

A CLOSER LOOK AT MONEY LAUNDERING REGULATIONS OF VIETNAM

Money laundering poses a significant threat to the stability and integrity of financial systems worldwide, and Vietnam is no exception. In response to evolving global financial challenges, the Vietnamese government has implemented and continuously refined anti-money laundering regulations to safeguard the nation's financial institutions and maintain the trust of international partners.

This exploration aims to delve into the key components of Vietnam's anti-money laundering regulations, shedding light on their strengths, weaknesses, and areas for improvement. By understanding the regulatory landscape, stakeholders can contribute to the ongoing dialogue surrounding financial transparency, accountability, and the prevention of illicit financial activities. As we navigate through the complexities of Vietnam's anti-money laundering framework, it becomes increasingly evident that the Van Thinh Phat scandal serves as a catalyst for reevaluation and refinement in the pursuit of a more resilient and vigilant financial system.

A. Definition

Money laundering (“ML”) is the act of individuals or organizations to legalize the assets sourced from any offences¹.

B. Impact of Money Laundering on the Economy

Following the tragic events of 9/11, referring to the attack on the Twin Towers in the U.S., there was a heightened global awareness of the link between money laundering and financing terrorism. The financing of terrorist activities often relies on illicit funds that are generated through various criminal activities. ML is recognized as a process to disguise the origin of these funds. The globalization trend and advancements in technology have further exacerbated the challenges associated with ML since criminal networks now operate on a global scale, taking advantage of the ease of cross-border transactions and the rapid movement of funds across different jurisdictions. The expansion of international banking networks has provided them with a means to transfer and conceal the proceeds of their illicit activities, making it increasingly difficult for law enforcement agencies to detect and disrupt ML operations.

The availability of laundered funds fuels the growth of organized crime, perpetuates corruption, and hampers efforts to combat illicit activities. Therefore, the consequences of ML are far-reaching and detrimental to society. It undermines the integrity of financial systems, erodes trust in democratic institutions, weakens ethical standards, and distorts economic development.

Effects of Money Laundering on The Economy²

¹ Article 3.1 of Anti Money Laundering Law (2022 AML Law)

² Vandana Ajay Kumar, 2012, *Money Laundering: Concept, Significance and its Impact*, European Journal of Business and Management, Vol 4



Financial institutions, including both traditional banks and non-banking financial institutions, find itself implicated in facilitating the processing of funds derived from criminal activities either because its employees or directors have been bribed to overlook or actively participate in the processing of illegal funds or because it turns a blind eye to the suspicious nature of certain funds, neglecting its responsibility to conduct thorough due diligence and compliance checks. Evidence of such complicity will lead to a damaging effect on equity markets, the attitudes of other financial intermediaries and of regulatory authorities as well as ordinary customers.



ML conducted through channels other than financial institutions involves investments in assets that are considered less closely monitored. These assets include real estate, art, antiques, jewelry, luxury automobiles, and various types of investments aimed at generating legal or illegal profits. Particularly, real estate holds particular significance in the context of ML due to its characteristics as a non-transparent market. The values of real estate properties are often challenging to determine accurately, plus, the real estate market can experience significant value increases, making it an effective method for placing and hiding large amounts of money. Moreover, the profitability associated within the real business provides a seemingly legitimate source of income.

These suboptimal resource allocations away from more productive uses have a detrimental effect on economic growth, particularly for developing countries.



ML activities may diminish the capability of any country's economy through the international trade and capital flows. The excessive outflow of illicit capital from a nation can be facilitated by either domestic financial institutions or foreign financial institutions. This capital flight drains valuable resources especially from developing economies. It also affects on the trust placed in both domestic financial institutions by local citizens and in a state's financial institutions by foreign investors and financial entities which ultimately hampers economic growth.

ML channels can also create distortions of a country's imports and exports. Criminal elements involved in illicit activities may utilize their proceeds to purchase imported luxury goods, either with laundered funds or as part of the process of laundering such funds. These imports do not contribute to domestic economic activity or employment, and in some cases can artificially lower domestic prices, thereby reducing the profitability of domestic enterprises.



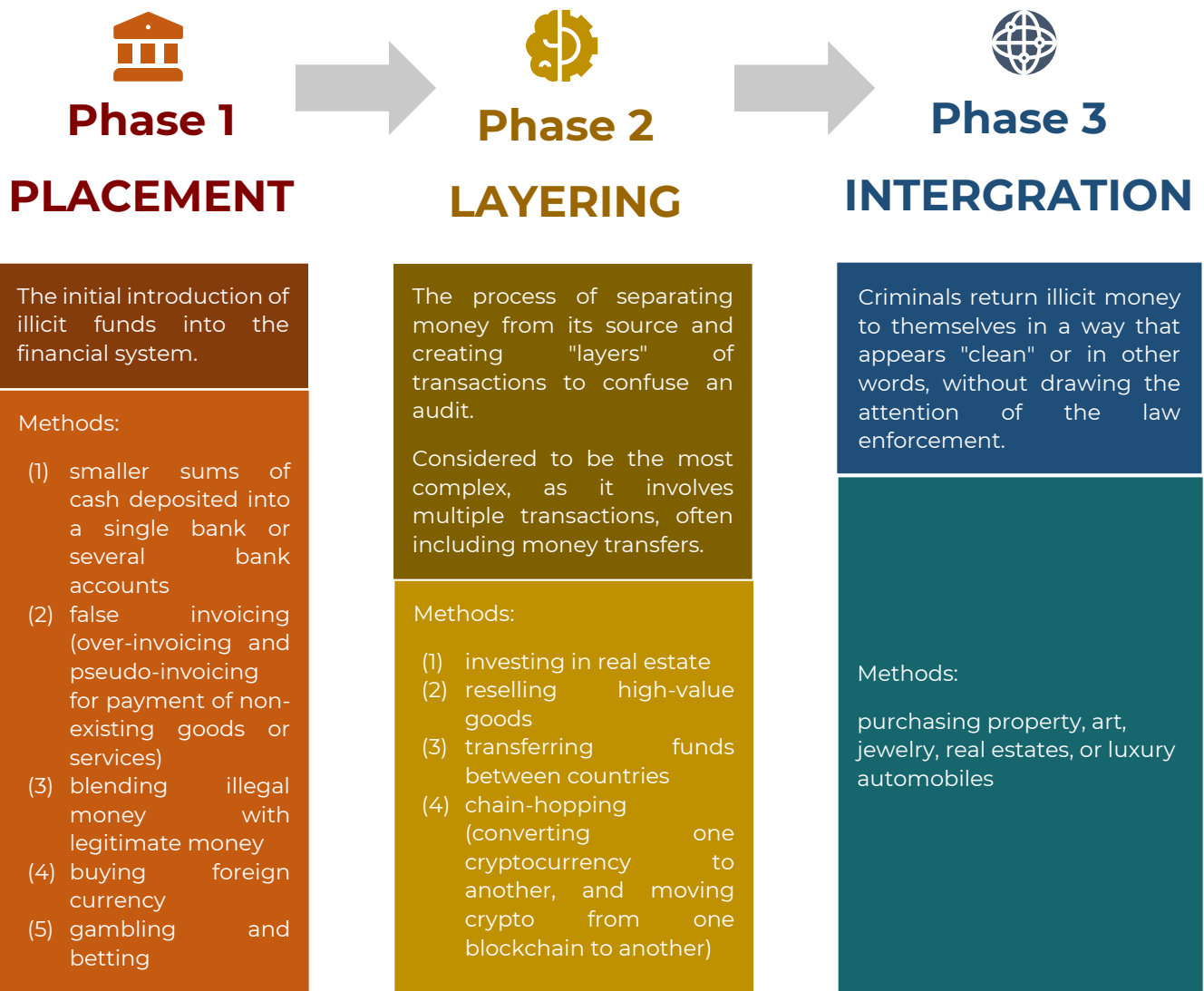
Once a financial institution being weakened, which means its bank secrecy laws and anti-money laundering regulatory regimes are not stringent, it becomes a vulnerable target of criminals as their illicit transfers are often with much speed and ease of faceless internet transactions under a liberal administration.

Criminals infiltration into legitimate markets can disrupt the balance of economic power. Responsible and accountable entities may be overshadowed by rogue agents who operate without political or social obligations. In essence, when criminal enterprises are allowed to benefit from their illegal activities, it can destabilize the global market. As a result, certain countries become susceptible to manipulation and interference by corrupt organizations.

C. Stages of Money Laundering

The objective of ML is to establish the furthest separation between illegal assets and their true owners. The initial form of profit expression is usually "money", but after the transition

to legalize "money", there have been alternative means of expression such as checks, credit cards, real estate, etc.



While “placement” injects illicit funds into the financial system, “layering” hides the source of these funds through a series of transactions and financial tricks.

In practice, ML cases may not follow all three stages in a linear manner. Some stages could be combined, reformed, or occur concurrently. For instance, cash from drug dealing may be divided into small amounts then deposited by “money mules” and subsequently transferred as payment for services to a shell company. In this scenario, the “placement” and “layering” are done within a single stage³.

D. Anti-Money Laundering of Vietnam

Vietnam's dedication to Anti-Money Laundering extends beyond its participation in several regional organizations and the adoption of various international conventions. The country has ratified *the United Nations Convention against Illicit Traffic in Narcotic Drugs and*

³ *Money Laundering* - United Nations Office on Drugs and Crime <https://www.unodc.org/unodc/en/money-laundering/overview.html>

Psychotropic Substances, the United Nations Convention against Corruption, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Treaty on Mutual Legal Assistance in Criminal Matters along with others. Furthermore, Vietnam has entered into numerous bilateral and multilateral agreements on mutual legal assistance, and extradition and has reinforced incorporation of international regulations.

Promoting international cooperation among crime prevention agencies is a pivotal element in effectively addressing anti-money laundering, combating the financing of terrorism, and combating proliferation financing (“**AML/CFT/CPF**”), especially in an era characterized by rapid advancements in information technology.

Following the Palermo Convention, Vietnam National Assessment of Money Laundering Risks (“**NRA**”) has identified 17 predicate offenses that generate monetary proceeds linked to tactical and organized schemes involving corruption, tax evasion, forgery, narcotrafficking, illegal wildlife trafficking, smuggling⁴. These illicit operations have become significantly apparent through the establishment of bank accounts, securities trading, gambling, the illegal movement of foreign currency out of the country, and the utilization of credit cards, among other methods.

The initial introduction of Law on AML took place in 2013, but it was not until the 2015 Criminal Code explicitly outlined the act of legitimizing funds and assets obtained from criminal activities that the investigating police agency gained a solid legal basis to pursue the prosecution and investigation of 10 ML-related cases. Nevertheless, when considering the list of predicate offenses, it is observed that the number of ML cases and defendants prosecuted in Vietnam remains relatively limited in comparison to the potential risks associated with this type of crime within the country.

An Insight into Van Think Phat Scandal

Truong My Lan, chairwoman of property giant Van Think Phat Holdings Group, has been accused of orchestrating Saigon Commercial Bank’s (“**SCB**”) operations so as to embezzle VND304 trillion equivalent to one-fifth of Vietnam’s GDP as of September-end.

After a year of investigation, Truong My Lan has been charged with exercising control, manipulation, and full direction over the activities of SCB, assuming the role of organizer, mastermind, and leader in performing a comprehensive misappropriation scheme involving a substantial sum of money. The Investigation Police Department for Corruption, Smuggling, and Economic Crimes (“**CO3**”) under the Public Security Ministry issued a notice to locate the victims in the case identifying 86 accused suspects, including Truong My Lan, SCB top executives, and several high-ranking officials in the State Bank of Vietnam (“**SBV**”). Recently, there are other 06 government inspectors and 12 officials from the SBV being probed for their involvement in this scam reported by the Central Internal Affairs Committee of the Communist Party of Vietnam.

Truong My Lan, the main figure, was recommended for prosecution on three charges: bribery, embezzlement, and violations of regulations on banking and related activities. According to Penal Code of Vietnam, embezzlement is a corruption-related crime and is categorized as a predicate offense of money laundering⁵. As a matter of fact, the accused tycoon and her Hong Kong husband, billionaire Chu Nap Kee Eric, and 06 other individuals

⁴ Clause 2 Article 6 of The United Nations Convention against Transnational Organized Crime (Palermo Convention)

⁵ Article 353 Criminal Code 2015

in her network are facing prosecution on charge regarding ML activities which has been separated for further investigation in the second phase.

The recommendation indicates that during the operation, Van Thinh Phat commandeered a vast empire comprising over 1,000 enterprises. This “ecosystem” encompasses member companies at home and abroad, organized into 04 groups maintaining close ties in tandem, namely a financial institutions group, a group of companies engaged in business activities within Vietnam, a group of phantom companies in Vietnam, and a network of many shell companies in "tax haven" territories and countries.


Within the domestic financial institutions group, SCB plays a critical role as a financial instrument for providing funding to companies in the ecosystem. The operations of SCB primarily cater to the activities of Truong My Lan.

Truong My Lan initiated her unsavory conspiracy of satisfying business needs of Van Thinh Phat ecosystem by taking advantage of banking operations on raising capital. To achieve this, she exerted control over individuals and utilized her own funds to enable them to purchase a majority of shares of 03 privately held banks under their own names. On January 1, 2021, happens the consolidation of 03 banks to form SCB. Ms. Lan owned 91.5% of the bank but had the shares registered in the names of 27 individuals. She only held 4.982% in her name to comply with the 5% individual ownership limit allowed for banks.

After taking control of the bank, the major shareholder, Ms. Lan, handpicked and appointed all the well-qualified banking and financial specialists that she trusted to occupy key leadership positions in it. It is important to highlight that SCB, as a bank, was employed as a means to attract deposits from people and organizations. Nevertheless, in its lending operations, SCB predominantly served the personal interests of Truong My Lan.

Money Laundering Process in Van Thinh Phat case

PLACEMENT



“Madam” Lan purportedly directed a group of individuals at SCB and Van Thinh Phat to fabricate fraudulent loan profiles to facilitate the withdrawal of raised funds. This was accomplished using various tactics, including bribing asset appraisal companies to validate her collateral for loan security, violating lending protocols by disbursing funds prior to completing documentation, and engaging in multiple asset swaps to reclaim legally valuable assets from the bank.

Ms. Lan’s exploitation of her authority as the Chairwoman of Van Thinh Phat’s Board of Directors and the majority shareholder of SCB, in order to obtain thousands of billions from individuals and organization, transforming SCB into her personal financial instrument constitute as embezzlement.

The ill-gotten funds from the original criminal activity (i.e. dirty money) were transferred from the borrower company to fictitious entities opened accounts at SCB. As a result, the illicit funds were divided into smaller sums and introduced into the financial system through SCB, marking their first entry into legitimate channels.

Another method Lan applied to disrupt the cash flow involved cash withdrawal. This money was either delivered to her place or to Van Thinh Phat headquarter, and subsequently driven to various addresses. The investigation report reveals no ultimate destination of these funds.

LAYERING



When needed, Ms. Lan would instruct a spiral of fund transfers among the subsidiaries overseen by Van Thinh Phat, in order to evade scrutiny during audits.

The purpose is to create layers of transactions, resulting in a convoluted and

INTERGRATION



The entirety of these misappropriated funds was utilized to fulfill Ms. Lan's personal interests including investments in domestic real estate and property ownership; repurchasing projects, usually those initially borrowed to provide the backing for the loans; offshore businesses; repayment of principal and interest amounts; compensation for those who registered for loans at SCB, who acted as legal representatives of the ghost companies, who falsely claimed ownership of assets; and for many other purposes.

At this stage, the dirty money resurfaces and returns to the criminal in a guise that appears to be legitimate.

According to The United Nations Convention against Transnational Organized Crime (Palermo Convention)⁶, Truong My Lan and her accomplices committed acts constituting money laundering including:

The concealment of the true nature, source, location, disposition, movement or ownership of or rights with respect to the money, knowing that such money is the proceeds of crime

The acquisition, possession or use of money, knowing at the time of receipt that such money is the proceeds of crime

Money transfer multiple times, knowing that such money is the proceeds of embezzlement, for the purpose of disguising the illicit origin of the money or helping Lan evade legal consequences of her action

Participation in, association with or conspiracy to commit, attempt to commit and aiding and abetting, facilitating and counselling the commission of any of the offences established

As per the findings of C03, between January 1, 2012, and October 7, 2022, SCB disbursed funds to 571 customers linked to Truong My Lan's group out of a total of its 1,366 customers. This entailed a total of 916 unlawful loans. As of October 17, 2022, the outstanding debt amounted to VND545 billion, consisting of VND415 billion in principal.

⁶ Clause 1 Article 6 of The United Nations Convention against Transnational Organized Crime (Palermo Convention)

Although the money was all used to serve Ms. Lan's personal objectives, C03 identified that many collaterals associated with her group's loans retain their value and are under SCB scrutiny. By adhering to the principle of benefit maximization, C03 has determined the culpability of Ms. Lan and her accomplices for the misappropriation of over VND304,096 billion. Additionally, Ms. Lan's embezzlement has resulted in losses exceeding VND129,372 billion. This amount represents the interest accrued on the principal amount. C03 has also clarified that from 2012 to 2022, individuals within SCB and other related parties engaged in unlawful lending practices, with a remaining debt of over VND677 billion. All these loans fall into the Group 5 debt category with no potential for recovery.

Anti-Money Laundering Compliance Quest

Van Thinh Phat scandal highlights weaknesses in payment methods as well as banking procedures and regulations compliance related to loan activities, which can be exploited by criminals to carry out illicit money transactions.

Under Vietnam 2022 AML Law dated November 15, 2022 taking effect as from March 01, 2023 and Decree No. 19/2023/ND-CP dated April 28, 2023 taking effect from December 01, 2023 ("**Decree 19**"), banks are designated as reporting entities ("**Reporting Entities**") and participate in AML efforts. These reports are submitted to the SBV and relevant government ministries and agencies⁷. In general, banks are obligated to establish internal regulations addressing AML measures, including procedures for customer identification⁸.

In detail, a Reporting Entity must undertake, inter alia, the following measures:

Conducting customer due diligence (i.e. Know Your Customer (KYC));

For the first time, KYC is defined by the 2022 AML Law as the collection, updating, and verification of information on the identity of a customer, its beneficial owners, and the assigned person working as an agent of the customer (if any), as well as the information on the customer's purpose and nature of the business relationship⁹.

A financial institution must undertake KYC measures when (i) a customer first opens an account for or establishes a business relationship with the financial institution, or (ii) a customer conducts occasional transactions involving an amount equal to or above the statutory threshold or wire transfers without details of the name, address, bank account of the originator or transaction code required in the absence of the originator's account, or (iii) there is a suspicion that a transaction or interested parties to a transaction involves/are involved in any money laundering offence, or (iv) it has doubts about the veracity or adequacy of previously obtained customer identification data¹⁰.

It is noted that the 2022 AML Law allows the Reporting Entities to implement KYC measures through a third party provided that the third party satisfies all conditions set forth thereunder. Nonetheless, the Reporting Entities remain ultimately responsible for the result of KYC implemented by the third party.

The customer's information to be collected by the Reporting Entities under the KYC measures include, among others: full name, date of birth, nationality, ID card or passport numbers, permanent residence address (if any), residence address in his/her home country

⁷ Clause 1 Article 4, Clause 2 Article 15 - 2022 AML Law

⁸ Clause 1 Article 24 - 2022 AML Law

⁹ Clause 1 Article 9 – 2022 AML Law

¹⁰ Clause 2 Article 9 - 2022 AML Law and Article 6 – Decree 19

and registered residence address in Vietnam (for customers being individuals); trading name, headquarter address, tax code, business sector, information of founders, legal representatives, directors/ general director or chief account (for customers or founders being organizations)¹¹.

Assessing money-laundering risks

The 2022 AML Law adds a new requirement that Reporting Entities must conduct the assessment of money laundering risks which shall be updated annually. The report on risk assessment (after being approved in accordance with internal rules of the Reporting Entity being an organization) must be reported to the SBV and other relevant within the timeline as required by the AML Law.

In particular, the national risk assessment on money laundering is implemented every 05 years. The SBV shall take the prime responsibility and coordinate with the relevant ministries for implementing national risk assessment on money laundering and submitting to the Government for approval the updated national risks on money laundering and the action plan after the update.

Making internal AML regulations

The 2022 AML Law requests all Reporting Entities (except for the micro-enterprises) to make available their internal AML regulations, which must cover all mandatory terms as required by the AML Law.

Paying special attention to unusual transactions:

Under the 2022 AML Law, special attention must be made to:

- Complex or unusual large transactions according to regulations prescribed by the Government;
- Transactions with natural or legal persons in the countries or territories falling on the FATF's list or the Greylist.
- Reporting when conducting high value transactions and suspicious transactions.

In general, the 2022 AML Law requires the Report Entities to report to the SBV on transactions in the following key circumstances:

- High-value transactions: The 2022 AML Law provides that the transaction value will be decided by the Prime Minister. However, under the 2012 AML Law, the current threshold of high value transactions to be reported is VND400 million (approx. USD 17,167) and above under Decision No. 11/2023/QĐ-TTg dated 27 April 2023 of the Prime Minister. In this regard, reports must be made within 01 working day from the date on which transactions are electronically made.
- Suspicious transactions: Suspicious transactions may include (i) those to be conducted at the request of the accused, defendant or convicted and has a reasonable ground to suspect that the properties in the transaction owned or originated from properties owned or controlled by such person; or (ii) those possibly related to money laundering after examining, collecting and analyzing information when the customer or transaction show one or more signs of suspicious activity as stipulated, or otherwise determined by the Reporting Entity. In this regard, reports

¹¹ Clause 1 Article 10 – 2022 AML Law

must be made (iii) within 03 working days (in lieu of 48 hours under the 2012 AML Law) from the date on which the transactions arise, or (iv) within 01 working day from the date on which the subject matter of reporting detects the suspicious transactions.

Accepting the basic suspicious signs of a transaction under the 2012 AML Law, the 2022 AML Law specifies some specific suspicious features in some strictly regulated sectors, e.g. securities, insurance, prized gaming, and casino.

Applying interim measures

Interim measures in the context of the AML Law refer to the measures to be applied by the Reporting Entity itself or at the request of the competent authorities on a temporary and urgent basis as specified by law. Under the 2022 AML Law, these measures include (i) postponement of transactions and (ii) sealing of assets, freezing of assets or accounts or temporarily seizing of assets.

It is noted that the period of postponement must not exceed 03 working days from the date of application of this measure. When applying this measure, the Reporting Entities must report promptly to the SBV and other relevant authorities. In such case, the Reporting entities shall be excluded from legal liability for any consequence following the application of this measure. In respect of sealing of assets, freezing of assets or accounts or temporarily seizing of assets, Reporting Entities will only do so at the request of the relevant authorities.

Disclaimer:

The article cannot and does not contain any legal advice. The information is provided for general informational purposes only and is not a substitute for professional advice.

Accordingly, before taking any actions based upon such information, I encourage you to consult with the appropriate professionals. The use or reliance of any information contained in this article is solely at your own risk.

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