

Special Alert

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Navigating Vietnam's New Anti-Money Laundering Law: Key Changes and Updates

On 15 November 2022, the National Assembly passed the Law on Anti-money Laundering No. 14/2022/QH15 (the “**2022 AML Law**”), which came into force from 1 March 2023 and replaced the Law on Anti-money Laundering 2012 (the “**2012 AML Law**”).

In general, Vietnam's 2022 AML Law has updated more requirements and orientations in the view of preventing and countering money laundering in the digital economy, especially regarding the use of technology and electronic transactions on the internet. According to the Government, the 2022 AML Law's political target is to strengthen the policy against crimes of corruption and money laundering.

The 2022 AML Law was drafted almost by the State Bank of Vietnam (the “**SBV**”), on the basis of inheriting and amending many provisions of the 2012 AML Law, as well as supplementing notable new points, such as the provisions of responsibilities and obligations of organizations and individuals doing business, operating in industries or business lines with risk of money laundering, chiefly banks.

The “Reporting Entities”

As prescribed in Article 4 of the 2022 AML Law, the reporting entities includes those subjects with special business activities linked to money laundering risks, as listed below. In addition to these, the Government can supplement new activities with risks of money laundering from time to time, after obtaining the consent of the Standing Committee of the National Assembly.

Financial institutions

According to the 2022 AML Law, the reporting entities being financial institutions are those licensed to provide one or more of the services as follows: (a) receiving deposits, (b) lending, (c) financial

leasing, (d) payment services, (e) intermediary payment services, (f) issuance of negotiable instruments, bank cards (including credit and debit cards), money transfer orders, (g) bank guarantees, financial undertakings, (h) provision of foreign exchange services, currency instruments in the money market, (i) securities brokerage services, securities investment consultancy and securities underwriting in securities issues, (j) investment fund and securities portfolio management, (k) life insurance, and (l) currency exchange. Of which, intermediary payment services are newly compiled into the 2022 AML Law after it was initially introduced in Decree No. 87/2019/ND-CP dated 14 November 2019 (amending Decree No. 116/2013/ND-CP guiding the 2012 AML Law). In addition, compared to the 2012 AML Law, the 2022 AML Law also amends and unifies the definition of a number of services in the group of securities – insurance to be suitable with the current local legal framework on such business lines and industries.

It is worth noting that the 2022 AML Law removes the service of issuing electronic money from the list of services conducted by the reporting entity, in the context that the local authority still maintains a prudential policy on this technology product. In the draft version of the 2022 AML Law in June 2022, (i) virtual asset service providers and (ii) intermediary service providers connecting borrowers and lenders based on technology (P2P Lending) are also proposed as reporting entities in the group of financial institutions. However, they were then not mentioned in the official draft submitted to the National Assembly. Regarding virtual assets, the law of Vietnam has not yet regulated or has an official understanding of this object. The terms “virtual assets/crypto assets”, and respective service providers have not been recognized in any law or regulation in Vietnam. Regarding P2P lending, the sandbox mechanism for this new service is still in need of improvement.

[Organizations and individuals engaged in non-financial related business lines](#)

Besides the group of financial institutions, the reporting entities under the 2022 AML Law also contain a group of non-financial entities. This group includes organizations and individuals performing one or more of the following activities: (a) prize gaming business, (b) real estate business (except for real estate leasing and sub-leasing activities and real estate consulting services), (c) trading in precious metals/stones and gems, (d) provision of accountant service, notary services, legal services of lawyers and legal practicing organizations, and (dd) services of establishment, management and running an enterprise; provision of directorship and company secretary service to a third party and legal agreement services.

While the definition and regulation of activities mentioned in items (c) and (d) remain unchanged from the 2012 AML Law, the activity of prize gaming business is newly clarified under the 2022 AML Law as prize-winning video games, games on tele-network, internet; casino; lottery; and betting. It also amends and supplements the definitions of activities (b) and (dd) to suit regulations in the current laws on relevant specialized sectors. Accordingly, organizations and individuals that conduct real estate business are defined as reporting entities, save for real estate leasing and sub-leasing, and real estate consulting services. The investment trust service in the 2012 AML Law was removed, while the legal agreement providing service is newly added, and the director's secretary was renamed the company secretary.

Obligations of the Reporting Entities in Anti-Money Laundering

Know your customers (KYC) requirements

The 2022 AML Law maintains the principle that the reporting entities in the business process must conduct the KYC / customer due diligence, including collecting, updating, and verifying customers' identification information at the beginning and throughout the whole period of the business relationship. The information to be collected includes (i) identifying information, and (ii) information about the respective beneficial owner. In addition, Article 10 of the 2022 AML Law details and requires more customer identification information to be compiled and updated than in the 2012 AML Law.

Regarding the verification of customers' identification information, the 2022 AML Law expands the scope of documents and data used in verifying information identifying customers as organizations and supplements the right of reporting entities to exploit information in the national database in accordance with the laws to compare and verify information provided by customers. Additionally, the 2022 AML Law allows the reporting entities to (i) verify the customers' identification information by hiring other organizations binding with the confidentiality obligation or (ii) conduct the KYC through the third party provided that the third party satisfies all conditions stipulated in this 2022 AML Law. In all cases, the reporting entities shall take the ultimate responsibility for the results of the KYC or the verification of the customer's identification information by the third party / hired party.

Money laundering risk assessment

The 2022 AML introduces a new regulatory obligation of the reporting entities in preparing an annual assessment and update report on money laundering risks. In case the reporting entity is an organization, the assessment and update of money laundering risks must be approved in accordance with the internal rules of the reporting entity. The annual report on the assessment and update of money laundering risk must be submitted to (1) the SBV, and (2) the state ministries managing relevant business sectors operated by the reporting entity. The deadline for submitting the annual report on the assessment and update of money-laundering risk by the reporting entities is 45 days from the date of completion for individuals or the date of approval for organizations.

Risk-based classification of customers

Article 16 of the 2022 AML Law specifies the obligations of the reporting entities in classifying customers according to their low, medium, or high-risk level of money laundering based on the results of the assessment and annual update on money laundering risk. On the basis of classification, the reporting entities are obliged to apply the corresponding necessary measures to identify and monitor the respective customer. The detailed instructions on the implementation of this article will be further regulated by the Governor of the SBV.

Monitoring and reporting on foreign politically exposed persons ("PEPs")

In addition to a new separated definition of the PEPs, Article 17 of the 2022 AML Law inherits the provisions for controlling money laundering risks related to PEPs from the 2012 AML Law and expands the reporting entities' obligations. Accordingly, the reporting entities are required to actively review information sources regarding PEPs, including the list of PEPs announced by the SBV, in order to formulate a list of PEPs to apply internally when identifying and monitoring customers. Simultaneously, the 2022 AML Law provides a broader scope of PEPs' related persons that the reporting entities are liable to conduct the identification and surveillance. This scope now includes individuals being co-owners with a PEP of one or more legal entities or legal agreements or being beneficial owners of one or more legal entities or legal agreements owned by a PEP, rather than only including individuals who are related by marriage or paternity to PEPs as the 2012 AML Law provided.

As a notable point, Article 17 of the 2022 AML Law clearly provides the requirement of obtaining senior management (*Quản lý cấp cao*) approval in accordance with the reporting entity's internal rules before establishing a business relationship with a PEP and the responsibility of the reporting entities to take appropriate measures for verifying the source of assets of customers being PEPs and their related persons, especially the beneficial owners, and supervise the business relationship during the transaction process with this type of customers.

Responsibilities of reporting entities for new products and services or existing products and services applying innovative technologies

The 2022 AML Law clarifies the provisions of the 2012 AML Law on the responsibility of the reporting entities before providing not only new products and services but also existing products and services applying innovative technology. Accordingly, the reporting entities are liable to develop and issue policies and procedures to identify and assess the level of risk of money laundering in order to manage, detect, prevent, and apply suitable measures to reduce the risk of money laundering, when establishing transactions with customers using those advances, and innovations.

Supervising special transactions

The 2022 AML Law requires the reporting entities to supervise the special transactions including (i) unusually large value or complicated transactions as prescribed by the Government, and (ii) transactions with organizations and individuals in countries and territories on the list published by the Financial Task Force to control money laundering or the Warning List. To supervise such transactions, the reporting entities must apply the enhanced measures prescribed by the law, check the information and purpose of the transaction, and in case of doubt, the reporting entities must review, analyze and report the suspicious transaction and may reject such transaction.

Internal regulations of reporting entities on anti-money laundering

Based on the inheritance of requirements of internal rules on preventing and countering money laundering from the 2012 AML Law, the 2022 AML Law elaborates a number of mandatory contents

in those internal rules, such as the policy on accepting customers which contain contents about refusing to open an account, establishing, performing or terminating a business relationship; KYC procedures; policy and procedures for risk management; recruiting personnel, training and fostering professional on anti-money laundering. Furthermore, Article 24 of the 2022 AML Law requires that the issued internal rules must be applied and disseminated throughout the system and agents of the reporting entity.

One of the advancements of the 2022 AML Law is that there is a classification with respect to the rigor and complexity of the internal rules on anti-money laundering, whereby more detailed and diverse requirements are set for the reporting entities being organizations and are significantly simplified for individuals and micro enterprises.

Reporting high-value transactions, suspicious transactions, and electronic money transfers

Articles 25, 26 and 34 of the 2022 AML Law require the reporting entities to report to the SBV about the following transactions:

- Transactions with high value that equal to or exceed the value decided by the Prime Minister from time to time. Per Decision No. 20/2013/QĐ-TTg of the Prime Minister, the current transaction-reporting threshold value is VND300,000,000. The regulation on this threshold value may be remained or be updated upon the effectivity of the 2022 AML Law.
- Suspicious transactions where (i) the reporting entities know that the transaction is conducted at the request of the accused, the defendant, or convicted person, and there are reasonable grounds to suspect that the assets in the transaction are assets owned or derived under the ownership and control of such person; or (ii) there are reasonable grounds to suspect that the assets in the transaction related to money laundering determined by one or several suspicious signs. Apart from the basic suspicious signs in Article 27, the 2022 AML Law provides detailed suspicious signs in particular sectors in separate articles from Articles 28 to 33, including sectors of banking, intermediary payment services, life insurance business, securities, prize-winning games business, and real estate business. The reporting entities may determine the suspicious transaction by other signs other than those prescribed by the laws and must notify such signs to the SBV.
- Electronic money transfers that exceed the value specified by the SBV's Governor.

The reporting of transactions must be prioritized by electronic data, and only using paper documents when a compatible information technology system has not been established. The reporting of high-value transactions to be reported and the electronic money transfer transaction must be done within one working day from the date of the transaction if it is reported by electronic data, and within two working days if the report is in paper writing. The report of suspicious transactions must be accompanied by the account opening records for transactions made through the account, customer's identification information, other relevant documents, and dossiers, and must be done within three

working days from the date of the transaction or within one working day from the date of detecting suspicious signs.

Storing, securing, and providing the information to State agencies

According to Article 38 of the 2022 AML Law, the reporting entities are responsible for storing information, records, documents, and reports, including (a) customers' identification information, records, and documents, (b) results of the analysis and evaluation of the reporting entities on customers' identification information or the transaction to be reported, (c) information, records and other documents related to the customers or the transaction to be reported, and (d) reports on high-value transactions, suspicious transactions, and electronic money transfers along with the information, records, and documents accompanying the reported transaction. The period for storing information, records, documents, and reports is five years from the date of arising, ending transaction, the closing date of the account, or the date reporting the transaction with the SBV as the case may be. Compared to the 2012 AML Law, the 2022 AML Law remains the provisions of the storage period, and clearly stipulates the composition of information, records, documents, reports, and attached documents that the reporting entities must archive.

With respect to the responsibility of reporting and providing information by the reporting entities, the 2022 AML Law clarifies that the reporting entities must provide information, records, documents, and reports that have been stored when requested by a competent State agency and shall not be considered as violating the provisions of the laws on assurance of information confidentiality. In all other cases, the reporting entities, related organizations, and individuals must comply with provisions of the law on the protection of state secrets and confidentiality of customer identification information. The reporting entities and their managers and employees must not disclose information about having reported suspicious transactions or related information about the suspicious transactions to the SBV.

Application of interim measures and legalization of exemption from liabilities

The 2022 AML Law continues to require reporting entities to apply interim measures in prescribed cases including (i) postponement of transactions, or (ii) freezing of accounts, sealing, freezing, or seizing of assets. The reporting entity is entitled to postpone a transaction by itself for a maximum period of three working days and must promptly report to the competent State agencies and the SBV. It is worth noting that the reporting entities shall not take legal responsibility for consequences arising when applying this postponement measure in accordance with the laws.

The reporting entities must also implement decisions of competent State agencies on the freezing of accounts, sealing, freezing, or seizing of assets of organizations and individuals in accordance with the laws.

Transparency of Information of Legal Entities, Legal Agreements, and NPOs

The 2022 AML Law stipulates the responsibilities of the concerned parties in ensuring the

transparency of information of legal entities, legal agreements, and the operation of non-profit organizations (“**NPOs**”) with more details compared to those in the 2012 AML Law. In particular:

- With respect to legal entities, the licensing authorities are required to update and store the basic information of legal entities for at least five years after the date of termination of operation of the legal entities in accordance with the provisions of the laws, accompanied by the obligation of the legal entities in collecting, storing and updating the same information itself. The basic information of the legal entity includes name and type of legal entity, establishment decision, license related to its operation, legal status, head office address, organizational structure; the list of managers of the legal entity, the charter; beneficial owner of the legal entity (if any).
- In terms of legal agreements (which were mentioned as fiduciary agreements in the 2012 AML Law), the trustee has obligation to collect, update, and store identification information related to involved parties for at least five years from the time the trustee stops participating in the trust activities.
- For NPOs, it is mandatory for the NPOs to collect, update and store for at least five years information, records, and documents related to sponsorship activities, funding coordination, and related information, documents, and vouchers on financing and receiving funds. Notably, when the NPO dissolves or terminates its operation, such information, records, and documents stored shall be mandatorily handed over to the respective supervising authority of such an NPO.

The SBV, competent State agencies in the course of performing their functions and tasks of State management of the prevention and combatting of money laundering, investigation, prosecution, and trial have the right to request the above subjects to provide respective information, dossiers, and documents stored in accordance with the laws.

Enhancing the Role and Responsibilities of Banks

Banks prescribed by the Law on Credit Institutions (the “CI Law”)

The 2022 AML Law does not provide a separate compliance mechanism for banks under the CI Law but applies the same as other reporting entities. However, banks are the largest entities in the group of reporting entities, conducting nearly all business activities with money laundering risks and involving many other reporting entities, such as banks are the parent company of financial companies, parent companies or partners of securities companies; insurance agents, etc., so the expansion of liabilities as well as detailing the obligations of the reporting entities will increase the compliance responsibility of banks under the CI Law.

In correspondent banking relationships, Article 18 of the 2022 AML Law, on the basis of inheriting the principles of the 2012 AML Law, sets out stricter regulations on the responsibilities of local banks when establishing a relationship with foreign partner banks to provide banking services, payment, and

other services for foreign partner banks. Accordingly, the local bank now is required to collect information about whether the foreign partner bank has been investigated for money laundering or other violations of the law on prevention and combat of money laundering, instead of the previous regulation that the local bank only needs to ensure its foreign partner bank being subject to the supervision and management of the foreign competent regulatory agency. The 2022 AML Law introduces a new concept of shell bank and also sets out prohibitions on the establishment of and maintaining business relationships with the shell bank.

SBV – Central Bank

Change of specialized agency in charge of anti-money laundering under the SBV

The 2022 AML Law basically maintains assigning management responsibilities to relevant ministries and sectors in preventing and countering money laundering. The focal point responsible for management is the SBV with the specialized body in charge of anti-money laundering being the Anti-Money Laundering Department (the “**AML**D”) (*Cục phòng chống rửa tiền*). Currently, the AMLD is a body of the Banking Inspection and Supervision Agency (the “**BISA**”) (*Cơ quan Thanh tra, giám sát ngân hàng*) being a unit under the organization structure of the SBV.

On the basis of absorbing international recommendations on an independent specialized agency for anti-money laundering, Article 64.1 of the 2022 AML Law amending Article 49.1 of Law on the SBV No. 46/2010/QH12 dated 16 June 2010 omits the authority of the BISA on preventing and countering money laundering. However, according to Article 66.2 of the 2022 AML Law, this change of authority will take effect from the effective date of other regulations on agencies performing the prevention and combatting of money laundering functions and tasks promulgated by competent State authorities.

Assess and update national risks of money laundering

Article 7 of the 2022 AML Law for the first time sets forth provisions for the assessment and update of national risks of money laundering. Accordingly, every five years, the SBV presides and coordinates with relevant ministries and branches in assessing and updating national risks of money laundering on the basis of considering updated results of ministries and sectors on risks and submitting to the Government for approval the results of assessment and implementation plans after the updating.

In fact, in 2018, Vietnam carried out a national assessment on money laundering risk and the national risk result on money laundering was MEDIUM HIGH for the period 2012-2017 (combined with the results of the national risk assessment on terrorist financing), however this assessment has no legitimized basis but is based on the decisions of the Prime Minister. Part of the results of this assessment (Summary Report) are made available to the public.

Guidelines to be issued for Implementation of the New Law

For implementation of the 2022 AML Law, guiding regulations expected to be issued soon, including

the Government's decree, decision of the Prime Minister, and one or some circular(s) of the SBV's Governor. In particular:

The Government's decree will guide principles, criteria, and methods of national risk assessment on money laundering (Article 7), the identification of customers and beneficial owners of the reporting entities (Articles 9 and 10), transactions of extraordinarily large value or complex that need to be monitored (Article 20), the collection, handling and analysis of information on preventing and countering of money laundering (Article 41), the exchange, provide and transfer information on anti-money laundering to the local competent authorities (Article 42), issues related to transaction delay (Article 44), etc. The Government may also issue an amendment or replacement decree on sanctioning administrative violations in the field of anti-money laundering, which updates administrative sanctions for failures to comply with the new compliance requirements set forth in the 2022 AML Law and its guiding regulations.

The Prime Minister's decision stipulates the value level of high-value transactions must be reported, while the circular of the SBV's Governor will detail and guide such contents as criteria and methods of assessing the risk of money laundering of the reporting entities (Article 15), classification of customers according to the level of risk of money laundering (Article 16), the development and promulgation of internal regulations of the reporting entities on prevention and countering of money laundering (Article 24), the reporting regime on high-value transactions that must be reported, suspicious transactions and electronic money transfer transactions (Articles 25, 26 and 34), etc.

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