

Vietnam: Money laundering update

The recent adoption of a new law to prevent and combat money laundering (the “**AML Law**”) by The National Assembly of Vietnam along with the existing Penal Code and the Law on Anti-Corruption provides a three-pronged approach to combating increasingly sophisticated money laundering activities and corruption in Vietnam. The AML Law is effective from 1 January 2013.

Background

Currently, the anti-money laundering (“**AML**”) laws of Vietnam are covered by the Penal Code, Decree 74 of the Government dated 7 June 2005 on anti-money laundering (“**Decree 74**”) and certain subordinate documents issued by the State Bank of Vietnam (Circular 22 dated 17 November 2009), Ministry of Finance (Circular 148 dated 24 September 2010) and Ministry of Construction (Circular 12 dated 1 September 2011). These diverse provisions cover a range of activities which could involve money laundering (both monetary and asset transactions) including: securities, insurance, prize-winning games and real estate transactions). Decree 74 is the most comprehensive law dealing with AML issues although it is subordinate to other laws. As a result, provisions of Decree 74 are subordinate to other laws in cases of discrepancies, which undermines the effectiveness of the law in dealing with AML activities. The new AML Law aims to address this.

The main focus of the AML Law continues to be banking, insurance, securities, real estate transactions, prize-winning games and casinos. The AML Law revises several provisions of existing AML regulations, and covers a wider range of internationally recognized AML practices (e.g. identification of “shell” banks and “phantom” or fake accounts; management of foreign individual clients having political influence and their family members etc.)

Extended definition of money laundering

The AML Law has expanded the key definition of money laundering to include:

- the activities specified in the Penal Code;
- supporting individuals and organizations in enabling criminals to avoid legal liability by legitimising the origin of property acquired from criminal activities; and
- possessing property which is known to have been acquired from criminal activity in order to legitimise the origin of such property.

It is important for banks, insurance/securities/real estate companies or even hotel operators (which host prize-winning games and casinos) to understand the new act of supporting money laundering activities. These businesses can be exposed to administrative sanctions or individuals in those organisations can face criminal prosecution if found to be in violation of this law.

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Broader application

The scope of application of the AML Law is broader than the current law covering providers of services such as finance and accounting; investment management and consulting; investment trusts; corporate management and secretarial services. These businesses must apply Know-Your-Customer (KYC) measures and reporting procedures when providing services to clients (though the reporting burden is limited to transactions of substantial value or which are suspicious).

The AML Law will be applicable to, among others, foreign individuals living in Vietnam and foreign/ international organizations operating in Vietnam. However, it appears that the AML Law will not apply to foreign individuals/ organizations not present/ operating in Vietnam but transacting with or providing services to clients in Vietnam (as currently stipulated in Decree 74). Therefore, offshore parties may not be caught by the provisions of the AML Law.

Reporting requirements and customer classification

Substantial value

Transactions in cash, gold or foreign currencies having substantial value must be reported to the state authorities (i.e. the State Bank of Vietnam (“**SBV**”). From time to time the Government will specify the thresholds for transactions to be reported to the SBV. Reports on substantial value transactions must be made within the day that such transactions occur via electronic communication with the SBV or, otherwise, within 2 working days from the date of such transaction.

Suspicious transactions

The AML Law also provides detailed guidance for the identification of suspicious transactions. While Decree 74 provides some general guidance for identifying a suspicious transaction, the AML Law provides detailed guidance for identifying a suspicious transaction in each specific sector including banking, insurance, securities, real estate and businesses hosting prize-winning games such as hotels. Suspicious transactions must be reported to the SBV within 48 hours while transactions in respect to which there are indications of criminal activity must be reported immediately to the SBV and other competent State authorities (i.e. the Ministry of Public Security).

Customer identification

The AML Law provides more specific customer identification requirements. In particular, customer classification must be based on risk exposure according to:

- customer/ client
- goods/ services in use; and
- place of residence/ head-office

Therefore, customers and transactions which are classified in the high-risk range require additional evaluation. In addition to financial institutions, real estate businesses, insurance companies, securities brokers etc. will have to establish an AML management system with risk-based customer classification.

Obligation to report and act

Under Decree 74, if service providers conduct transactions with parties on the black list (which will be provided by the Ministry of Public Security from time to time) or have reason to believe that such transactions are related to crime, the service providers can opt to apply appropriate measures to delay such transaction and report the same to the SBV. The AML Law, imposes an obligation (rather an option) on that party to do so. The relevant party is also obligated to block the relevant accounts or apply other measures to temporarily seize or seal off the relevant property if so required by the competent State authorities.

However, unlike Decree 74, the AML Law has not specified particular measures to handle violations of the new AML Law. Instead, the AML Law only stipulates generally that organizations violating the law will be subject to administrative sanctions and individuals failing to comply with the law may be subject to disciplinary penalties, administrative sanctions, or even civil and criminal liability. It is expected that more detailed provisions will be stipulated in the subordinate legislative documents which will be issued to implement the AML Law.

If you require any further advice on any of the issues raised in this briefing please contact the authors above.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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