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Challenges in the Fight against Money Laundering in Vietnam and Suggestions for Improvement

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ABSTRACT: In the context of money laundering and terrorist financing activities, there have been many complex developments in recent decades, with potential risks and threats to destabilize the financial, security, political, and social systems and hinder the prosperity of all countries. Preventing and combating money laundering and terrorist financing increasingly receives substantial attention from the international community, and Vietnam is no exception.

This article presents the legal system, the situation of money laundering in Vietnam and the challenges Vietnam faces in combating this kind of crime before suggesting solutions to handle this phenomenon better.

KEYWORDS: Money laundering, anti-money laundering, FATF Recommendation, financial crime, Vietnam

1. INTRODUCTION

There are several money laundering definitions. According to the Financial Action Task Force's (FATF)[1] definition, money laundering transforms income to conceal its original illegal origin. Article 6 of the 2000 United Nations Convention on the Prevention of Transnational Organized Crime, money laundering includes the following four primary groups: (i) Conversion or transfer of property resulting from crime intended to cover up or conceal the unlawful origin of the property or to assist any person involved in the commission of an offence to avoid the legal consequences of that person's conduct cause; (ii) Concealing or concealing the true nature, origin, location, transfer, transfer or ownership or rights to property, knowing that the property was obtained by crime; (iii) Acquiring, possessing or using property, even though at the time of receiving the property, knowing that it is criminal property; (iv) Participate in, associate or conspire to commit, attempt to commit and assist, incite, facilitate and guide the commission of any offence under the provisions of this article.[2]

According to the International Monetary Fund (IMF), the scale of global money laundering activities can reach 1,600 - 4,000 billion USD/year, equivalent to 2 - 5% of the total world GDP. Data from the Bank for International Settlements (BIS) shows that the scale of these illegal activities could be even higher, from 2,000 - 5,000 billion USD/year.[3]

Money laundering is carried out through many stages, with different tricks, forming a cycle. Typically, the traditional money laundering process is conducted in a cycle including the following stages:[4]

- Placement: Criminals seek to put funds originating from criminal acts into circulation in the financial system. This is the first operation of money laundering activities to convert criminal funds into other legal forms and put them into economic and financial cycles.

- Layering: After successfully putting money into the financial system, criminals will conduct transactions, such as transferring money to domestic bank accounts, transferring money overseas, project investment, construction, securities, and real

[1] FATF, which was founded in 1989 by the G7 and is headquartered in Paris, is the international monitor against money laundering and terrorism financing. International standards are established by the intergovernmental organization to prevent these unlawful activities and the damage they inflict on society. The FATF, functioning as a policy-making entity, endeavors to instill the requisite political determination to enact legislative and regulatory reforms at the national level in these domains. In order to enable national authorities to efficiently pursue illicit funds associated with drug trafficking, the illicit arms trade, cyber fraud, and other grave offenses, the member body establishes global benchmarks. As part of a coordinated global effort to tackle organized crime, corruption, and terrorism, over two hundred nations and jurisdictions have made commitments to adopt the FATF's standards.

[2] United Nations Convention Against Transnational Organized Crime

[3] Unger, B., & Busuioc, E. M. (2007). The scale and impacts of money laundering. Edward Elgar Publishing.

[4] Madinger, J. (2011). Money laundering: A guide for criminal investigators. CRC Press.

estate trading. Money in the financial system will be converted between bank accounts, countries, and project investments and traded back and forth. This process creates a complex and difficult-to-trace chain of transactions that aims to conceal the sources of funds from illegal activities and move them further and further away from their sources. Money is transferred from one financial institution to another to conceal the origin and owner of the assets. During this stage, a series of transactions are carried out, causing money to move everywhere, revolving many times to erase traces of the crime, artificially cutting off the connection between assets and criminal organizations.

- Integration: The funds officially enter the legal economy and can be used for legal investment. Dirty money has been thoroughly "cleaned" and become legal, and individuals and organizations will use it for many different purposes.

2. THE KEY LEGISLATIVE FRAMEWORK IN VIETNAM

The National Assembly issued Law No. 14/2022/QH15 on November 15, 2022, which pertains to the prevention and anti-money laundering (AML); the Government issued Decree No. 19/2023/ND-CP on April 28, 2023, which elaborates on the implementation of particular provisions of the AML (Decree 19); and Decree No. 88/2019/ND-CP, issued by the Government on November 14, 2019, which specifies sanctions for administrative infractions of currency and banking legal regulations (Decree 88), which was amended by Decree 1. The 2017 Penal Code went into effect on January 1, 2018.

i) Who are the reporting entities or entities affected?

The state above authorities bear the responsibility of receiving reports, preventing and combating money laundering operations:

The Ministry of Public Security is tasked with the collection, receipt, and investigation of information on money laundering-related offences;

The Ministry of National Defence is tasked with the exchange of information and documents concerning money laundering activities to finance the proliferation of weapons of mass destruction in Vietnam and abroad;

SBV is primarily accountable to the Government for state administration of AML regulations.

The Ministry of Finance is entrusted with the implementation of anti-money laundering (AML) measures in the insurance, securities, accounting, prize-winning games and casinos, lottery, betting, and other state-managed service sectors. In the real estate industry, AML measures are the responsibility of the Ministry of Construction, excluding real estate leasing, subleasing, and consulting services.

The Ministry of Justice implements AML measures in the real estate business sector.

It is the responsibility of the Ministry of Planning and Investment to enforce AML measures that pertain to the sectors that fall under its purview. Implementation of AML measures applicable to associations, social funds, charity funds, and religious institutions falls under the purview of the Ministry of Home Affairs.

The Ministry of Foreign Affairs is responsible for enforcing AML regulations that pertain to foreign non-governmental organizations.

The Ministry of Information and Communications is responsible for enforcing AML regulations pertaining to the telecommunications and Internet network-based gaming industries.

The People's Procuracy and the People's Court collaborate with various agencies to address money laundering offences through investigation, prosecution, and resolution.

Legislative training on anti-money laundering in the province is the responsibility of People's Committees at every level. These committees collaborate with state authorities to execute policies, strategies, and programs to prevent and combat money laundering. The Anti-Money Laundering Steering Committee aids the Prime Minister in formulating such programs, strategies, and plans.

ii) For financial institutions:

The following conditions apply to clients engaging in account opening or transaction setup with financial institutions: (i) The client lacks a bank account and has not conducted any transactions within the previous six months. (ii) The client does not deposit, withdraw, or initiate a bank transfer of VND 400,000,000 or a foreign currency amount of equal or greater value per day, except for final settlements or withdrawals of savings interest, credit card debt repayments, loans to financial institutions, or instalment payments. There are concerns regarding the legitimacy of transactions or the potential involvement of parties in money laundering activities. Additionally, there are uncertainties regarding the accuracy and completeness of the identification information previously collected from clients.

iii) Customer due diligence

Customer due process: Implementing client identification measures is contingent upon the outcomes of a money-laundering risk assessment. Procedures for administering money laundering risks include categorizing clients according to their risk level as low, medium, or high. As mentioned above, the service providers/entities must consistently update their customers' identification information throughout their business relationship with them. Furthermore, under varying degrees of risk exposure, clients must be categorized according to the products and services they utilize and their place of habitation or headquarters.

iv) Recordkeeping

Documents, information, and records about customer identification, the outcomes of the reporting entity's evaluation and assessment of customers and reporting transactions, as well as other pertinent records, are required to be retained for a minimum of five years starting from the date of transaction closure, account closure, or reporting. Information, documents, and records about high-value transactions (i.e., those exceeding VND400 million), suspicious transactions, and electronic money transfer transactions surpassing VND500 million or the corresponding amount in foreign currency (for domestic transfers) or $1,000 (for inbound or outbound transfers). Such reports, documents, and records must be maintained for at least five years from the transaction date.

v) Penalties

Disciplinary action, a criminal penalty, or administrative sanctions of up to VND500 million may be imposed on those who violate the AML, contingent on the gravity and character of the transgression. The potential criminal consequences include imprisonment for a period ranging from one to fifteen years, seizure of assets in whole or in part, a monetary fine equal to three times the amount violated, and suspension from holding specific positions or titles for one to five years.

In addition to monetary fines ranging from VND1 billion to VND20 billion, criminal sanctions against corporate legal entities include suspensions of business operations, one- to three-year prohibitions on operations in specific business fields, or forced termination and liquidation.

3. MONEY LAUNDERING IN VIETNAM AND CHALLENGES IN COMBATING

Over the past few years, Vietnam's increased integration into the global and regional economies has provided an excellent opportunity for international money laundering offences. Nevertheless, the visibility of money laundering activities involving establishing bank accounts, trading securities, gambling, illicit transfer of foreign currencies, credit card usage, and so forth has only emerged recently.[5]

The prevention of money laundering has emerged as a primary objective for the State Bank of Vietnam and other pertinent governmental bodies in Vietnam. Based on a report published by the State Bank of Vietnam, the aggregate value of dubious transactions increased from VND51,000 billion in 2012 to VND79,000 billion in 2013 and VND119,000 billion in 2014. This data indicates a concerning surge in the prevalence of dubious transactions associated with money laundering.

The FATF designated Vietnam on the Enhanced Surveillance List (Gray List) in June 2023.[6] Concurrently, it provided Vietnam with seventeen action recommendations to resolve deficiencies in the mechanism designed to prevent money laundering, financing of terrorism, and the proliferation of weapons of mass destruction.

An escalation in investment and trade expenses and the cost of loans to Vietnam could result in a decline in foreign direct investment (FDI) inflows as investors withdraw their capital out of apprehension. The acquisition of preferential capital from international organizations such as the IMF, World Bank, and Asian Development Bank has become more challenging due to the potential inclusion of binding conditions. Observe regulations regarding preventing and suppressing money laundering and financing terrorism. Consequently, commercial loans with elevated conditions, particularly concerning interest rates, have become more prevalent. [7]

Based on estimates provided by the IMF, the majority of countries that were placed on the Gray List witnessed a reduction in their investment capital (an average of 7.6% of GDP; 3% of GDP for foreign direct investment (FDI) capital, 2% of GDP for capital through the banking system, and 2.4% of GDP for capital through non-bank financial systems). Additionally, it undermines Vietnam's political standing, reputation, and image on the global stage and adversely affects foreign affairs operations and the banking and financial system. Particular economic repercussions are illustrated by the case of Pakistan, which potentially incurred losses of approximately 37 billion USD during its tenure on the grey list from 2008 to 2019.

The financial industry has revolutionary growth prospects due to the blockchain's rapid development; however, it presents numerous novel obstacles in fighting against and preventing money laundering via cryptocurrency transactions. Due to insufficient legal regulations, unfinished procedures, and, most notably, a dearth of competent personnel, the prevention and combat of money laundering continue to be intricate and challenging.

Specific legal regulations in Vietnam do not govern virtual currency; however, transaction volume is ranked fifteenth globally, and acceptance of cryptocurrencies is the highest internationally.[8] However, with the advent of blockchain technology came the possibility of an increase in sophisticated, complex, and rapid-fire financial crimes and money laundering facilitated by cutting-edge technology. Most nations lack the legal framework necessary to adapt to this rapid evolution.

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

6 https://www.reuters.com/world/asia-pacific/vietnam-financial-grey-list-over-weapons-proliferation-risks-2023-06-24/

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Even though Vietnam has not yet acknowledged cryptocurrencies, they are still utilized for transactions. It is critical to advocate for the completion of legal regulations by regulatory agencies to prevent and restrict criminal conduct. Asset tokenization could reach $16 trillion, or 10% of global GDP, by 2030, according to an analysis from September 2022; 5-10% of all assets will be tokenized. Criminals find cryptocurrency transactions the most practical means of concealing their illicit activities. Vietnam is actively implementing stringent regulations within the fintech sector to bolster digital currency's security and participate in the worldwide surge of virtual assets.

4. SUGGESTIONS

First, the autonomy of anti-money laundering organizations must be strengthened. Currently, there are 03 crucial international organizations associated with anti-money laundering activities in Vietnam: (1) FATF: Financial Task Force on Anti-Money Laundering; (2) APG: Asia-Pacific Group on Anti-Money Laundering; and (3) Egmont Group: Egmont Group of financial intelligence units. The Egmont group is an informal organization established in 1995; members are financial intelligence organizations (FIU). According to the State Bank, the Anti-Money Laundering Department is identified as Vietnam's FIU, and its current functions and tasks are as follows: The Egmont group has more than 160 FIU members from countries worldwide. The Egmont Group aims to provide a forum for FIUs to enhance cooperation, exchange experiences, and secure financial intelligence information to prevent money laundering and terrorist financing. Accordingly, the State Bank of Vietnam proposed to establish the Anti-Money Laundering Department based on reorganizing the Anti-Money Laundering Department from a unit under the Banking Supervision and Inspection Agency into a unit under the State Bank of Vietnam.

The Anti-Money Laundering Department should improve the quality and quantity of financial intelligence analysis (both operational and strategic) and delivery (proactive or upon request) to Law Enforcement Agencies legislation tailored to Vietnam's risk profile through increasing the number of suspicious transaction reports (STRs) analyzed; create feedback mechanisms with reporting subjects to improve STR quality, and access the most expansive possible sources of information and use appropriate technology and analytics tools.

Second, the following responsibilities must be undertaken to close technical compliance breaches identified in the Multilateral Assessment Report and finalize the legal framework regarding money laundering: Addressing deficiencies in the Criminal Code, Law on Prevention and Combat of Money Laundering, and guiding documents; Priorities including the formulation of solutions to these issues; Law on Prevention and Combat of Terrorism and guiding documents; Develop and submit to the appropriate authorities a proposal to amend or impose new sanctions for administrative violations involving the financing of weapons proliferation and anti-money laundering; Investigate, design, and enhance the legal structure that supports the execution of risk-based inspection endeavours about the financing of weapons proliferation and anti-war prevention.

Third, solutions should be synchronously implemented to improve the effectiveness of anti-money laundering activities and finance weapons proliferation in all fields and industries. Accordingly, research and develop the National Plan on anti-money laundering for the period 2021 - 2025; Update and assess national risks of money laundering and terrorist financing for the period 2018 - 2022; Improve the capacity and operational efficiency of the Department of Anti-Money Laundering to ensure the implementation of the core role of a financial intelligence unit according to international standards as well as the central role in anti-money laundering work in Vietnam; establishing a legal framework, improve tools and carry out inspections based on risks of money laundering and terrorist financing in management areas; develop policies, procedures, instructions and organize investigations focusing on money laundering investigations for high-risk predicate criminal groups; Increase resources to focus on investigating, prosecuting, and adjudicating money laundering to improve asset recovery activities./.

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