprisonment between one to five years.

(2) The penalty under Subsection (1) shall also be imposed upon any person who, in connection with an asset obtained from a punishable criminal offence committed by others:

a) obtains the asset for himself or for a third person;

b) safeguards, handles, uses or consumes the asset, or obtains other financial assets by way of or in exchange for the asset, or by using the consideration received for the asset; if being aware of the true origin of the asset at the time of commission.

(3) The penalty under Subsection (1) shall also be imposed upon any person who, in order to conceal the true origin of an asset that was obtained from a punishable criminal offence committed by others:

a) uses the asset in his business activities;

b) performs any financial transaction or receives any financial service in connection with the asset

(4) The penalty shall be imprisonment between two to eight years if the money laundering specified under Subsections (1)-(3):

a) is committed on a commercial scale;

b) involves a particularly considerable or greater amount of money;

c) is committed by an officer or employee of a financial institution, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, body acting as a central counterparty, insurance company, reinsurance company or independent insurance intermediary, voluntary mutual insurance fund, private pension fund or an institution for occupational retirement provision, an organization engaged in the operation of gambling activities or a regulated real estate investment company;

d) is committed by a public official;

e) is committed by an attorney-at-law.

(5) Any person who collaborates in the commission of money laundering as specified under Subsections (1)-(4) is guilty of misdemeanor punishable by imprisonment not exceeding two years.”

According to Section 400:

“(1) Any person who, in connection with an asset obtained from a punishable criminal offence committed by others:

a) uses the asset in his business activities;

b) performs any financial transaction or receives any financial service in connection with the asset, and is negligently unaware of the true origin of the asset is guilty of misdemeanor punishable by imprisonment not exceeding two years.

(2) The penalty shall be imprisonment not exceeding three years if the criminal act described in Subsection (1):

a) involves a particularly considerable or greater value;

b) is committed by an officer or employee of a financial institution, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, body acting as a central counterparty, insurance company, reinsurance company or independent insurance intermediary, voluntary mutual insurance fund, private pension fund or an institution for occupational retirement provision, an organization engaged in the operation of gambling activities or a regulated real estate investment company; or

c) is committed by a public official.

(3) Any person who voluntarily reports to the authorities and unveils the circumstances of commission shall not be prosecuted for money laundering as specified under Subsections (1)-(2), provided that the act has not yet been revealed, or it has been revealed only partially.”³⁷⁸

4.3. 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:

4.3.1. The Anti-Money Laundering Steering Committee

On 12 May 2022, Vietnam’s Prime Minister signed and promulgated Decision No.581/QD-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.³⁷⁹

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)

³⁷⁸ Nyitrai, E. (2019). Criminal regulations on money laundering in hungary. *Journal of Eastern-European Criminal Law*, 2019(1), 120-126.

³⁷⁹ Prime Minister, (2022). Decision No.581/QD-TTg, on the establishment of the Anti-Money Laundering Steering Committee Article 1

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).³⁸⁰

The roles and responsibilities of the AMLSC outlined under Article 3 of the Decision No.581/QD-TTg as follows:

i) Assist the Prime Minister in directing the formulation of strategies, undertakings, policies, programs, plans, mechanisms and solutions on prevention and combat of money laundering.

ii) Assist the Prime Minister in directing and coordinating activities, urging, inspecting and evaluating the prevention and combat of money laundering in the Vietnamese territory.

iii) Assist the Prime Minister in directing the implementation of Vietnam's membership obligations in the APG and the plan to fully implement the FATF 40 recommendations.

iv) Synthesize and report to the Prime Minister on the situation of AML activities, the results of the implementation of the National Action Plan at the request of the Prime Minister.

v) Perform other tasks assigned by the Prime Minister.³⁸¹

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

³⁸⁰ Ibid, Article 2

³⁸¹ Ibid, Article 3

laundering offenses and predicate crimes. The SBV is responsible for coordinating the transmission of information between agencies during money laundering investigations, prosecutions, and convictions.³⁸²

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 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.

4.3.2. 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.³⁸³

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.³⁸⁴ In addition to licensing gold bar stores, credit

³⁸² Decree No.116, 2013: Detailed provisions for implementation of some articles of the Law on AML, Article 21

³⁸³ National Assembly, (2010). The Law on the SBV, Article 2

³⁸⁴ The 2022 Law on AML, Article 41

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 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 (AML/D) is designated as Vietnam's FIU. AML/D is set under the Banking Supervision Agency (BSA) of the SBV.³⁸⁵ 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.³⁸⁶

Currently, the functions, tasks, powers, and organizational structure of the AML/D are governed by Decision No.1367/QD-NHNN dated 26 June 2019 by the Governor of the SBV and Decision No.2393/QD-NHNN dated 14 November 2019 amending and supplementing Decision No.1367 on regulating the functions, tasks, powers, and organizational structure of the AML/D under BISA within the SBV. The AML/D is instrumental in coordinating AML/CFT initiatives in Vietnam. It compiles cash transaction reports, cross-border wire transfer reports, suspicious transaction reports (STRs), and other data from reporting entities and distributes financial intelligence to law enforcement agencies. It is an administrative FIU with no law enforcement authority and the ability to supervise AML/CFT.

Article 39 (1) of the 2022 Law on AML stipulates that AML/D 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.³⁸⁷ AML/D is also authorised to request additional information from reporting entities and

³⁸⁵ 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.

³⁸⁶ Decree No.74/2005, Article 14

³⁸⁷ The 2022 Law on AML, Article 39 (1)

requires reporting entities to comply with requests.³⁸⁸ In order to access necessary information, AMLD is granted to access a wide range of financial information from reporting entities using the powers specified above.

In terms of information dissemination, AMLD 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. AMLD 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.³⁸⁹

In term of international cooperation on AML/CFT, AMLD 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.³⁹⁰

The Interpretive Note of FATF Recommendation 29 states that:

“The FIU should be operationally independent and autonomous, meaning that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information. In all cases, this means that the FIU has the independent right to forward or disseminate information to competent authorities.”³⁹¹

If a FIU is established as part of an existing authority, its primary functions must remain distinct from those of the other authority. However, in Vietnam, AMLD is headed by a Director and consists of four divisions. According to Article 4 of Decision No.1367/2019, the Director of AMLD is responsible for coordinating and supervising the execution of the duties outlined in Article 2 of this Decision. However, the Director is accountable to the Chief of BSA and the Governor of the SBV for all AMLD activities. Clearly, this does not meet the requirement that AMLD have the authority and capacity to conduct its activities freely and independently.³⁹²

FATF Recommendation 29 further suggest that:

³⁸⁸ Decree No.116/2013, Article 19 (2)

³⁸⁹ The Law on Anti-terrorism 2013, Article 45

³⁹⁰ Decision No. 1367/2019, Article 2 (5)

³⁹¹ FATF interpretive note to Recommendation 29

³⁹² APG, (2022). Anti-money laundering and counter-terrorist financing measures – Vietnam, Third Round Mutual Evaluation Report, APG, Sydney

“FIU should be provided with adequate financial, human and technical resources, in a manner that secures its autonomy and independence and allows it to conduct its mandate effectively. Countries should have in place processes to ensure that the staff of the FIU maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.”

Vietnam failed to demonstrate that AMLD has a separate budget from SBV and conducts recruitment independently and without assistance in this regard. As a result, AMLD has limited access to financial resources and has a limited capacity to acquire and deploy the resources needed to consistently complete its tasks.³⁹³

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

FATF’ Interpretive Note to Recommendation 30 about responsibilities of law enforcement and investigative authorities states that:

“There should be designated law enforcement authorities that have responsibility for ensuring that money laundering, predicate offences and terrorist financing are properly investigated through the conduct of a financial investigation. Countries should also designate one or more competent authorities to identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation.”³⁹⁴

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

³⁹³ APG, (2022). Anti-money laundering and counter-terrorist financing measures – Vietnam, Third Round Mutual Evaluation Report, APG, Sydney

³⁹⁴ FATF’ Interpretive Note to Recommendation 30

the jurisdiction of the People's Army's investigation authorities or the SPP's investigation authority.³⁹⁵ Furthermore, the 2015 Law on OCIB designates the investigating police officers of the MPS as responsible for investigating money laundering,³⁹⁶ and the investigating security officers of the MPS are responsible for investigating terrorist financing.³⁹⁷ 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.

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.³⁹⁸

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.³⁹⁹ 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

³⁹⁵ National Assembly, (2015). The Criminal Procedure Code, Article 163 (1)

³⁹⁶ The 2015 Law on OCIB, Article 19, 20, 21

³⁹⁷ The 2015 Law on OCIB, Article 16, 17

³⁹⁸ The 2022 Law on AML, Article 49

³⁹⁹ The 2013 Law on Anti-Terrorism, Article 40

terrorism offense.

In addition to law enforcement agencies, FATF Recommendation 30 also applies to other responsible bodies tasked with investigating the financial aspects of predicate offenses. In a similar vein, a wide variety of additional agencies assume authority over particular aspects of investigating predicate offenses within their purview in Vietnam. Border guards, GDC, forest protection, marine police, fisheries surveillance are all examples of relevant authorities. If they find proof of money laundering or the financing of terrorism, however, they have seven days to contact the MPS or the People's Army, depending on the jurisdiction, and submit the case file for further assessment.⁴⁰⁰

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.

The operation of the INTERPOL Vietnam Office has just assumed the role of collecting, analyzing and processing information on crime to advise on strategies and plans for international cooperation in crime prevention and control; Conduct basic research, forecast the situation of transnational crimes as well as propose specific measures to strengthen international cooperation in crime prevention and combat, and carry out specific coordination activities in criminal justice. Handles investigation requests, criminal prosecutions and arrests, and matters of mutual criminal justice and extradition.⁴⁰¹

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 infringing on judicial activities, crimes related to corruption and breach of positions that occur

⁴⁰⁰ The 2015 Law on OCIB, Article 9

⁴⁰¹ <https://bocongan.gov.vn/diem-tin-interpol/tin-tuc/gioi-thieu/interpol-viet-nam-d9-t130.html>

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.⁴⁰² 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.⁴⁰³

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 money, state assets, national financial reserves, and the finances of state corporations. In

⁴⁰² The 2015 Criminal Procedure Code, Article 163 (3)

⁴⁰³ National Assembly, (2015). Law No80/2015/QH13 on Promulgation of Legislative Documents, Article 21

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.⁴⁰⁴ The investigation authorities of the People's Army are responsible for investigating all crimes falling into the jurisdiction of a military court,⁴⁰⁵ which includes any crime committed by military personnel, against military personnel, involving military secrets,

⁴⁰⁴ Decree No. 81/2019/ND-CP on combating proliferation financing, Article 10

⁴⁰⁵ The 2015 Criminal Procedure Code, Article 163

on military property or under martial law.⁴⁰⁶ 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.⁴⁰⁷

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 with competent state agencies to implement AML guidelines, policies, strategies, and plans;

⁴⁰⁶ The 2015 Criminal Procedure Code, Article 272

⁴⁰⁷ Decree No. 81/2019/ND-CP on combating proliferation financing, Article 13

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.⁴⁰⁸ 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.⁴⁰⁹

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.

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

⁴⁰⁸ Levi, M., & Reuter, P. (2006). Money laundering. *Crime and justice*, 34(1), 289-375, p.298

⁴⁰⁹ Ibid.

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

5.1.1. Geographical, legal, political and economic environment in Vietnam

Map 5.1: Map of Vietnam



Source: Internet

i) 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.⁴¹⁰

The terrain varies greatly across the country, from hills to mountains to deltas to the coast to the continental shelf. Vietnam's landscape is dominated by gentle hills and mountains. The majority of the landmass (85%) lies at an elevation of less than 1,000 meters

⁴¹⁰GSO, (2020). Available at <https://www.gso.gov.vn/en/population/>. Accessed 01 March 2023

above sea level. Mountains higher than 2,000 meters make up less than 1% of the Earth's surface. Fansipan, at 3,143 meters above sea level, is the highest peak in Indochina, which is located in the west and northwest. Only a quarter of Vietnam is actually deltas. Vietnam has 3,260 kilometers of coastline, including approximately 4,000 large and small islands, which it shares with the Eastern Sea to the east and the Gulf of Thailand to the south and southwest.⁴¹¹

ii) 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.⁴¹²

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.

iii) Economic environment

In 2021, the population was estimated to reach 98.5 million. There were around 36.6 million people living in urban areas, or 37.1% of the total population; 61.9 million people living in rural areas, or 62.9% of the total; 49.1 million men and 49.4 million women. There are 99.4 men for every 100 females. The labor force aged 15 and over was estimated at 50.6 million persons. There was a big gap between the labor force in the urban and the rural areas, although in recent years the percentage of the labor force in the urban areas increased. In

⁴¹¹ See more at <https://vietnamembassy-usa.org/vietnam/geography>. Accessed 13 May 2023

⁴¹² 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

general, as a whole, 63.3% of the workforce resides in rural areas.⁴¹³

Since launching the "Doi Moi" strategy (which literally means "renovation" in 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".⁴¹⁴ 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.⁴¹⁵

Vietnam's shift from a centrally planned to a market economy saw it go from being among the world's poorest nations to a lower middle-income nation. In 2018, Vietnam's GDP was roughly USD 245 billion, making it one of the East Asian region's most rich and rapidly expanding countries. Since 2002, the GDP per capita has expanded by 2.5 times, and the poverty rate has sharply decreased from over 70% to under 6%. 2018 saw a 7.1% increase in Vietnam's GDP. In recent years, inflation has been very consistent, averaging 3.5% in 2018. By 2021, the GDP per capita will have increased to US\$3,700 from US\$1,500 in 2002.⁴¹⁶

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.⁴¹⁷ 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.⁴¹⁸

⁴¹³ GSO, Statistical yearbook of Vietnam 2021. Available at <https://www.gso.gov.vn/wp-content/uploads/2022/08/Sach-Nien-giam-TK-2021.pdf>. Accessed 01 March 2023

⁴¹⁴ Beresford, M. (2008). Doi Moi in review: The challenges of building market socialism in Vietnam. *Journal of Contemporary Asia*, 38(2), 221-243.

⁴¹⁵ 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.

⁴¹⁶ <https://www.worldbank.org/en/country/vietnam/overview>. Accessed 13 May 2023

⁴¹⁷ The World Bank, (2020): Universal Financial Access.

⁴¹⁸ IMF, (2019). Vietnam: Article IV Consultation; Press Release; Staff Report; and Statement by the Executive Director for Vietnam

Table 5.0: Credit institution system in Vietnam as of December 31, 2021.⁴¹⁹

Type	Number
State-owned commercial banks	4
Compulsory acquired banks	3
Social Policy Bank	1
Vietnam Development Bank	1
Joint-stock commercial banks	28
Joint-ventured banks	2
100% foreign-owned banks	9
Foreign bank branches	51
Finance, leasing companies	26
Cooperative Bank	1
People's credit funds	1181
Microfinance institutions	4

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.⁴²⁰

5.2. Money Laundering Methods

5.2.1. Money laundering through a shell or front company

A shell or front company is a legally established entity, but its activities are not intended to perform its real functions, but to launder illicit funds, and lacks organizational structure and a fixed location for production and operation.⁴²¹ The creation of these companies make criminal have legitimate reasons for transferring funds among different jurisdictions in various currencies.

Case study: Nguyen Thi Nguyet and Pham Anh Tuan

Nguyen Thi Nguyet and Pham Anh Tuan and 11 accomplices who used this method in the illegal transportation of more than VND30000 billion (about USD1.2 billion). Accordingly, Nguyen Thi Nguyet and Pham Anh Tuan borrowed ID cards of relatives to establish 08 companies, with different business sector. After that, Nguyen Thi Nguyet drafted and signed economic contracts to buy smartphone chips from companies in Singapore and sell

⁴¹⁹ SBV, (2021). Annual report

⁴²⁰ Global Financial Integrity, (2019). Illicit Financial Flows to and from 148 Developing Countries: 2006-2015

⁴²¹ He, P. (2010). A typological study on money laundering. *Journal of Money Laundering Control*, 13(1), 15-32, p.24

them to companies in China in the form of temporary import for re-export in order to get customs declaration. Then Nguyen Thi Nguyet contacted banks, set up accounts and then illegally transferred money from Vietnam to abroad to benefit 0.1% on each money transaction. The number of goods purchased by China is overvalued many times, and is also rotated many times to create more customs declarations before transferring to the bank to make money transfer requests.

5.2.2. Money laundering through real estate sector

Real estate sector can be one of the investment channels that money laundering crime can easily exploit because compared to other markets, real estate investment is relatively convenient and does not have too many procedures. Real estate is the field that attracts many sources of investment of great value, real estate transactions and transfers can be done in cash so it is difficult for the authorities to check and determine the origin of the money. Cash payment for real estate transactions in Vietnam is now quite common with large number of transactions and high transaction value. To launder money, criminals often ask for help from their family members to buy, transfer, or donate real estate. There are no regulations, binding laws on large-value transactions that must be done through the banking system is increasing the risk of money laundering through this sector.

Real estate is among the sector that attract high sources of capital investment, the transactions or remittance related to real estate trading can be done directly in cash or through by banking remittance systems but not over real estate trading floors therefore, it would be difficult for the authorities to check and verify the source of money.⁴²² To launder money, criminals often buy real estate in the names of family members, transfer and give real estate as a gift.⁴²³

5.2.3. Money laundering through banking sector

Banks are particularly susceptible to money laundering and other forms of fraud because to their role as gatekeepers of the legitimate financial system, such as the Hawala system.⁴²⁴ The system is an alternative to traditional methods of transferring funds that does not require the physical transfer of funds. For a fee, the consignor can use the system's

⁴²² <https://www.bangkokpost.com/world/1685260/you-can-still-buy-a-house-with-gold-bars-in-vietnam>

⁴²³ MER 18

⁴²⁴ Pramod, V., Li, J., & Gao, P. (2012). A framework for preventing money laundering in banks. *Information Management & Computer Security*, 20(3), 170-183, p172.

widespread membership to transfer virtually any sum of money safely from one jurisdiction to another. These technologies provide launderers with convenient ways to transport money quickly and safely.⁴²⁵

Vietnam's financial sector is dominated by the banking sector. The banking sector is comprised of state-owned banks, joint-stock commercial banks, joint-venture and wholly owned foreign banks, policies banks, cooperative banks, finance and leasing companies, and the People's Credit Funds. Banking sector account for nearly 90% of all the STRs to the AMLD, higher than any other sector. It should be emphasized that not all of the illegal proceeds from criminal activities are laundered. However, from the much higher STRs in the banking sector than others, it might be implied that money launderer might prefer the banking system to legalize the illegal proceeds to clean the "dirty money" than others. From the high value cases being investigated for money laundering recently and statistic on STRs received by the AMLD have, it can be assumed that the money laundering threats in the banking sectors might mainly originated from predicate offences include embezzling property (the offence might related to person with responsibilities, positions), gambling, tax evasion. Accordingly, in order to conceal the proceeds, criminals often use other person bank accounts to receive and transfer illegal funds.

5.2.4. Money laundering through stock market

According to experts in the field of securities, money laundering offence in the stock market are increasing because the law currently does not have strict regulations on controlling origin of financial source. Therefore, it can be said that the stock market is a fertile ground for criminals to take advantage of to carry out their money laundering activities.⁴²⁶

In order to carry out the act of laundering "dirty money" into "clean money", criminals will bring illegal cash to securities trading centers to buy stocks. The trick of the criminals is to split by buying many different shares, then pooling the shares into a large sum, to avoid the attention and suspicion of the regulator. Criminals even buy fake shares issued by front companies themselves. In the international stock market, these shares can then be launched in foreign markets to turn them into legal tender.

Money laundering through securities causes many serious consequences, significantly

⁴²⁵ Gal, I. L. (2005). The Techniques of Money Laundering. *Studia Iuridica Auctoritate Universitatis Pecs Publicata*, 138, 129-138, p.138.

⁴²⁶ Gal, I. L. (2005). The Techniques of Money Laundering. *Studia Iuridica Auctoritate Universitatis Pecs Publicata*, 138, 129-138, p.137.

affecting the development of the country. For newly developed or developing countries, the problem of money laundering can affect the Government's budget, causing the budget to be lost from tax sources, leading to the Government losing control over policies. economy.

5.2.5. Money laundering through virtual currencies and virtual assets

With the advantage of easy exchange on a global scale, virtual currency is an effective channel for criminals to take advantage of to launder money and finance terrorism when they can easily convert funds. Money transfers are made person-to-person through new technological payment systems instead of through banks or other traditional financial institutions. Therefore, virtual assets can be transferred virtual anywhere in the world. Vietnam's legal system has no legal regulations governing the issuance, trading, and exchange of virtual currencies and virtual assets, nor does it prescribe an official unit to manage the issuance and delivery of digital assets. virtual currency translation, virtual assets. Accordingly, the activities of exchanging, buying and selling virtual money on virtual currency exchanges are still outside the regulation of the law, not under the management of any authorities.⁴²⁷

5.2.6. Money laundering through insurance companies

Criminals use money or assets obtained from criminal activities to purchase life insurance policies from an insurance company. The money is left at the company for a while and the immobility of the money creates a certain level of security. The subject will then cash out before the end of the policy term or use the value of the insurance policy to secure payment for a transaction, such as the purchase of real estate. Once this process is completed, the funds will have a “legitimate” origin.⁴²⁸

5.2.7. Money laundering through money remittance and foreign currencies exchange

Globalization of both financial markets and organized crime have fostered the global money laundering industry.⁴²⁹ There has been a shift from banks to non-bank financial institutions, including the bureau of exchange and remittance businesses.⁴³⁰

⁴²⁷<https://phaply.net.vn/nhan-dien-7-thu-doan-rua-tien-duoc-toi-pham-su-dung-trong-giai-doan-hien-nay-a255647.html>

⁴²⁸ Gal, I. L. (2005). The Techniques of Money Laundering. *Studia Iuridica Auctoritate Universitatis Pecs Publicata*, 138, 129-138, p.131.

⁴²⁹ Lilley, P. (2003). *Dirty dealing: the untold truth about global money laundering, international crime and terrorism*. Kogan Page Publishers.

Procedures on international money transfer offered by remittance companies are often simpler than banks with lower fees, and documents proving remittance purpose is simpler or not requested. These elements might create the chance for money laundering activity.

For example, Vietnam received approximately USD12.3 billion in international remittances,⁴³¹ of which USD7 billion was attributed to the US - Vietnam remittance corridor in 2014.⁴³² These numbers exclude unrecorded and informal remittance flows. In the NRA, the money laundering risks associated with illicit remittances were rated as high, while those associated with regulated remittances were rated as medium-high.

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.⁴³³ 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.⁴³⁴

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.

⁴³⁰ De Boyrie, M. E., Pak*, S. J., & Zdanowicz, J. S. (2005). The impact of Switzerland's money laundering law on capital flows through abnormal pricing in international trade. *Applied Financial Economics*, 15(4), 217-230.

⁴³¹ World Bank, (2016). Migration and remittances fact book 2016, p12.

⁴³² Ibid, p16

⁴³³ 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.

⁴³⁴ SBV, (2019). National Risk Assessment on Money Laundering and Terrorism Financing

- 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.
- 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.⁴³⁵ 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.

The subsequent section below will examine these predicate offenses.

⁴³⁵ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF

5.3.1. Corruption Acts (including Embezzling; Receiving bribes; and Abusing positions and/or powers to appropriate property)

It is believed that corruption is part of human history.⁴³⁶ Corruption is seen as a big problem all over the world, not just in politics and government, but also in the private industry.⁴³⁷ Corruption in Vietnam is not a new phenomenon.⁴³⁸ The “Doi Moi” policy of the late 1980s, when the CPV began to implement market-driven economic reforms, is generally agreed upon by scholars as the time when corruption in Vietnam began to flourish.⁴³⁹ One of the greatest barriers to a truly effective anti-corruption policy in Vietnam is the fact that a number of high-ranking officials, from whom the required political will must emerge, are themselves major benefactors of a corrupt system. Additionally, there is a lot of bureaucratic red tape in the Vietnamese government's administration generally, which fosters corruption.⁴⁴⁰

It is now widely accepted that corruption is one of the most serious challenges to economic development and decent government.⁴⁴¹ Corruption ranks fifth among the "most problematic factors for doing business" in the World Economic Forum's Global Competitiveness Report 2015-2016, behind only access to funding, political instability, an inadequately educated workforce, and weak work ethic among the workforce.⁴⁴² In addition to the obvious financial costs, corruption undermines the efficacy of social programs and initiatives, damages the administrative infrastructure of government agencies, and reduces public faith in the Communist Party and the State's administration.⁴⁴³

⁴³⁶ Kohalmi, L. (2014). Etikai stratégiák a korrupció elleni küzdelemben (English: Ethical strategies in the fight against corruption). Jura: Pecs Tudományegyetem Állam- és Jogtudományi Karának Tudományos Lapja, 2014(2), 92-98.

⁴³⁷ Kohalmi, L. (2014). A korrupció (English: On corruption). Jura: Pecs Tudományegyetem Állam- és Jogtudományi Karának Tudományos Lapja, 2014(1), 147-155.

⁴³⁸ Tran, N. A. (2008). Corruption and human development. Development and Policies Research Center (DEPOCEN), Vietnam, Working Paper, 7.

⁴³⁹ Gregory, R. (2016). Combating corruption in Vietnam: A commentary. *Asian Education and Development Studies*, 5(2), 227-243.

⁴⁴⁰ Nghia, N. T (2015): Tham nhũng – Nguyên nhân và biện pháp phòng ngừa (Corruption - causes and prevention measures). Available at <https://www.angiang.dcs.vn/Lists/XayDungDang/DispForm.aspx?PageIndex=130&ID=1839>. Accessed 01 March 2023

⁴⁴¹ Sharman, J. C., & Chaikin, D. (2009). Corruption and anti-money-laundering systems: putting a luxury good to work. *Governance*, 22(1), 27-45.

⁴⁴² World Economic Forum's Global Competitiveness Report 2015-2016, p366

⁴⁴³ Thuc, T, H; Thanh, V, T (2022): Nguyên nhân khách quan dẫn đến tham nhũng ở Việt Nam hiện nay – những vấn đề đặt ra đối với công tác phòng, chống tham nhũng (English: Causes of corruption in Vietnam today - problems for anti-corruption work). Available at <https://noichinh.vn/nghien-cuu-trao-doi/202209/nguyen-nhan-khach-quan-dan-den-tham-nhung-o-viet-nam-hien-nay-nhung-van-de-dat-ra-doi-voi-cong-tac-phong-chong-tham-nhung-311528/>. Accessed 9 March 2023

There is widespread agreement that corruption poses a serious risk to the stability of the Vietnamese government. Despite this, Vietnamese lawmakers have made considerable moves since 2005, when the country's first anti-corruption law was drafted, to incorporate international anti-corruption norms into the country's legal structure. The government's annual anti-corruption enforcement efforts, however, have fallen short of expectations and failed to impress outside observers.⁴⁴⁴

In recent years, Vietnam has adopted a robust approach to the prosecution and punishment of corrupt individuals, but corruption remains a significant problem at all levels and in all sectors. In an endeavor to combat corruption, Vietnam signed and ratified the UNCAC in 2003 and 2009, respectively. Vietnam's Law on Anti-Corruption was enacted in 2005 and revised in 2007, 2012, in part to facilitate ratification of the UNCAC. However, the new Law on Anti-Corruption, which was passed in 2018 and went into effect on 01 July 2019, has wholly replaced the 2005 version. The purpose of the Vietnam's Law on Anti-Corruption was to demonstrate the government's commitment to fighting corruption and to increase public awareness of the issue. It is a central component of Vietnam's National Anti-Corruption Strategy toward 2020, which was introduced in 2009, and outlines a number of corrupt activities, such as embezzlement, receiving a bribe, and abusing positions and/or powers to appropriate property.

The Government Inspectorate (GI), which has jurisdiction over all levels of government, is allegedly the most vital entity in the fight against corruption. All tasks performed by state agencies and representatives are evaluated for legality by the GI and inspectorates within an administrative unit, who then make recommendations for improvements. Established in 2006 to supervise and coordinate anti-corruption activities, the Central Steering Committee for Anti-Corruption (SCAC) is chaired by the Prime Minister. Vietnam's anti-corruption score has risen dramatically in recent years, as measured by Transparency International's Corruption Perceptions Index (CPI). On a scale from 0 (extremely corrupt) to 100 (very clean), Vietnam moved up from a 2012 score of 31 to a 2022 level of 42.⁴⁴⁵

Table 5.1 shows the number of cases and defendants have been adjudicated for each among three predicate offence between 2010 and 2020.

⁴⁴⁴ 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.

⁴⁴⁵ Transparency International, (2022). Corruption Perceptions Index

Year	Embezzlement		Receiving bribes		Abusing positions and/or powers to appropriate property	
	Case	Defendant	Case	Defendant	Case	Defendant
2010	122	234	30	82	41	56
2011	115	242	17	73	34	65
2012	118	219	26	65	46	67
2013	110	216	26	60	47	68
2014	121	267	27	66	49	80
2015	120	201	22	49	33	67
2016	73	145	13	50	26	42
2017	102	189	17	39	34	48
2018	68	122	8	24	45	58
2019	74	92	6	22	48	62
2020	72	126	16	48	50	67
Total	1095	2053	208	578	453	680

Source: Investigative Police Agency Office - MPS

Although there are a large number of predicate offences among corruption acts, Vietnam has just investigated and prosecuted 01 money laundering case originated from the offence of embezzling property among these offences.⁴⁴⁶

Case study: Giang Van Hien:

The Sales Manager at Vinashin Ocean Shipping Company, Giang Kim Dat, was charged with embezzling money. During the investigation, police discovered that Giang Kim Dat had asked his father, Giang Van Hien, to open 22 foreign currency bank accounts at various banks in order to evade the attention of the appropriate authorities, conceal the proceeds of crime, and facilitate transfers from foreign accomplices. 92 transactions totaling with USD16 million were made to these accounts by the foreign partners. Giang Van Hien acquired and sold 13 luxury vehicles, and using the identities of his family members to purchase 40 real estate holdings. Giang Van Hien purposefully carried out the transactions while being aware that the money was the result of criminal activity. Based on the STR disseminated by AMLD, Giang Van Hien's case was opened for investigation of money laundering. Giang Van Hien received a 12-year sentence for money laundering in February 2017.⁴⁴⁷

⁴⁴⁶ SBV, (2019). National Risk Assessment on Money Laundering and Terrorism Financing

⁴⁴⁷ VOV, (2016). Ket luan dieu tra vu Giang Kim Dat va dong pham. (English: Conclusion of the investigation of the case of Giang Kim Dat and his accomplices). Available at <https://vov.vn/tin-nong/ket-luan-dieu-tra-vu-giang-kim-dat-va-dong-pham-523999.vov>. Accessed 01 March 2023

5.3.2. *Gambling and Organizing gambling or Running Gambling-dens*

AML threats might arise from gambling. It is possible for a money launderer to visit a land-based casino, make a few wagers, and then withdraw the proceeds in cash. The same holds true for virtual casinos. A player joins a poker site by downloading the software, making a profile, and then putting money into an electronic wallet.⁴⁴⁸

Currently gambling and gambling organizations have an upward trend in Vietnam, especially gambling and organizing gambling on the cyberspace.⁴⁴⁹ The expansion of Internet gambling, including mobile gaming, has had a huge impact on the gambling landscape over the past decade. Internet gambling is the fastest-growing kind of gambling, and it is altering how people engage in this activity. Concerns have been raised that Internet gambling may increase rates of disordered gambling due to its high degree of accessibility, immersive interface, and simplicity of money spending.⁴⁵⁰ Some aspects specific to online gambling may increase the potential for harm, especially for vulnerable groups. Online casinos provide a number of advantages over traditional establishments, including 24-hour access, a plethora of games, and the chance to place bets in complete secrecy.⁴⁵¹

With the help of advanced techniques, domestic and international criminals have created gambling networks that anybody may join at any moment and have access to a limitless amount of gaming funds. For example, in order to establish a divide for the football betting companies in Vietnam in cyberspace, the leaders of professional gambling organizations, whose servers are situated abroad, form gambling activities. With several advertising channels and alluring publicity in Vietnam. To gamble, players only need to have devices that can access the Internet, sign up for a member account, have a personal bank account, transfer money to the account, or use a third party payment gateway.⁴⁵² In order to assist in the investigation of the primary crime and money laundering in the massive, cross-

⁴⁴⁸ Simser, J. (2012). Money laundering: emerging threats and trends. *Journal of Money Laundering Control*, 16(1), 41-54.

⁴⁴⁹ Bocongan, (2022). Canh bao he luy xau tu cac trang web to chuc danh bac va danh bac tren khong gian mang (English: Warning of bad consequences from websites that organize gambling and online gambling). Available at <https://bocongan.gov.vn/tin-tuc/canh-bao-he-luy-xau-tu-cac-trang-web-to-chuc-danh-bac-va-danh-bac--tren-khong-gian-mang-t32072.html>. Accessed 01 March 2023

⁴⁵⁰ Gainsbury, S. M. (2015). Online gambling addiction: the relationship between internet gambling and disordered gambling. *Current addiction reports*, 2, 185-193, p.185.

⁴⁵¹ McCormack, A., & Griffiths, M. D. (2013). A scoping study of the structural and situational characteristics of internet gambling. *International Journal of Cyber Behavior, Psychology and Learning (IJCBPL)*, 3(1), 29-49.

⁴⁵² Bocongan, (2022). Canh bao toi pham danh bac bang hinh thuc ca do tren khong gian mang (English: Criminals gamble in the form of football betting on cyberspace). Available at <https://bocongan.gov.vn/tin-tuc-su-kien/canh-bao-toi-pham-danh-bac-bang-hinh-thuc-ca-do-bong-da-tren-khong-gian-mang-d17-t33698.html>. Accessed 01 March 2023

country, high-tech gambling case with proceeds reaching trillion VND, the AMLD has worked with the necessary authorities to provide financial information as requested.

Vietnam presently forbids online gaming. There are nine casinos in Vietnam with licenses, and all but one of them are exclusively for foreign tourists. In order to determine whether other casinos would be accessible to Vietnamese nationals in the future, the government established a three-year pilot program in January 2019 that permits Vietnamese nationals to play at a single casino.⁴⁵³ Compared with other predicate offences, there has been a very high number of cases being adjudicated for the offence of gambling and organizing gambling or running gambling-dens.

Table 5.2 shows the number of cases and defendants have been adjudicated for gambling, and organizing gambling or running gambling-dens between 2010 and 2018.

Year	Gambling		Organizing gambling or running gambling-dens	
	Case	Defendant	Case	Defendant
2010	2695	11995	576	2401
2011	3109	16207	418	2047
2012	4127	21577	436	1971
2013	4452	22184	465	2101
2014	5230	25215	476	2149
2015	5142	24932	478	1949
2016	4173	21433	447	1799
2017	3665	20162	494	1771
2018	3853	21687	485	1843
Total	36446	185392	4275	18031

Source: Investigative Police Agency Office – MPS

According to the statistic of AMLD, the AMLD has transferred to the MPS 02 cases for further investigation of money laundering regarding the predicate offence of organize gambling or running gambling-dens.

Case study: Phan Sao Nam and Nguyen Van Duong.

The indictment states that beginning in 2014, Phan Sao Nam and Nguyen Van Duong, along with others, conspired to create and run an online gambling system that was linked to multiple intermediary payment companies and allowed users to wager virtual currency on card games and withdraw real money. Agents operated as a market for the online betting system's virtual money. Nearly 43 million gaming accounts and \$9.8 trillion (about \$418 million) in wagers were uncovered by the police. More than VND3 trillion (about USD127 million) in profit was made by Phan Sao Nam and Nguyen Van Duong.

⁴⁵³ The U.S. Department of State (2022), International Narcotics Control Strategy Report (Volume II: Money laundering).

To conceal the proceeds of the crime, Phan Sao Nam and his accomplices forged contracts and invoices, invested funds in real estate, construction, vehicle, and bullion ventures, sent wire transfers overseas and to relatives who then returned the money.

To date, 105 people have been arrested and charged for a variety of offenses, including money laundering. Nguyen Van Duong was given a five-year sentence for organizing gambling and a five-year sentence for money laundering and was ordered to pay VND1.7 trillion (USD74 million) in restitution to the state. Phan Sao Nam received two years for organizing gambling and three years for money laundering, and was forced to repay the state VND1.5 trillion (USD65,2 million). An estimated VND506 billion (USD22 million) was recovered from the defendants, while VND1.1 trillion (USD 48.3 million) was frozen.⁴⁵⁴

5.3.3. Illegally stockpiling, transporting, trading in or appropriating drug

The United Nations Office on Drugs and Crime (UNODC) estimated in a report published in 2021 that more than 36 million people had substance use disorders and that over 275 million individuals used drugs worldwide by the end of 2020. As the report's title suggests, cannabis's potency has increased by a factor of four times in the last 24 years, and its long-term users have seen a wide range of negative consequences.⁴⁵⁵

One of the main centers for the manufacture of illicit drugs in the globe is said to be Southeast Asia. Although Vietnam does not belong to the group of countries that produce a significant amount of illegal drugs, the country has faced difficulties in preventing drugs from being imported illegally, consumed in its own country, and then transported to other nations due to its unique geographic location, border, and sea and road routes that run from the north to the south.⁴⁵⁶ As a result, it is difficult for law enforcement to stop drug trafficking, which complicates the problem of drug crime in the nation.⁴⁵⁷

Drug criminality will continue to develop in a complex manner with numerous potentially unforeseen elements. Synthetic drug and psychotropic substance manufacture, trade, transportation, and consumption have all expanded in most countries along with the emergence of numerous new medications. Drug-related crimes' tactics and strategies will

⁴⁵⁴<https://vir.com.vn/5-10-years-of-imprisonment-for-masterminds-of-online-gambling-ring-64265.html>

⁴⁵⁵ UNODC, (2021). World Drug Report 2021. Available at <https://www.unodc.org/unodc/en/data-and-analysis/wdr2021.html>

⁴⁵⁶ Sang, N. T., & Thai, H. V. (2022). Psychological Research on Drug-related Crimes in Vietnam from the Criminological Perspective. *International Journal of Social Science And Human Research*, Volume 05 Issue 03, pp.726-730.

⁴⁵⁷ Huyen, T. Q. (2019). International Cooperation to Prevent and Combat Transnational Drug Trafficking at Border Locations: A Case Study of Vietnam. *International Cooperation*, Vol 85., pp.206-214

advance in sophistication and frequently alter. They employ contemporary modes of transportation, communication, and military hardware; they are prepared, even proactive in their fightback when discovered. To commit crimes, criminals take advantage of legal weaknesses in the system. Particularly in relation to heroin and amphetamine-type stimulants (ATS), Vietnam has become more and more of a transit and destination country.⁴⁵⁸ For instance, a lot of heroin enters Vietnam from the "Golden Triangle" (Thailand, Laos, and Burma) for both local use and exportation to other Southeast Asian and Oceanian nations.⁴⁵⁹ Between January and October 2022, Vietnamese law enforcement investigated 19,754 drug-related cases, detained 29,934 offenders, seized 677 kilograms of heroin, 4.6 metric tons of methamphetamine, 256 kilograms of cannabis, 104 kilograms of opium, 184 firearms, and an undetermined number of vehicles and other assets. In addition, more than 100 wanted criminals for connected drug offences were detained by Vietnam's counter-narcotics police agency.⁴⁶⁰

So far Vietnam has not investigated, prosecuted any money laundering case originated from the offence illegally stockpiling, transporting, trading in or appropriating drug.

Table 5.3 shows the number of cases and defendants have been adjudicated for illegally stockpiling, transporting, trading in or appropriating drug between 2010 and 2020.

Year	Case	Defendant
2010	11385	14321
2011	14096	17490
2012	14941	18665
2013	15064	19109
2014	13191	17286
2015	11433	14505
2016	16222	20282
2017	17220	21355
2018	10378	11954
2019	13955	16349
2020	14676	17463
Total	152561	188779

Source: Investigative Police Agency Office – MPS

⁴⁵⁸ UNODC, (2013). Transnational organized crime in East Asia and the Pacific: A threat assessment. Vienna, Austria.

⁴⁵⁹ The U.S. Department of State (2022). International Narcotics Control Strategy Report (Volume I: Drug and Chemical Control).

⁴⁶⁰ The U.S. Department of State (2023), International Narcotics Control Strategy Report (Volume I: Drug and Chemical Control).

5.3.4. Tax evasion

The situation of violations and crimes in the tax field is very complicated, with an increasing and serious trend in most types of businesses. Tax evasion is common in all fields, causing serious losses to the state budget. Of the 10 taxes that the State has issued, there are 5 taxes that criminals take advantage of the most. They are value-added tax, corporate income tax, personal income tax, import-export tax and real estate tax. Many tax evasion tricks have been clarified. Notably, non-state-owned enterprises and foreign-invested enterprises find ways to reduce profits, thereby reducing income to evade taxes. Non-invoice sales are also common. In the field of import and export, subjects often use tricks to reduce the price of imported goods, write the price in the contract lower than the actual value, especially declaring the wrong type of goods.⁴⁶¹ So far Vietnam has not investigated, prosecuted any money laundering case originated from the offence tax evasion. Compared with other predicate offences, there has been quite low number of cases and defendants being prosecuted for tax evasion. However, the crime of tax evasion has occurred more and more complicated causing a lot of difficulties for competent authorities to detect and handle, making a great loss to the state budget.

Table 5.4 shows the number of cases and defendants have been adjudicated for tax evasion between 2010 and 2020.

Year	Case	Defendant
2010	11	17
2011	16	27
2012	13	20
2013	16	37
2014	31	55
2015	31	46
2016	33	48
2017	34	50
2018	35	47
2019	26	57
2020	20	40
Total	266	444

Source: Investigative Police Agency Office – MPS

⁴⁶¹ Baodautu, (2013): Toi pham ve thue ngay cang nghiêm trong (English: Tax crimes are getting more and more serious). Available at <https://baodautu.vn/toi-pham-ve-thue-ngay-cang-nghiêm-trong-d16608.html>. Accessed 01 March 2023

5.3.5. Appropriating property through swindling

The situation of appropriating property through swindling occurs in many localities, affecting security and order. In particular, there are forms of fraud to appropriate property in many fields such as finance, banking, and real estate, especially fraud to appropriate assets in cyberspace.

Some common cunning fraudulent behaviors include: Impersonating state officials or senior state leaders to deceive those applying for a job, project approval, or capital loan; Impersonating airport, customs, or tax office employees to request victims pay shipping fees, taxes, or fines to criminals' bank accounts; Impersonating police officers or court officials to call victims and threaten them to transfer money. In addition, these criminals create unreliable websites, trading platforms, and money-making applications to entice individuals to invest in virtual currency and binary options. They then manipulate the system to cause investors to lose money or even cause the system to collapse in order to steal money. Using online purchasing websites or social networks for fraudulent purposes is another common tactic. Specifically, criminals in economy-related fields such as finance, securities, investments, and corporate bond issuance have become more sophisticated, as they typically exploit weaknesses in mechanisms, policies, and legal terms to commit crimes, causing severe harm to the economy, individuals, and businesses.⁴⁶² So far Vietnam has not investigated, prosecuted any money laundering case originated from the offence appropriating property through swindling. Several high-profile money laundering cases in Vietnam were not prosecuted despite the fact that they could have been. It is not uncommon for defendants to possess high-value assets whose value is inconsistent with their income. Each could have been investigated further and prosecuted for money laundering violations.

Table 5.5 shows the number of cases and defendants have been adjudicated for appropriating property through swindling between 2010 and 2020.

Year	Case	Defendant
2010	1706	2248
2011	1807	2360
2012	2080	2735
2013	2274	3097
2014	2431	3446
2015	2277	3020
2016	2106	2743

⁴⁶² Vietnamnet, (2022): Fraud crimes in Vietnam becoming increasingly sophisticated. Available at <https://vietnamnet.vn/en/fraud-crimes-in-vietnam-becoming-increasingly-sophisticated-2012876.html>. Accessed 01 March 2023

2017	1987	2564
2018	871	999
2019	919	1025
2020	699	782
Total	19157	25019

Source: Investigative Police Agency Office – MPS

Case study: Nguyen Thai Luyen.

Nguyen Thai Luyen, the chairman of Alibaba Real Estate JSC ("Alibaba"), has established 22 special-purpose vehicles and 58 "ghost" real estate projects to sell to clients. Nguyen Thai Luyen and his firms gathered and appropriated roughly VND2.4 trillion (USD102 million) from 4,560 clients. At the time, Alibaba's Chairman arranged for his family members to create bank accounts. The Chairman authorized the transfer of VND13 billion (about USD568,000) from investor bank accounts to his family members' accounts. The money was subsequently used to buy property and make cash withdrawals. The Chairman was convicted of fraud and sentenced to life in prison. His wife, Vo Thi Thanh Mai, and his younger brother, Ngo Thai Luc, were both sentenced to 30 and 27 years in prison for fraud and money laundering, respectively.

5.3.6. Abusing trust in order to appropriate property

The crime of abusing trust in order to appropriate property mainly involves individuals and legal entities in the private sector and the banking sector. This crime usually takes place in the form of an individual's act against an individual or an individual against a legal entity. The characteristics of this type of crime are often expressed through tricks such as: cheating, running away after receiving property with the intention of not paying, not returning the property; Using property for illegal purposes leads to inability to pay debt.

Although statistics on institution, prosecution and adjudication of the offence abusing trust in appropriating assets show that every year there has been significant number of criminal cases brought to trial by competent agencies, there has not any investigated, prosecuted money laundering case originated from the offence abusing trust in order to appropriate property in Vietnam

Table 5.6 shows the number of cases and defendants have been adjudicated for abusing trust in order to appropriate property between 2010 and 2018.

Year	Case	Defendant
2010	920	1074
2011	1048	1213
2012	1214	1410
2013	1292	1480

2014	1337	1536
2015	1289	1448
2016	1073	1191
2017	958	1107
2018	1023	1300
Total	10154	11759

Source: Investigative Police Agency Office – MPS

5.3.7. Breaching regulations on the protection of precious and rare wild animals

Vietnam's illegal wildlife trade poses a substantial threat to endangered species worldwide. During the previous decade, the illicit trade and consumption of wildlife, primarily rhino horn and ivory from Africa, increased dramatically in the US. The Vietnamese government has prioritized law enforcement as a result. Despite the fact that Vietnam has strengthened its environmental regulations, a lack of coordination among its enforcement agencies has hampered its ability to prosecute environmental offenders.⁴⁶³ Due to its globalized, export-driven economy and extensive business ties, the nation has been recognized in previous research as a key node in the wildlife trafficking network. Vietnamese networks have been connected to the poaching of almost 1000 rhinoceroses, 110,000 pangolins, and at least 18000 elephants since 2010. However, the investigations have only led to a few prosecutions.⁴⁶⁴

Recently, the situation of wildlife trade has shown signs of shifting to cyberspace. Groups on social networks have become black markets dedicated to wildlife trade and consumption. From July 2021 to June 2022, there are more than 8,000 advertisements for public sale of wildlife products.⁴⁶⁵ The increase in online transactions will allow demanders and suppliers to exchange more easily, while cutting intermediaries and other operating costs. In particular, this method helps sellers have less contact with law enforcement agencies and specialized shipping services, so there is less risk in the process of contacting, transporting and trading.

⁴⁶³ USAID, (2018). Vietnam Strengthens Law Enforcement to Combat Wildlife Trafficking. Available at <https://www.usaid.gov/vietnam/news/vietnam-strengthens-law-enforcement-combat-wildlife-trafficking#:~:text=The%20illegal%20wildlife%20trade%20in,horn%20and%20ivory%20from%20Africa.> Accessed 01 March 2023

⁴⁶⁴ The Global Initiative, (2022): Vietnam's virtual landscape for illicit wildlife trading: A snapshot of e-commerce and social media. Available at <https://globalinitiative.net/analysis/vietnam-online-illicit-wildlife-trade/>. Accessed 01 March 2023

⁴⁶⁵ VnEconomy, 2022: Chan cac hanh vi mua ban dong vat hoang da tren khong gian mang – Trach nhiem cua cac cong ty cong nghe (English: Blocking wildlife trade in cyberspace: Tech companies' responsibilities). Available at <https://vneconomy.vn/chan-cac-hanh-vi-mua-ban-dong-vat-hoang-da-tren-khong-gian-mang-trach-nhiem-cua-cac-cong-ty-cong-nghe.htm>. Accessed 01 March 2023

According to NRA, Vietnam has neither investigated nor prosecuted any money laundering case arising from a violation of regulations protecting endangered and rare wild animals. However, data from competent agencies show that since 2003, Vietnam has arrested dozens of people involved in the illegal import and transit of ivory from Africa. Since the beginning of 2015, Vietnamese customs have apprehended almost 6 tons of ivory, 4 tons of pangolins, and hundreds of kilograms of rhinoceros horns illegally brought from Africa, as well as dozens of cases of tigers, leopards, and other wild animals being illegally traded.

Table 5.7 shows the number of cases and defendants have been adjudicated for breaching regulations on the protection of precious and rare wild animals between 2010 and 2020.

Year	Case	Defendant
2010	60	86
2011	54	94
2012	69	108
2013	77	140
2014	30	43
2015	45	68
2016	70	99
2017	62	141
2018	36	72
2019	46	62
2020	48	74
Total	597	987

Source: Investigative Police Agency Office – MPS

5.3.8. Illegal cross-border transportation of goods and/or currencies

The main types of goods illegally transported across the border by criminals include: petroleum, timber, tobacco, tobacco ingredients, currency and other items mainly for economic purposes. Modes of transport include: hired carriers, which may include transnational organized crime. For the illegal transportation of cash, foreign currency and gold across the border, no suspected cases related to money laundering or money transfer to finance terrorism have been detected across the border. Compared with goods smuggled across the border, currency has a great value, so it attracts many criminals to participate.

There has been a moderate number of cases being adjudicated for the offence illegal cross-border transportation of goods and/or currencies. Proceeds obtained from this crime is often used for personal consumption, and might also be used by criminals to bribe authorities to carry out their illegal cross-border transportation of goods and/or currencies. So far

Vietnam has not investigated, prosecuted any money laundering case originated from the offence illegal cross-border transportation of goods and/or currencies.

Table 5.8 shows the number of cases and defendants have been adjudicated for illegal cross-border transportation of goods and/or currencies between 2010 and 2020.

Year	Case	Defendant
2010	54	71
2011	58	86
2012	54	74
2013	67	116
2014	62	96
2015	70	113
2016	74	175
2017	51	86
2018	50	75
2019	28	52
2020	17	47
Total	585	991

Source: Investigative Police Agency Office – MPS

5.3.9. Human trafficking

Several recent developments show that the Vietnamese government has prioritized combating human trafficking. These include the introduction of new laws, the establishment of bilateral agreements with other countries, the ratification and implementation of numerous international treaties, and the introduction of new anti-trafficking initiatives.⁴⁶⁶ The manufacturing and industrial sectors in urban regions have experienced higher average yearly economic growth recently than the agriculture sector in rural areas. Due to the difference in development between rural and urban areas, migrants from rural to urban areas both inside Vietnam and abroad have increased.⁴⁶⁷ Furthermore, gender equality remains limited, with women having lower status than men in both the public and commercial sectors. Women lack equal access to waged labor, equal compensation, proper legal protection, political attention, and other chances as males. This situation is seen as a hidden source of people trafficking in Vietnam.⁴⁶⁸

⁴⁶⁶ Le, T. H. (2017). Human trafficking in Vietnam: Preventing crime and protecting victims through inter-agency cooperation (Doctoral dissertation, Queensland University of Technology).

⁴⁶⁷ Le, T. H., Carrington, K., Tran, T. H., Nguyen, T. P., Le, T. K., & Bui, N. H. (2018). Inter-agency cooperation to raise awareness on human trafficking in Vietnam: Good practices and challenges. *Asian journal of criminology*, 13, 251-274.

⁴⁶⁸ Duong, K. A. (2014). Engendering the evaluation of anti-trafficking policy: The Vietnamese National Action Programme against trafficking in women and children 2004-2010 (THE VNAP) (Doctoral dissertation, University of Waikato).

In recent years, the number of victims and cases of human trafficking has increased. Human trafficking entails forced labor and sexual exploitation of individuals. Vietnamese men and women migrate unofficially abroad in search of employment, including through clandestine brokerage networks operated by other Vietnamese nationals based abroad or through state-owned and -regulated labor recruitment firms. Traffickers entice Vietnamese nationals, especially women and members of ethnic minorities, to join their networks with fraudulent promises of employment opportunities overseas. The majority of human trafficking victims are destitute, have limited education, and are unemployed.⁴⁶⁹ Due to the lack of systematic and comprehensive data, a number of researchers assert that the reported data do not paint a complete picture of human trafficking in Vietnam. The actual number of cases and victims of human trafficking is significantly higher than what is officially recognized. However, Vietnam has not investigated, prosecuted any money laundering case originated from the offence human trafficking so far.

Table 5.9 shows the number of cases and defendants have been adjudicated for human trafficking between 2010 and 2020.

Year	Case	Defendant
2010	124	236
2011	147	277
2012	155	319
2013	169	341
2014	139	322
2015	139	265
2016	108	188
2017	91	161
2018	83	147
2019	58	98
2020	34	43
Total	1247	2397

Source: Investigative Police Agency Office – MPS

5.3.10. Making, storing, transporting and/or circulating counterfeit money, treasury bills and/or bonds

The act of making counterfeit money is likely as old as money itself.⁴⁷⁰ The counterfeiting of money violates the state's monopoly on the issuance of currency, the security

⁴⁶⁹ The U.S Department of State, 2022: Trafficking in Persons Report 2013, July 2022. Available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf>. Accessed 08 March 2023

⁴⁷⁰ Tóth, D. (2017). The regulation of counterfeiting money in the German Criminal Code. *Zeszyty Naukowe Towarzystwa Doktorantów Uniwersytetu Jagiellońskiego. Nauki Społeczne*, (19 (4)).

of cash flow, and the public's faith in money as a lawful tender. A substantial quantity of counterfeit currency in circulation can endanger the state's economy, as well as the balance of its funds and community funds.⁴⁷¹

In Vietnam, cash is still widely used to carry out transactions of buying and selling goods and services. Over the past time, the activities of counterfeit money crimes have taken place with increasingly sophisticated and complex methods, operating in many localities, and connecting domestic and foreign entities. Previously, most counterfeit money was produced by objects from abroad, then transferred to domestic consumption in many different forms. However, at present, the subjects have equipped themselves with machines and equipment to make counterfeit money and sell it in the country. In order to avoid detection by the authorities, they organize into a continuous line from buying, selling, transporting, hiding to consuming. Consumption areas are often in remote areas, where people's access to information related to counterfeit money in particular is limited, and places where it is easy to escape when detected.⁴⁷²

Vietnam has not yet investigated or prosecuted any money laundering case stemming from the offense of producing, storing, transporting, and/or circulating fraudulent currency, treasury bills, or bonds. According to estimates, however, the amount of counterfeit currency introduced into Vietnam was substantial. Through investigation, counterfeit money can be imported into Vietnam, but it is primarily used to purchase low-value goods and services for personal consumption. Therefore, if the fake money is successfully counterfeited, the real money offenders receive back is of low and small value, making it difficult for them to launder money through high-value business activities.

Table 5.10 shows the number of cases and defendants have been adjudicated for Making, storing, transporting and/or circulating counterfeit money, treasury bills and/or bonds between 2010 and 2020.

Year	Case	Defendant
2010	178	358
2011	119	211
2012	110	177
2013	112	203
2014	67	147

⁴⁷¹ Gal, I. L., & Toth, D. (2018). Risk Analysis of Counterfeiting Money in Hungary and in the EU. *Journal of Criminology and Criminal Law*, Vol 56.

⁴⁷² VTV, (2023). Thu doan luu hanh tien gia khien nhieu nguoi dan nong thon sap bay. (English: The trick of circulating fake money has caused many rural people to "fall into traps"). Available at <https://vtv.vn/phap-luat/thu-doan-luu-hanh-tien-gia-khien-nhieu-nguoi-dan-nong-thon-sap-bay-20230302190654838.htm>. Accessed 05 April 2023.

2015	59	118
2016	67	133
2017	71	126
2018	32	60
2019	19	35
2020	35	72
Total	869	1640

Source: Investigative Police Agency Office – MPS

5.3.11. Smuggling

Currently, the smuggling situation is taking place in a very complicated manner in most localities and on most goods circulation routes. Crime of smuggling causes great consequences and harms, weakening industries and production; reducing budget revenues, affecting the country's socio-economic development strategy. According to reports of authorities, criminals often form lines to smuggle and illegally transport into Vietnam high-tax goods, goods requiring a management license.⁴⁷³ Up to now, Vietnam has not prosecuted or investigated any cases of money laundering originating from smuggling crimes.

Table 5.11 shows the number of cases and defendants have been adjudicated for smuggling between 2010 and 2020.

Year	Case	Defendant
2010	49	89
2011	89	141
2012	73	126
2013	88	151
2014	90	165
2015	103	168
2016	105	204
2017	90	150
2018	37	89
2019	23	77
2020	19	74
Total	766	1434

Source: Investigative Police Agency Office – MPS

5.3.12. Manufacturing, stockpiling, transporting and/or trading in banned goods

The situation of manufacturing, stockpiling, transporting and/or trading in banned goods has complicated developments in border provinces and is consumed most in big cities

⁴⁷³ Congannhandan, (2023). Diem mat cac thu doan buon lau (English: Smuggling tricks). Available at <https://cand.com.vn/Lan-theo-dau-vet-toi-pham/diem-mat-cac-thu-doan-buon-lau-i684399/>. Accessed 01 March 2023.

such as Hanoi and Ho Chi Minh City. The most traded items include firecrackers, cigarettes, military weapons, products derived from rare animals due to high profits. High number of cases being prosecuted and adjudicated for the offence manufacturing, stockpiling, transporting and/or trading in banned goods. However, Vietnam has not yet instituted, prosecuted, adjudicated any money laundering originated from this type of offence.

Table 5.12 shows the number of cases and defendants have been adjudicated for manufacturing, stockpiling, transporting and/or trading in banned goods between 2010 and 2018.

Year	Case	Defendant
2010	213	302
2011	364	539
2012	404	551
2013	467	667
2014	499	702
2015	571	811
2016	315	419
2017	118	179
2018	242	317
Total	3193	4487

Source: Investigative Police Agency Office – MPS

5.3.13. Manufacturing and/or trading in fake goods

In recent years, according to the Police Department for Investigation of Crimes on Corruption, Economy, and Smuggling - MPS, the number of crimes related to the production and sale of counterfeit goods is increasing. In order to deceive consumers and evade the inspection of the authorities, criminals manufacturing and trading banned goods, counterfeit goods, imitation goods, poor quality goods and infringing intellectual property often take full advantage of digital technology platform to sell goods on e-commerce sites, social networks to reach consumers quickly, and at the same time easily erase traces of crime, evade the prosecution of the competent agencies.

In comparison to other predicate offenses, the number of cases prosecuted and adjudicated for this type of offence has been fairly low. Practical investigation experience with this crime reveals that the proceeds are frequently tiny, and offenders do not convert the illegal money into other forms of investment, but instead utilize it for personal consumption. So far, Vietnam has not investigated or prosecuted any money laundering case stemming from the offense of manufacturing and/or trading in counterfeit goods.

Table 5.13 shows the number of cases and defendants have been adjudicated for manufacturing and/or trading in fake goods between 2010 and 2020.

Year	Case	Defendant
2010	7	12
2011	9	13
2012	20	28
2013	25	27
2014	26	40
2015	37	63
2016	30	44
2017	28	43
2018	25	38
2019	17	30
2020	18	40
Total	242	378

Source: Investigative Police Agency Office – MPS

5.3.14. Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means

The main method and tactic of this type of crime is to take advantage of the assigned tasks in weapon management or take advantage of the loopholes of the weapons manager to seize the piece. However, the number of weapons that are appropriated is often small, with a single cases, the main purpose of which is to sell for money for personal use. However, the situation of illegal weapons trading is increasing and complicated, especially criminals often promote the use of social networks to buy and sell weapons. So far Vietnam has not prosecuted, investigated any cases of money laundering originated from this offence.

Table 5.14 shows the number of cases and defendants have been adjudicated for illegally manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means between 2010 and 2018.

Year	Case	Defendant
2010	70	159
2011	91	182
2012	158	205
2013	227	354
2014	187	307
2015	131	204
2016	109	164
2017	113	156
2018	97	128
Total	1183	1859

Source: Investigative Police Agency Office – MPS

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.

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

6.1.1.1. Understanding of anti-money laundering obligations

In order to achieve their goals of combatting money laundering, FATF sets up the CDD standards. The FATF has updated its recommendations by including a glossary and interpretive notes that define and elaborate on the CDD requirements. According to Recommendation 10 (i), (ii), (iii), (iv), financial institutions are required to apply CDD measure when:

- “1) Establishing business relations;
- 2) Carrying out occasional transactions: (i) above the applicable designated threshold (US\$/EUR 15,000); or (ii) that are wire transfers in the circumstances covered by the Interpretative Note to Recommendation 16;
- 3) There is a suspicion of money laundering or terrorist financing; or
- 4) The financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.”⁴⁷⁴

The CDD measures are conducted as follows:

- “a) Identifying the customer and verifying that customer’s identity using reliable, independent source documents, data or information.
- b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.
- c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.
- d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.”⁴⁷⁵

⁴⁷⁴ FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation 10 (i), (ii), (iii), (iv)

⁴⁷⁵ Ibid, Recommendation 10 (a), (b), (c), (d)

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.”⁴⁷⁶

“Financial institutions are also prohibited from opening or maintaining anonymous accounts or accounts using false names.”⁴⁷⁷

The SBV is responsible for issuing implementation guidelines for AML laws.⁴⁷⁸ The AMLD has sent out memos instructing reporting organizations, like ministries and agencies, to implement AML/CFT measures. The MOF addressed letters to the securities, gambling, and insurance industries, and the MOC sent letters to the real estate business, all asking that they adopt AML/CFT procedures. Reporting entities are aware of their AML responsibilities thanks to the dissemination of related laws, rules, and circulars as well as the efforts of the SBV. However, there is an inconsistent knowledge of money laundering risks and AML responsibilities across sectors. While financial institutions like banks, insurance providers, and securities firms appear to have AML rules and processes in place and have taken steps to mitigate the risk of money laundering, DNFBPs, which offer numerous opportunities and inducements for hiding the true origin of illicit funds,⁴⁷⁹ show little understanding of money laundering risk and AML prevention strategies.

For example, in the real estate sector, the MOC requested reporting entities to:

- Issue and implement internal regulations on prevention and combat of money laundering.

⁴⁷⁶ The 2022 Law on AML, Article 9 (2)

⁴⁷⁷ The 2022 Law on AML, Article 8 (2)

⁴⁷⁸ Government, (2013). Decree No.116/2013, Article 24

⁴⁷⁹ Thai, H. V. (2022). Mitigating Money Laundering and Terrorist Financing: A Review on The Role of Designated Non-financial Businesses and Professions in Vietnam. In: Szabó Béla (szerk.): Scientia nobilitat. Debrecen, Debreceni Egyetem Állam- és Jogtudományi Kar, pp. 23-32.

- Implement regulations on customer identification, update customer information, review transactions and customers, apply enhanced measures to high-risk customers, assign staff to perform AML.

- Report suspicious transactions, reports of large cash transactions to AMLD
- Conduct internal risk assessment of money laundering and terrorist financing
- Undertake enhanced scrutiny on foreign PEPs.⁴⁸⁰

However, according to the NRA findings, the real estate industry has an inadequate knowledge of the risk of money laundering. This has also led to a lack of understanding of the necessary preventive measures that should be put in place.

Despite their role as business advisors, lawyers, notaries, and accountants all appear to have a fundamental understanding of money laundering risk. While these are the most important service providers for Vietnamese businesses, they appear to be unaware of the risks posed by legal persons and foreign trusts. In a similar vein, it appears that some larger casinos comprehend the dangers of money laundering, while others have only a basic awareness of these issues, along with their AML/CFT responsibilities and the hazards associated with money laundering and the funding of terrorism.

6.1.1.2. Application of customer due diligence measures

FATF Recommendation 11 suggests that “financial institutions should be required to keep all records obtained through CDD measures (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence, including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large transactions), for at least five years after the business relationship is ended, or after the date of the occasional transaction.”⁴⁸¹

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

⁴⁸⁰ MOC, (2019). Official Letter No.1590, on AML in real estate sector

⁴⁸¹ FATF Recommendation 11

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 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

6.1.2.1. Suspicious Transactions Report from reporting entities

Financial institutions should be obligated by law to report promptly to the FIU any suspicions that monies are the proceeds of criminal activity or are tied to terrorism financing,⁴⁸² regardless the size of the transaction.⁴⁸³

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.⁴⁸⁴

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.

⁴⁸² FATF Recommendation 20

⁴⁸³ FATF Recommendation 20, Interpretive note.

⁴⁸⁴ The 2022 Law on AML, Article 26

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.

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.⁴⁸⁵

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.⁴⁸⁶ 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

⁴⁸⁵ The 2022 Law on AML, Article 27

⁴⁸⁶ The 2022 Law on AML, Article 42

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.⁴⁸⁷

Table 6.1. show the numbers of STRs from reporting entities to AMLD between 2014-2019

Year	Banks			Foreign Remittance Co.	Insurance Co.	Securities Co.	Others FIs & DNFBPs	Total
	Joint stock commercial Banks	State-Owned Banks	Joint-Venture & Wholly-Owned Foreign Banks					
2014	352	413	84	-	24	1	-	874
2015	851	305	192	114	80	-	-	1542
2016	456	236	237	372	25	-	-	1326
2017	343	305	294	485	46	-	1	1474
2018	322	380	523	285	25	-	5	1540
2019	325	543	410	41	25	-	9	1353
Total	2649	2182	1740	1297	225	1	15	8109

Source: Extracted from Vietnam MER 2022

6.1.2.2. Suspicious Transactions Report requested and received by competent authorities

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.

⁴⁸⁷ APG. (2022). Anti-money laundering and counter terrorist financing measures - Vietnam, Third Round Mutual Evaluation Report, APG, Sydney

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 2021.⁴⁸⁸

Table 6.2 shows the number of STRs disseminated by AMLD to competent agencies, mostly to MPS between 2014-2019

Year	MPS	Inspection Agencies	Other	Total
2014	242	233	0	475
2015	217	619	3	839
2016	497	454	11	962
2017	291	237	2	530
2018	586	152	11	749
2019	82	4	0	92
Total	1,915	1,99	27	3,647

Source: Extracted from Vietnam MER 2022

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 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

⁴⁸⁸ The US Department of State, (2022), International Narcotics Control Strategy Report. Volume II. Money laundering p.201

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.⁴⁸⁹ 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.⁴⁹⁰

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.⁴⁹¹

In addition to MPS, the investigation authorities of the People's Army are responsible 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.⁴⁹² This may include money laundering, predicate offenses, and financing

⁴⁸⁹ FATF Recommendation 30

⁴⁹⁰ Thai, H. V. (2023). Anti-money laundering and countering financing. *Essays of Faculty of Law University of Pécs, Yearbook of 2021-2022*, 203-216.

⁴⁹¹ The 2022 Law on AML, Article 49

⁴⁹² The 2015 Criminal Procedure Code, Article 163

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.⁴⁹³ 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.⁴⁹⁴ 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.⁴⁹⁵ 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, 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.

⁴⁹³ The 2015, Criminal Procedure Code, Article 163

⁴⁹⁴ The 2015, Criminal Procedure Code, Article 164

⁴⁹⁵ FATF Recommendation 31

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.⁴⁹⁶ 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 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

⁴⁹⁶ The 2022 Law on AML, Article 49

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.⁴⁹⁷

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.⁴⁹⁸

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.⁴⁹⁹ 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 occurs during investigations when law enforcement agencies and competent authorities exchange information.⁵⁰⁰

However, there is a typical obstacle prevents investigators from acquiring banking information when conducting financial inquiries. Financial information are important, but the

⁴⁹⁷ MPS, (2019). Process No.4885/QT-C03-P13

⁴⁹⁸ 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.

⁴⁹⁹ Chat, L. N. (2014). International anti-money laundering standards and their implementation by Vietnam, Phd thesis, p105

⁵⁰⁰ 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.

current law makes them difficult to obtain by investigation agencies.⁵⁰¹ In general, banking institutions forbid disclosing details of consumer financial transactions.⁵⁰² 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.⁵⁰³ 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.⁵⁰⁴ 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.⁵⁰⁵

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.

Table 6.3 shows the number of money laundering investigations and convictions compared with the number of predicate offences leading to convictions between 2014 - 2019.

⁵⁰¹ Tran, T. T. H., & De Koker, L. (2021). Confiscation of proceeds of crime in Vietnam: improving the legal framework. *Journal of Money Laundering Control*

⁵⁰² 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

⁵⁰³ Government, (2000). Decree No.70/2000/ND-CP on Keeping Secret, Storing and Providing Information Related to Customers' Deposits and Assets, Article 5 (4)

⁵⁰⁴ Tran, T. T. H., & De Koker, L. (2021). Confiscation of proceeds of crime in Vietnam: improving the legal framework. *Journal of Money Laundering Control*

⁵⁰⁵ 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)

Predicate Crime	Predicate investigations & convictions	Money laundering investigations	Money laundering investigations leading to money laundering convictions
Human trafficking	550	0	0
Appropriating property through swindling	10,769	1	0
Abusing trust to appropriate property	5,526	0	0
Smuggling	417	1	0
Illegal cross-border transportation of goods and/or currencies	322	0	0
Manufacturing and/or trading in fake goods	156	0	0
Tax evasion	167	0	0
Making, storing, transporting and/or circulating counterfeit money, treasury bills and/or bonds	301	0	0
Breaching regulations on the protection of precious and rare wild animals	342	0	0
Illegal manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means	604	0	0
Gambling	22650	0	0
Organizing gambling	2453	1	1
Manufacturing, stockpiling, transporting and/or trading in banned goods	2478	0	0
Embezzlement	509	1	1
Receiving Bribes	100	0	0
Abusing positions and/or powers to appropriate property	182	0	0
Total	125,647	4	2

Source: Extracted from Vietnam MER 2022

It is important to note that, there are no specialized teams investigating money 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.⁵⁰⁶ Other potential explanations include a lack of a suitable administrative framework and political considerations about the costs and advantages of possibilities.⁵⁰⁷ Furthermore, the lack of combined agency taskforces in Vietnam limits law enforcement agencies' ability to effectively collaborate on money laundering investigations.

6.3. Confiscation

The Vienna Convention was the first significant international agreement to include requirements for confiscating assets related to criminal gains. According to Article 1 of the Vienna Convention, "confiscation" refers to the permanent taking of property at the direction of a court or other competent authority, and, when appropriate, includes forfeiture. Additionally, it defines "freezing" or "seizure" as temporarily prohibiting the transfer, conversion, disposition, or transportation of property or temporarily assuming custody or control of property in accordance with a court order or other competent authority's order.⁵⁰⁸ State Parties are required to take the necessary actions to enable the confiscation of narcotic drugs and psychotropic substances, materials, equipment, and other instruments used in or intended for use in any way in such offenses, as well as property whose value corresponds to the proceeds of offenses established in accordance with the Convention, as per Article 5 of the Convention.⁵⁰⁹ It also requires State Parties to take all necessary steps to give their competent authorities the ability to locate, identify, and seize funds, assets, instruments, etc. in order to prepare them for future seizure.

In addition, FATF Recommendation 4, for example, requires jurisdictions to have a framework to enable their competent authorities to freeze, seize, and confiscate the following without jeopardizing the rights of legitimate third parties, countries should adopt measures akin to those outlined in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention. These measures should include legislative measures.

Such measures should include the authority to:

- “(a) identify, trace and evaluate property that is subject to confiscation;
- (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property;

⁵⁰⁶ 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

⁵⁰⁷ 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.

⁵⁰⁸ The Vienna Convention, Article 1

⁵⁰⁹ The Vienna Convention, Article 5

(c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and

(d) take any appropriate investigative measures.”⁵¹⁰

FATF Recommendation 38 further addresses mutual legal assistance in relation to the freezing and confiscation of assets by suggesting that: It is important for countries to be able to quickly respond to international requests to locate, seize, freeze, and confiscate the proceeds of money laundering, underlying offenses, and terrorist financing, as well as the tools used or intended to be used in committing these offenses, or property of comparable value. Unless doing so would contravene fundamental principles of their domestic law, this power should include the capacity to react to requests made in connection with confiscation proceedings without a finding of guilt and related temporary remedies. Furthermore, countries should have systems in place for effectively managing confiscated property, instruments, or property of equivalent value, and rules for coordinating confiscation and seizure actions that involve asset sharing.⁵¹¹

The confiscation of illegal property can be used for a variety of objectives.⁵¹² A strong confiscation and provisional measure system is required for an effective AML regime. By prohibiting criminal property from being laundered or reinvested, confiscation prevents it from being used to assist or conceal other crimes or illegal earnings. This has the potential to seriously impede organized crime activities, disrupt them, and restrict the flow of stolen property. Lowering the rewards for crime has an effect on the risk-reward ratio, and the possibility of losing money may deter some people from committing crimes. Furthermore, even if the monies are transferred internationally, the victim of the crime may still be able to seek full or partial restitution.⁵¹³ This is especially true when considering asset recovery. The confiscation may also impair criminal businesses by denying them access to assets and working capital, as well as the ability to reinvest the proceeds in future illegal actions.⁵¹⁴ Depending on what the State is allowed to do with the confiscated funds, they could be used

⁵¹⁰ FATF Recommendation 4

⁵¹¹ FATF Recommendation 38

⁵¹² Alexander, R. (2015). The pursuit of criminal property. In *Research Handbook on International Financial Crime* (pp. 447-461). Edward Elgar Publishing.

⁵¹³ FATF (2012), “Best Practice on Confiscation (Recommendations 3 and 38) and a Framework for Ongoing Work on Asset Recovery”, FATF, Paris

⁵¹⁴ 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.

to help victims of crime, improve society, or aid law enforcement.⁵¹⁵

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. 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.

Case study: Le Minh Quang

In 2015, the MPS investigated suspicious gold transactions and capital raises. The AMLD furnished the MPS with financial information that identified up to VND384 billion (approximately USD17 million) associated with the crimes. The offender was found guilty of

⁵¹⁵ Brun, J. P., Gray, L., Scott, C., & Stephenson, K. (2011). *Asset recovery handbook: A guide for practitioners*. World Bank Publications.

fraud and was sentenced to twenty years in prison. The investigation led to the seizure of the only following property:

- VND 466,780,000 (approximately USD 20,000) in cash
- VND 393,000,000 (approximately USD 17,000) from a bank account.
- 4.5 kilograms of valuable stones and metals
- 1 certificate for land use for a total area of 413.5 square meters.⁵¹⁶

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.

Recently, on February 8, 2023, the Prime Minister signed Decision No.64/QD-TTg, which promulgates the Regulation on coordination between ministries, ministerial-level agencies, and government agencies in the prevention and control of money laundering and terrorism financing. This Decision allows for the use of the following methods of coordination: official letters, emails, phones, and faxes; meetings to share and gather information; and the formation of multidisciplinary teams tasked with inspection and oversight. The coordination mode is decided upon depending on the coordinating goals and situations. Exchange and provision of information on the prevention and combat of money laundering and terrorist financing; propaganda on the prevention and combat of money laundering and terrorist financing; inspection and supervision of organizations in the observance of the provisions of the law on prevention and combat of money laundering and terrorist financing are just a few of the many components that make up coordination in the prevention of money laundering and terrorist financing.

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

⁵¹⁶ <https://phaply.net.vn/vu-san-vang-bbg-tong-giam-doc-le-minh-quang-bi-tuyen-20-nam-tu-giam-a157507.html>

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.⁵¹⁷ 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 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.

Over the past years, law enforcement agencies, SPP, SPC and SBV have actively implemented the task of preventing and combating money laundering through professional measures of their sector. In addition, the parties have coordinated in exchanging information on money laundering, the situation, money laundering trends, alerting new tricks of the crime, legal regulations and coordinating the implementation of preventive measures, appointing officials to participate in thematic reports at conferences on money laundering prevention and control.

6.5. International cooperation

6.5.1. Legal framework and rules for international cooperation

The scope and extent of money laundering have expanded worldwide. Criminals today are using cutting-edge tools and methods that fully leverage technological and scientific developments. The effects of money laundering extend far beyond national borders. Therefore, combating transnational money laundering is no longer a task for a single country alone but rather a global endeavor.

⁵¹⁷ Decree No.116/2013, Article 21

Vietnam has joined a wide variety of international and regional organizations, including the World Trade Organization (WTO), the Association of Southeast Asian Nations (ASEAN), the Asia-Europe Cooperation Forum (ASEM), the Asia-Pacific Economic Cooperation Forum (APEC), the World Bank, and the IMF.. The US, the European Union, Japan, Russia, China, India, and other major economies have all strengthened and expanded their links to Vietnam's economy.

The key international instruments for cooperation include: The 1988 Vienna Convention, the 2000 Palermo Convention, the 2003 UNCAC, the 1999 Terrorist Financing Convention. FATF also suggests that in case of applicable, countries are also encouraged to ratify and implement other relevant international conventions, such as the 2001 Council of Europe Convention on Cybercrime; and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005.⁵¹⁸

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.”⁵¹⁹

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.

Article 6 of the 2022 Law on AML stipulates the rules of international cooperation:

“International cooperation in the prevention and combat of money laundering is carried out on the principle of respecting independence, sovereignty and territorial integrity, national security, mutual benefits, and compliance with Vietnamese laws and regulations.

⁵¹⁸ FATF Recommendation 36

⁵¹⁹ National Assembly, (2013). The Constitution Law, Article 12.

treaties to which the Socialist Republic of Vietnam is a signatory, and international agreements between a Vietnamese contracting party and a foreign contracting party. In case there is no international treaty or agreement between Vietnam and a foreign country, the exchange, provision and transfer of information in international cooperation on prevention and combat of money laundering shall be carried out on the principle of reciprocity, but not contrary to Vietnamese law, in accordance with international law and practices.”

This rule is further supported in the Article 4(2) of the Law on Mutual Legal Assistance (Law on MLA),⁵²⁰

Article 492 of the 2015 Criminal Procedure Code also states that:

“1. International cooperation in criminal proceedings is carried out on the principle of respect for national independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit. in accordance with the Constitution, laws of Vietnam and international treaties to which the Socialist Republic of Vietnam is a signatory.

2. Where Vietnam has not signed or acceded to relevant international treaties, international cooperation in criminal proceedings shall be carried out on the principle of reciprocity but not contrary to Vietnamese law, in accordance with the provisions of law. accordance with international law and international custom”⁵²¹

Vietnam ratified to the Vienna Convention on 4 November 1997; ratified the Palermo Convention on 8 June 2012; ratified the Merida Convention on 19 August 2009; and International Convention for the Suppression of the Financing of Terrorism on 25 September 2002. As a signatory of these convention, Vietnam takes the commitment to implement these regulation into the domestic legal system. For example: Vietnam has largely implemented the relevant articles of these convention by enacting the Law on Drug Prevention and combat 2013, Law on Mutual Legal Assistance 2007, the Criminal Code 2015, the Criminal Procedure Code 2015, Law on AML 2022, the Law on Anti-Corruption in 2018, the Law on Anti-Terrorism 2013, and through a number bilateral and multilateral treaties.

These are the normative underpinnings for international cooperation in the detection, investigation, and resolution of crimes involving transnational actors, all of which serve to safeguard national security, national interests, and the international legal order as a whole.

Regarding the mechanism of international cooperation in crime prevention and control in general, and money laundering crimes in particular, the Vietnamese Police force usually

⁵²⁰ National Assembly, (2007). The Law on MLA, Article 4 (2)

⁵²¹ The 2015 Criminal Procedure Code, Article 492

mainly follows the cooperation frameworks that are: Through the bilateral and multilateral cooperation framework; INTERPOL, ASEANAPOL cooperation framework; through cooperation channels with the liaison officers of the police force of other countries in Vietnam; or through direct cooperation with a number of other law enforcement agencies such as the US Federal Bureau of Investigation (FBI); the US Federal Drug Administration (DEA); transnational crime centers within the Asia-Pacific Network of Transnational Crime Centers; through bilateral cooperation mechanism in crime prevention and control in general and with certain types of crimes in particular between the police of Vietnam's border provinces and their respective foreign partners in the form of cooperation between provinces or in the form of twinning for provinces that have not signed international agreements on crime prevention and control at provincial level.

6.5.2. International cooperation in mutual legal assistance

Asset recovery and investigations into possible money laundering often require international collaboration to be successful. Due to the international nature of money laundering networks, information or evidence that is crucial to a successful prosecution may be located in a foreign jurisdiction.

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 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.⁵²² 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.⁵²³

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,

Table 6.4 shows the number of incoming MLA requests from 2014-2019

Requests	2014	2015	2016	2017	2018	2019
Total	22	18	29	25	23	34
Related to money laundering	4	0	1	5	5	9
Completed	4	0	1	5	3	7
Processed	0	0	0	0	2	2
Rejected	0	0	0	0	0	0
Related to predicate offence	18	18	28	20	18	25
Completed	18	17	27	19	16	20
Processed	0	1	1	1	2	5
Rejected	0	0	0	0	0	0

⁵²² The 2015 Criminal Procedure Code, Article 439

⁵²³ The 2007 Law on MLA, Article 21

Source: Extracted from Vietnam MER 2021

Table 6.5 show the number of outgoing MLA requests from 2014-2019

Requests	2014	2015	2016	2017	2018	2019
Total	49	63	70	78	96	84
Related to money laundering	1	7	5	3	6	1
Completed	1	5	3	0	0	0
Processed	0	1	1	0	6	1
Rejected	0	1	1	3	0	0
Related to predicate offence	48	56	65	75	90	80
Completed	28	31	39	38	41	17
Processed	20	25	26	37	49	63
Rejected	0	0	0	0	0	0

Source: Extracted from Vietnam MER 2021

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, distraint, 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.

When it comes to extradition, the MPS is in charge. If a person commits a crime that carries a sentence of at least one year in prison, life in prison, or the death penalty under the Criminal Code 2015 or the country making the request, they may be extradited under the Law on MLA 2007. Money laundering is considered an extraditable offense since it often carries a prison term of one year or more.

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.

Vietnam continues to increase its commercial relations with numerous countries across the world and in the region as part of its diversification policies. Foreign corporations and foreigners are increasingly investing in Vietnam. However, in addition to the benefits, it is also a requirement for money laundering criminals to take advantage of their operations. Criminals can launder money by investing in the real estate sector, investing abroad through economic contracts, or doing high-value but short-term enterprises.

Vietnam maintains political stability, defends the nation's independence and sovereignty, and facilitates the renovation process. Nonetheless, the political system of Vietnam contains numerous potential destabilizing factors. The level of bureaucracy, corruption, and other negative manifestations have diminished the public's confidence in the CPV and the efficiency of state management. Vietnam's socioeconomic administration will continue to provide favorable conditions for those who take advantage, engage in illegal business, and legalize profits from criminal activities.

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.

There has been a sharp increase in the number of potential money laundering predicate offenses in Vietnam, with the average number of annual cases now above 11,000. Corruption, drugs, economic crime, and other forms of predicate crime are all expected to worsen in the

next years, both globally and in Vietnam. The number of cases, people, and assets involving money from the underlying crimes is anticipated to rise.⁵²⁴

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.

There are some issues of crimes that should be taken into account in order to better combat money laundering in Vietnam in the coming time.

In the past, offenders engaged in money laundering through, among other things, investing in real estate and stocks, opening bank accounts in the names of friends and family, and sending money abroad to invest in the capabilities of others. They can benefit from the lawful actions of corporations by forming "shell" corporations. Many new forms of money laundering have appeared since the advent of digital technology and the proliferation of online payment options. Online financial services, e-commerce platforms, virtual currency markets, and online gaming are just some of the newer ways that criminals are able to launder money. There will be shifts in Vietnam's economic situation, and numerous new economic industries will emerge. There will be new methods of committing old crimes like fraud, smuggling, and counterfeiting, and there will be a surge in non-traditional crimes like terrorist financing and high-tech crimes.

In recent years, anti-corruption efforts in Vietnam have progressed favorably. But studies demonstrate that corruption occurs at various levels, localities, and fields, particularly in the land industry, banking and finance, fundamental building, and is therefore still considered a high-risk group leading to money laundering.

In the future years, the drug criminal situation will remain exceedingly complex, particularly the unlawful dealing of narcotics with foreign groups and across interprovincial lines. Because of the large sums of money and property stolen in these types of crimes, money laundering is expected to rise in frequency of occurrence and in the number of offenders.

7.2. Suggestions to improve

⁵²⁴ <https://vietnamlawmagazine.vn/money-laundering-crimes-on-the-rise-situation-and-solutions-48241.html>

7.2.1. Improving legal system and rising obligation awareness

Money laundering investigations, prosecutions, and the confiscation of criminal assets are aided by a number of important underlying elements in the broader AML/CFT regime, such as a comprehensive understanding of the jurisdiction's money laundering and terrorist financing risks, effective and timely domestic cooperation and coordination, or having internal guidelines, handbooks, or in-person trainings to teach investigators how to begin and pursue a basic investigation. In addition, policies or directives establishing the mandatory requirement of opening a parallel financial investigation in every investigation of a predicate offense of money laundering, as well as collaborating with the private sector to both provide and obtain information related to money laundering and terrorist financing, should be established.

Vietnam is no longer in danger of being included to the FATF's list of nations where money laundering and terrorism financing are a concern. However, according to the agency's assessment, Vietnam is still on the list of countries with a shortage of AML and anti-terrorism mechanisms. Therefore, in the coming time, based on the achieved results, Vietnam needs to comply with FATF's proper requirements to avoid the risk of damaging the reputation and foreign trade activities. The specific tasks to be implemented include: First, to ensure the development and issuance of documents related to the prevention of money laundering. Second, supplement guidance to identify suspicious transactions, even for those transactions intended to be performed or not yet completed but in nature. Third, maintain and strengthen measures to put the policy of a cashless economy into practice, promote electronic payment in e-commerce. Fourth, strengthening the capacity of the AML forces to become a real focal point in collecting, sharing and processing information of the reporting subjects according to the Law on AML.

To raise awareness of money laundering and terrorism financing risks in Vietnam, it is necessary to have a relatively comprehensive theoretical framework that reflects the country's actual criminal landscape. In order to prevent and combat money laundering crimes, competent authorities must intensify theoretical research, inherit the scientific achievements of criminals, and investigate criminals from leading nations with high levels of professional expertise. In addition, research summarizing the actuality of fighting crime in Vietnam must be concentrated. Although the fight against money laundering is not yet effective in Vietnam, the country's successes in preventing and combating other types of crime, particularly economic and drug offenses, are strengths that can be exploited.

There has to be national policies in place to make it clear that money laundering is a priority for all law enforcement agencies and prosecuting authorities, and that they should investigate and prosecute cases of money laundering in tandem with predicate offenses and on their own.

The low rate at which reporting entities other than banks disclose suspicious transactions suggests that attention should be directed toward AML non-compliance companies. Awareness of STR requirements among reporting companies, such as DNFBPs, is necessary for the prevention of money laundering. Since AMLD's financial intelligence focuses on detecting predicate offenses rather than money laundering as a standalone crime, STRs need to be enhanced so that they can provide actionable insights.

7.2.2. Create a specialized investigative team

Financial investigation requires specialized knowledge and unique access rights, such as forensic accounting knowledge and rights to bank, tax, and corporate account information. Therefore, the following fundamental requirements have been identified as essential for success in financial investigations: specialized financial detectives, a separate financial investigation method that applies when deciding a crime, and close coordination with other investigators during criminal investigations.⁵²⁵ In order to conduct investigations in line with best practices, financial investigation task forces also need to be furnished with facilities and knowledge in each pertinent subject.⁵²⁶ Therefore the creation of a specialized investigative team is needed.

The Vietnamese government should develop guidelines for the investigation and prosecution of money laundering to offer financial investigators and cooperating agencies with guidance and procedural information. Furthermore, the government could issue regulations prioritizing money laundering investigations in industries with the highest risk profile for money laundering in the case of Vietnam.

7.2.3. Staff training program

Training is one of the key tasks because people are the most important factor. Unlike many other types of crime, the stages of money laundering are covered under the cover of legitimate, difficult to detect, this is an underworld, very difficult to fight, it is necessary to

⁵²⁵ Golobinek, R. (2002). Financial investigations and confiscation of proceeds from crime. *Training Manual for Law Enforcement and Judiciary, Cards Regional Programme, 2003.*

⁵²⁶ FATF (2018) 'FATF President's Paper: Anti-money Laundering and Counter Terrorist Financing for Judges and Prosecutors'

promptly supplement the staffing of the police force directly engaged in the prevention and control work. This is an urgent need and an indispensable requirement

To combat the crime of money laundering, law enforcement must have personnel who have received the proper training and are highly motivated to detect, track, and investigate instances of money laundering.⁵²⁷ Training is an effective form of mentoring and coaching that boosts employees' knowledge, skills, and behavior. In the fight against money laundering, it is essential to have a workforce that is both trained and motivated to identify, investigate, and report instances of potentially illegal financial behavior.⁵²⁸ It is necessary to combine training in foreign languages and high-level informatics with professional knowledge for officers who directly apply international law in crime prevention and control.

In addition, it is necessary to strengthen international cooperation in training and training officials of functional agencies, to set up programs to request competent agencies of some countries with much experience to support training. The training process can be linked with experience sharing sessions from international experts, such as on effective models of testing and monitoring

The fight against money laundering requires a large investment of time and money, hence funds should be set aside specifically to train staff members. To effectively prevent money laundering, it is important to promptly seek the advice and help of instructors or professionals who have received their training abroad.⁵²⁹

7.2.4. Enhancing national cooperation and quality of information exchange

Methods for investigating money laundering and the application of forensic accounting techniques can be a major challenge for any law enforcement agency. Therefore the law should allow law enforcement agencies to access information sources, such as financial institution records, and to engage in financial investigations parallel to criminal investigations, and to cooperate with overseas financial and criminal investigations.

In order to effectively combat money laundering and terrorism financing, it is necessary to improve operational level collaboration and coordination by establishing or improving systems that concentrate on high-risk areas highlighted in the NRA. As an

⁵²⁷ Alldridge, P. (2008), "Money laundering and globalization", *Journal of Law and Society*, Vol. 35 No. 4, pp. 437-467.

⁵²⁸ Kemal, M. U. (2014). Anti-money laundering regulations and its effectiveness. *Journal of Money Laundering Control*, 17(4), 416-427.

⁵²⁹ Kemal, M. U. (2014). Anti-money laundering regulations and its effectiveness. *Journal of Money Laundering Control*, 17(4), 416-427.

example, the primary law enforcement agencies may form task teams to combat higher-risk crimes, and the licensing and supervisory authorities may pool their resources to monitor the higher-risk industries as a whole.

Financial investigations should be prioritized in order to develop evidence of money laundering and associated predicate offenses and to trace the criminal proceeds from those offenses. This requires law enforcement and other investigation authorities to improve the development and regular use of financial intelligence and other relevant information, both through their own processes and intelligence developed by AMLD. After that is complete, law enforcement agencies should give AMLD with feedback on the value of intelligence gathered.

By enhancing the analytical workflow that takes into account criminal intelligence approaches and the integration of data holdings, the AMLD will be better able to draw links between individuals, businesses, and financial transactions. AMLD needs to be proactive in its transmission of financial data to law enforcement authorities and should gather enough data to do so. In order to be more responsive to the ML risk profile, the AMLD's financial intelligence products should broaden their scope beyond predicates to include a concentration on money laundering and the transfer of illicit profits. In addition, The AMLD needs to better utilize electronic information exchange systems and speed up its access to law enforcement agency databases.

7.2.5. Enhancing international cooperation in combating money laundering

There is an urgent need to step up cooperation with dialogue partners, the international regional organisations in combating money laundering crime. The technical expertise and development assistance of the dialogue partners and organisations will be important for Vietnam to effectively tackle transnational crime.

For international cooperation in AML to be effective, the prerequisite is that the police force must actively expand, promote and strengthen the cooperative relationship. In light of that spirit, the police force should focus on implementing international treaties and agreements related to AML regime. Implementing international commitments and agreements plays an important role in implementing the policy, proactively and actively integrating into the world, helping to ensure a peaceful and stable environment, and protecting national interests. actively contribute to the improvement of the legal system in our country.

International collaboration in AML relies heavily on having efficient systems for coordination and information exchange. What this means is the elimination of time-consuming administrative procedures for international coordination and the establishment of

direct methods for the sharing of information. By promptly responding to requests for international cooperation in combating money laundering and terrorism, the receiving country makes it easier for the requesting country to expeditiously exchange information, conduct investigations, verify and clarify facts, apprehend and process criminals, and so on.

International cooperation should be prioritized by Vietnam at both the national and agency levels. To help with the volume of requests coming in and going out, as well as the creation of new foreign MOUs, the central authority and other implementing agencies should be given more funding. All employees should be given with training and capacity building in request making and processing for foreign cooperation.

The current official channels for exchanging information and documents are usually through INTERPOL, ASEANAPOL, diplomatic channels on the basis of international treaties or the principle of reciprocity. On the one hand, it is necessary to focus on promoting existing forms and mechanisms, on the other hand, to expand new mechanisms and forms, creating favorable conditions for the coordination process. Because of the high danger associated with money laundering in Vietnam, the country should actively seek both legal and informal foreign assistance to help with asset restraint and confiscations.

7.2.6. Improving economic and social policy

There is a close relationship between economic policy and criminal policy. This is a mutually beneficial relationship. The rate of crime, and especially property crimes, can be lowered by implementing the right economic policy. There may be an increase in property crimes as a result of an economic crisis caused by bad economic policy.⁵³⁰

Money laundering offences have their causes and conditions from socio-economic issues themselves. Therefore, to prevent money laundering offenses must first start with socio-economic measures. By promoting the development of the economy, living standard will be improved, and then when the economic condition is improved, it is inevitable that it can reduce the crime rate in some cases. Solving pressing social issues, creating jobs for a large number of workers, including those who have criminal records, giving them a stable life is among the great program in money laundering prevention.

In addition to economic development strategies, social problems also need to be addressed. In order to prevent and eradicate the causes and conditions of crimes in general

⁵³⁰ Gál, I. L. (2018). Economic Policy and Criminal Policy in the Practice: New Trends and Challenges in the Fight against Money Laundering in Europe and Hungary. *EU and comparative law issues and challenges series (ECLIC)*, 2, 310-322.

and money laundering in particular, it is crucial to concentrate on policies that address urgent socioeconomic challenges. The foundation for more successful crime prevention is fostering the strength of the entire people, along with all branches and levels, in the struggle against social ills and the resolution of social issues./.

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