



Anti-money laundering and counter-terrorist financing measures

Vietnam Mutual Evaluation Report

January 2022





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EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering / combating of financing (AML/CFT) measures in place in Vietnam as at the date of the end of the on-site visit, 15 November 2019. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Vietnam's AML/CFT system, and provides recommendations on how the system could be strengthened.

A. Key Findings

- a) While Vietnam has made improvements to its technical compliance since its 2009 mutual evaluation, significant technical compliance gaps still need to be addressed to make Vietnam's AML/CFT regime effective in combating serious money laundering (ML) threats and vulnerabilities.
- b) Vietnam has a developing understanding of its ML and terrorist financing (TF) risks. In 2019 Vietnam finalised its first National Risk Assessment (NRA), which was supplemented by assessments of the non-profit organisation (NPO) sector; legal persons; and financing the proliferation of weapons of mass destruction (WMD). These assessments reflected good coordination between Vietnamese authorities and the NRA itself serves as a good foundation for Vietnam's understanding of its ML/TF risks. However, there are gaps in Vietnam's understanding of risk, including in relation to virtual assets (VAs) and virtual asset service providers (VASPs); foreign trusts; and predicate offences including organised crime and sexual exploitation. Vietnam's AML/CFT National Action Plan, is not sufficiently focused on addressing ML/TF risks. While there is good policy-level coordination through the National Coordination Committees on ML and TF, operational-level coordination is less effective.
- c) The development and use of financial intelligence is very limited in Vietnam. Law enforcement agencies (LEAs) make minimal use of financial intelligence when tracing proceeds of crime, investigating ML and associated predicate offences and TF. Vietnam's financial intelligence unit (FIU) is the Anti-Money Laundering Department (AMLD) of the State Bank of Vietnam (SBV), which produces very limited operational analysis, focusing on predicate offences. Challenges with the availability and quality of suspicious transaction reports (STR) and weaknesses with FIU analytical systems and capabilities limit the volume and quality of FIU analytical products. Very few AMLD disclosures have led to LEAs developing financial intelligence or financial investigations. There is minimal exchange of financial intelligence between AMLD and competent authorities other than the Ministry of Public Security (MPS) police.
- d) Vietnam has criminalised ML largely in keeping with international standards and LEAs have powers and responsibilities to investigate and prosecute ML offences, however Vietnam does not investigate and prosecute ML consistent with its risk profile. There have been very few ML investigations or prosecutions in light of Vietnam's large volume of proceeds-generating predicate

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offences. Cooperation between LEAs during investigations is typically focused on predicate crimes with little pursuit of parallel financial investigations for ML.

e) Vietnam's system of conviction-based confiscation has produced results that reflect its ML risk profile to some extent, particularly in relation to high-risk predicates such as embezzlement, gambling and drug trafficking. Vietnam restrains and confiscates the proceeds or instruments of crime to satisfy court judgment amounts (which represent the damage arising from a criminal offence). There are challenges in identifying and tracing property, particularly connected to complex crime types. There are weaknesses with targeting, detecting and investigating currency and bearer negotiable instruments (BNI) smuggled across Vietnam's borders.

f) AML/CFT supervision in Vietnam is very limited and the supervision that is conducted is not risk-based. Only the banking, insurance and securities sectors and, to a limited extent, the gaming sector, have been subject to AML/CFT supervision. However, the scope of this supervision has been narrow and violations that have been identified have not been followed-up or sanctioned. Other sectoral AML/CFT supervisors lack capacity. Implementation of fit and proper controls is not comprehensive, nor is the understanding of ML/TF risks amongst supervisors.

g) The understanding of ML/TF risks and AML/CFT obligations and the implementation of preventive measures and reporting varies across reporting entities (REs). Banks, insurance and securities companies and, to a lesser extent, remittance companies demonstrate some understanding and implementation of obligations, but it is predominantly rules-based rather than risk-based. Understanding and implementation of AML/CFT obligations amongst other FIs and DNFBPs is negligible and VASPs are not subject to AML/CFT regulation. Significant technical compliance deficiencies with a range of preventive measures undermine effectiveness.

h) Despite the low risks, Vietnamese authorities have demonstrated commitment to combating terrorism and TF and an ability to identify and investigate TF activity. There are deficiencies in Vietnam's TF offence and the legal framework to implement targeted financial sanctions (TFS) related to terrorism and TF. However, as Vietnam has not generally faced transnational terrorism or TF risks, the lack of TF prosecutions and the absence of asset freezing related to terrorism are consistent with Vietnam's risk profile.

i) Vietnam introduced a legal framework to implement TFS related to proliferation of WMD at the time of the onsite visit in November 2019. However, the framework was not yet enforceable due to a lack of sanctions for non-compliance and effective implementation was not demonstrated. Vietnam had not identified or frozen any assets related to WMD proliferation financing (PF) TFS, despite its exposure to sanctions evasion activity in the region.

j) Vietnam has a reasonable legal framework for transparency of basic information related to commercial legal persons, but there are deficiencies in the collection and availability of beneficial ownership information. The primary source of beneficial ownership information on legal persons and foreign trusts is the information collected by REs pursuant to their customer due diligence (CDD) obligations.

k) Vietnam is responsive to requests for both formal and informal cooperation and also seeks cooperation in relation to predicate offences. However, the lack of outgoing requests related to ML is not consistent with Vietnam's risk profile and reflects the lack of proactive investigation of ML. AMLD has made very limited use of international cooperation with other FIUs and AML/CFT supervisors do not seek international cooperation.

B. Risks and General Situation

2. Vietnam has undergone extensive market reforms since the beginning of the ĐổiMới era¹, which has resulted in rapid economic growth and transformation from one of the world's poorest nations to a lower middle-income country. Vietnam remains a predominantly cash-based economy, with increasing levels of international trade and foreign investment. Its geographical location and long porous borders with China, Lao PDR and Cambodia, add to Vietnam's vulnerabilities to smuggling and trafficking.

3. Vietnam's assessments of risk have identified corruption (including embezzlement of property), illegal gambling, drug trafficking, tax evasion, wildlife trafficking, fraud, smuggling of currency and goods and human trafficking as the most significant ML threats. The sectors most vulnerable to ML include banking and illegal remittance, followed by real estate, foreign currency exchange and remittance companies, securities firms and casinos. High levels of corruption and capacity constraints are ongoing challenges that hinder AML/CFT efforts.

4. Vietnam has not faced significant transnational terrorism or TF risks. There have been no terrorist incidents in Vietnam linked to known transnational terrorist groups. Vietnam is primarily exposed to threats from domestic groups that are opposed to the Vietnamese Government and aim to overthrow it.

5. Vietnam is exposed to potential PF activity owing to its increasing global and regional linkages to the international financial system, large maritime sector and exposure to illicit maritime activity in the region, growing needs for raw materials and other imports for economic development and historical ties to some high-risk countries.

C. Overall Level of Effectiveness and Technical Compliance

6. Following its 2009 mutual evaluation and inclusion in the FATF's International Cooperation Review Group (ICRG) process, Vietnam's AML/CFT regime has undergone significant reform. The enactment of a new Penal Code in 2015, which included revised ML and TF offences and introduced corporate criminal liability, as well as the Law on Anti-Money Laundering (AML) 2012, the Law of Anti-Terrorism 2013 and their implementing Decrees have led to some improvements in Vietnam's AML/CFT system and an increase in technical compliance. However, significant technical deficiencies remain and improvements are needed in many areas. Changes to the legal and institutional framework have only begun to be implemented in limited areas.

7. In terms of effectiveness, Vietnam has moderate results in relation to risk, policy and coordination, international cooperation and TF investigation and prosecution. Though some measures are in place, Vietnam needs to make fundamental improvements in relation to: supervision; preventive measures; development and use of financial intelligence; ML investigations and prosecution; TF preventive measures and TFS; transparency of legal persons and legal arrangements; TFS against proliferation of WMD; and pursuit of international cooperation in keeping with Vietnam's risk profile.

Assessment of Risk, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33 & 34)

8. Vietnam has a developing understanding of its ML/TF risks and is commended for completing its first NRA in April 2019. The multi-agency process to produce the NRA and share its results reflects

¹ Economic reforms initiated from 1986

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good coordination amongst Vietnamese authorities. The NRA was supplemented by further risk assessments late in 2019 of the NPO sector; legal persons; and PF. These risk assessment processes improved the understanding of risk amongst competent authorities to some extent, although major improvements are still needed. AMLD produces limited strategic analysis to contribute to risk assessments. The ML/TF risks associated with VAs/VASPs and foreign trusts have not been assessed and are not well understood.

9. Vietnam issued an AML/CFT National Action Plan, which provides high-level strategies to address legal, institutional and capacity gaps and risks to a limited extent. Ministries and agencies have issued agency-specific action plans, which include general measures to address institutional and capacity gaps but do not sufficiently focus on actions to address identified risks. Vietnam has not implemented a comprehensive risk-based approach to allocation of resources or implementing measures to prevent ML/TF and the objectives and activities of competent authorities are not yet consistent with the ML/TF risks identified by the NRA.

10. While risk assessments identified high-risk areas, enhanced measures for identified high-risk areas such as the banking, real estate, foreign exchange and remittance sectors have not been implemented. Similarly, Vietnam does not apply simplified measures for lower-risk sectors.

11. There is well established policy level inter-agency cooperation and coordination through the two National Coordination Committees (NCCs) for ML and TF. Some operational level coordination mechanisms for AML/CFT are in place, however, the extent of effectiveness of these operational coordination mechanisms is unclear. While the Ministry of Defence (MOD) was recently designated as the focal point for the implementing measures to combat PF, there is no specific national coordination and cooperation framework for combating PF.

12. Private sector awareness and understanding of the results of the NRA and supplementary risk assessments is mixed across sectors. Larger FIs have some awareness of ML/TF risks in Vietnam but significant improvements are required for smaller FIs and DNFBPs.

Financial Intelligence, ML Investigations, Prosecutions and Confiscation (Chapter 3 – IO.6, 7,-8; R.1, R.3, R.4, R.29-32)

13. Vietnamese LEAs make some use of financial intelligence to investigate predicate offences and trace criminal proceeds, but the LEAs' development and use of financial intelligence remains limited for ML and TF. LEAs do not develop or use financial intelligence to open ML investigations or parallel financial investigations when predicate investigations indicate a financial link. LEAs rarely request the AMLD for information to support LEAs' ML, predicate or asset tracing investigations. There is minimal exchange of financial information and intelligence between the AMLD and other competent authorities in Vietnam.

14. The SBV AMLD, as Vietnam's FIU, produces limited analysis, with very few of its disclosures to LEAs ultimately contributing to ML or predicate offence investigations. The AMLD faces a range of technological challenges, including the manual receipt of many reports and the lack of an integrated IT tool to facilitate its analysis. The Director of the AMLD is responsible to the Chief of Banking Inspection and Supervision and Governor of the SBV for all activities of the AMLD, not fully satisfying the requirement for the AMLD to carry out its functions freely and autonomously.

15. AMLD receives a limited number and low quality of STRs from a narrow range of REs, and these STRs do not provide a good basis for the AMLD's analysis. AMLD disseminations are primarily

related to predicate offences, and there is limited indication that further analysis has been undertaken to strengthen or add value to STRs received. While cash transaction reports (CTRs) and cross-border wire transfer reports (EFTs) are reported to the AMLD, they are not used to enhance disseminated reports.

16. Vietnam's LEAs have a broad range of powers and responsibilities to investigate and prosecute ML offences and there are only minor technical shortcomings in the criminalisation of ML. However, the extent of ML investigations, prosecutions and convictions is not commensurate with Vietnam's risk profile, particularly in light of the number of investigations of proceeds-generating predicate offences in Vietnam. There were only three ML prosecutions in the 10 years leading up to the onsite visit in November 2019 and three ML investigations were ongoing at the time of the onsite. Vietnam demonstrated that the sanctions applied in the three completed ML prosecutions were proportionate and dissuasive.

17. The MPS, as the primary ML investigation agency, lacks ML investigation capacity. MPS does not have a dedicated ML investigation team to target ML activities, and there appears to be a general lack of awareness of ML offences or the value of "following the money". LEAs and competent authorities in Vietnam exchange information and cooperate during investigations, but do not conduct joint investigations. Where inter-agency cooperation and information exchange does occur, it is typically focused on predicate offences with little focus on parallel financial investigations for ML.

18. Vietnam has a conviction-based confiscation system which has produced confiscation results that reflect, to some extent, Vietnam's ML risk profile, particularly in relation to high-risk predicates such as embezzlement of property, organising gambling and drug trafficking. Vietnam restrains the proceeds or instruments of crime for the purpose of satisfying confiscation judgment amounts (representing the damage arising from a criminal offence). The recovery rate of property subject to a confiscation order is low: approximately 29% of judgements for confiscated property are recovered across all predicate offences.

19. Vietnam has given priority to pursuing the confiscation of proceeds of crime, and some policies and strategies are in place at the national and operational levels to pursue confiscation. LEAs face challenges in identifying and tracing property, particularly connected to complex crime types. Some particular challenges include the intermingling of legitimate property, the use of associates to conceal beneficial ownership of property, and the significant use of cash in criminal activities. LEAs do not appear to prioritise or effectively investigate the source of funds seized at Vietnam's borders, ports and airports, leading the confiscation action for false or non-declared movements of cash or BNIs to be modest.

Terrorist and Proliferation Financing (Chapter 4 – IO.9, 10, 11; R.1, R.4, R.5-8, R.30, R.31 & R.39)

20. While the risk of TF is low, Vietnam has demonstrated its national, ministerial and provincial level commitment to combating terrorism and TF. However, there are technical deficiencies in Vietnam's TF offence, particularly with respect to financing terrorist acts. Vietnam has demonstrated an ability to identify and investigate TF activity. However, the limited scope of the TF offence and the Vietnamese prosecution policy, which prioritises terrorism prosecutions over TF in most cases means that TF charges are not often pursued. There have been no prosecutions and convictions for TF. However in keeping with its risk profile, Vietnam has successfully identified and investigated TF conduct, and prosecuted and convicted persons who engaged in TF activity of terrorism offences. Vietnam has demonstrated that it places a strong emphasis on disruption efforts.

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21. Vietnam has a system for TFS against terrorism, however moderate gaps remain that undermine effectiveness. At the time of the onsite visit, Vietnam had domestically designated two entities and associated individuals for engaging in terrorism. While there have been no UN designation proposals and no assets frozen, this is in line with the low risk of TF in Vietnam. Implementation of TFS obligations by the private sector is mixed but weak amongst smaller FIs and DNFBPs and has not occurred amongst VASPs. Outreach and guidance by competent authorities has not been comprehensive.

22. Vietnam has a large NPO sector and has recently assessed the TF risk associated with NPOs and identified those at highest risk of abuse. There are some general measures in place to mitigate TF risk in the sector, which Vietnam has assessed as being low. Competent authorities do not take a risk-based approach to supervision or monitoring of NPOs. Outreach to the sector has been largely administrative, but authorities commenced some outreach on TF risk and preventive measures shortly before the onsite visit.

23. Vietnam enacted a legal framework to implement PF-related TFS in November 2019. However, the TFS obligations contained in the relevant Decree were not enforceable at the time of the on-site visit due to a lack of penalties for non-compliance. There was insufficient time for Vietnam to implement the Decree and demonstrate effectiveness. At the time of the onsite visit outreach to the private sector on TFS obligations and monitoring of compliance had not yet commenced. No funds or assets associated with persons or entities designated in relation to PF had been identified despite Vietnam's exposure to sanctions evasion and potential PF activity.

Preventive Measures (Chapter 5 - IO4; R.9-23)

24. A range of technical compliance gaps remain with respect to AML/CFT preventive measures for reporting entities (REs), which undermine effectiveness. These are particularly in relation to deficiencies with CDD, domestic politically exposed persons (PEPs) and a lack of measures to identify, regulate and supervise VAs and VASPs. The vast majority of preventive measures are related to AML only and do not explicitly extend to CFT.

25. The understanding of ML/TF risks and AML/CFT obligations and their implementation varies across FIs. Banks, insurance and securities firms have some understanding of risks and obligations and are implementing obligations to some extent. Understanding and implementation were greater amongst FIs with exposure to global group-wide internal AML/CFT policies. Understanding and implementation by remittance companies is at a lower level, and appears to be negligible amongst non-bank credit institutions, and money-changers.

26. FIs appear to take a rules-based approach to applying preventive measures, with no consideration of Vietnam's ML/TF risks. Banks, insurance, securities and remittance companies implement CDD, record-keeping and ongoing monitoring measures. Notably CDD on beneficial owners is a challenge, particularly for foreign companies. Other FIs conduct basic CDD and have weak record-keeping and inadequate monitoring systems.

27. Banks, insurance, securities and remittance companies apply enhanced measures for PEPs and higher risk countries, and specific measures on correspondent banking, new technologies, wire transfers and TFS related to TF. These entities have mechanisms to monitor for and report suspicion, though it is notable that the vast majority of STRs are submitted by banks. Other FIs do not have clear STR mechanisms in place. Most STRs filed appear to be based on thresholds rather than suspicious behaviour. Very few TF-related STRs are filed, which is consistent with the low risk of TF.

28. DNFBPs do not appear to understand their ML/TF risks or AML/CFT obligations. DNFBPs are implementing preventive measures to a negligible extent and the majority do not file STRs. VASPs are not subject to AML/CFT regulation and intermediary payment service providers were only made subject to AML/CFT obligations during the on-site visit.

Supervision (Chapter 6 - I03; R.14, R.26-28, R.34, R.35)

29. AML/CFT supervisors have been designated for both FIs and DNFBPs, however AML/CFT supervision is not prioritised and risk-based supervision is not undertaken. AML/CFT supervision has been mostly limited to the banking, insurance and securities sectors and a few prize-winning electronic games and casinos. The scope and frequency of AML/CFT supervision is not determined by risk. Only on-site supervision has occurred and the scope of inspections has been limited. AML/CFT supervision of the banking sector is mainly driven by prudential supervision concerns. Only a small number of AML/CFT violations have been detected but these have not been followed up and supervisors did not demonstrate the application of remedial actions or sanctions.

30. Implementation of fit and proper controls is not comprehensive. Criminal background checks of directors and certain shareholders are undertaken for core principles FIs and casinos. However, the source of funds, fit and proper checks for beneficial owners and connection to criminal associates are not considered. For remaining FIs and DNFBPs, fit and proper checks rely on basic registration procedures.

31. Although all supervisors participated in the NRA process, they have mixed understanding of ML/TF risks, with NBFI and DNFBP supervisors demonstrating little understanding. AML/CFT supervisory capacity is weak and not supported by training. Supervisors have organised some training and workshops to promote RE's understanding of ML/TF risks and AML/CFT obligations. However, the reach and effectiveness of the training are limited.

32. VASPs are not subject to AML/CFT regulation or supervision.

Transparency and Beneficial Ownership (Chapter 7 - I05; R.24-25)

33. Information on the creation and types of commercial legal persons in Vietnam is widely available. Vietnam recently assessed the ML/TF risks associated with legal persons. However, the results are not yet widely understood and the assessment of the ML risks associated with non-commercial legal persons was not comprehensive.

34. Vietnam has a reasonable legal framework for transparency of basic information related to commercial legal persons. Their basic information is required to be registered and is publicly available online. Compliance with basic ownership registration requirements is undermined by low penalties, which are only applied to commercial legal persons.

35. There are deficiencies in the collection and availability of beneficial ownership information. The primary source of beneficial ownership information on legal persons and arrangements is the information collected by REs pursuant to their CDD obligations. However, there are deficiencies in the relevant legal requirements; limited understanding of the concept of beneficial ownership; and mixed levels of compliance amongst REs with information collection requirements. Some measures have been taken to increase transparency of legal persons.

36. While trusts and similar legal arrangements cannot be created under Vietnamese law, there are very limited measures in place to prevent the misuse of foreign trusts for ML/TF.

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International Cooperation (Chapter 8 - IO2; R. 36-40)

37. Vietnam has a relatively sound legal framework for AML/CFT international cooperation complemented by bilateral and multilateral mechanisms to provide both formal and informal international cooperation. There are some gaps in the legal framework for MLA with respect to freezing and confiscation.

38. Vietnam is responsive to requests for formal international cooperation and has provided MLA and extradition to a wide range of jurisdictions within reasonable timeframes, including in relation to ML and predicate offences. Vietnam has also sought MLA and extradition in relation to predicate offences. However, there have been limited outgoing requests in relation to ML, which is a product of the lack of proactive investigation of ML and is inconsistent with the risk of ML in Vietnam.

39. In relation to informal international cooperation, Vietnamese competent authorities are responsive to requests from foreign counterparts. However, the focus of outgoing requests does not align with Vietnam's ML risk profile. The AMLD has made very limited use of international cooperation, LEAs have made limited requests related to ML and no supervisors have sought cooperation in relation to AML/CFT.

40. There has been limited international cooperation to identify and exchange beneficial ownership information in relation to legal persons and no cooperation in relation to legal arrangements. Deficiencies in relation to transparency of beneficial ownership information may, in practice, impede the ability of competent authorities to provide formal or informal cooperation in this area.

D. Priority Actions

- a) Vietnam should continue to develop its understanding of ML/TF risks by conducting additional sectoral and threat-based assessments to better understand key risks.
- b) Based on the findings of existing and further risk assessments Vietnam should develop clear overarching national AML/CFT policies and agency-level plans that are guided by the identified risks.
- c) Operational level cooperation and coordination should be enhanced, with a focus on identified high-risk areas.
- d) The SBV AMLD should significantly enhance the quality and quantity of its financial intelligence products and focus on ML in addition to predicate offences. AMLD should enhance its resources and its analysis capacity. AMLD should enhance its information sharing with LEAs, including beyond MPS, and proactively disseminate financial intelligence to support investigations.
- e) The MPS and other LEAs should prioritise proactive financial investigations including increasing the development and use of financial intelligence for both parallel and standalone ML investigations in accordance with Vietnam's risk profile. This should be reflected in allocation of resources to financial investigations, supported by investigation policies, procedures and guidance to prioritise and build understanding and increase investigation and prosecution of ML.

- f) Vietnam should enhance LEAs' use of financial intelligence to trace criminal proceeds and continue to review and amend policies and strategies at the national and operational level to pursue asset confiscation, in particular for high-risk crimes.
- g) Vietnam should develop and implement a risk-based supervision strategy and substantially increase supervisory resources and activities of all regulated sectors based on ML/TF risk, including thorough offsite and on-site supervision. Where violations are identified, these should be followed up and proportionate and dissuasive sanctions applied.
- h) Amend legal frameworks to address technical compliance gaps with preventive measures, especially CDD, PEPs, wire transfers and new technologies including VASPs, and ensure coverage of all CFT requirements including explicit obligations for TF-related STRs.
- i) Going beyond banks, authorities should increase outreach to REs including DNFBPs, to raise awareness of ML/TF risks and AML/CFT obligations, and to facilitate a shift from a rules-based to a risk-based approach.
- j) Develop a more comprehensive understanding of the features of different types of legal persons that make them vulnerable to ML/TF abuse. Beneficial ownership requirements should be extended to all legal persons and foreign legal arrangements when recognised.
- k) Amend legal frameworks to require comprehensive PF-related TFS obligations, including introducing proportionate and dissuasive sanctions for non-compliance. Vietnam should prioritise effective implementation of the new PF TFS regime, including capacity building within competent authorities and conducting targeted outreach to the private sector.
- l) Proactively and increasingly seek both formal and informal AML cooperation in line with Vietnam's risk profile. This should include MLA to seek and provide evidence to support asset restraint and confiscations as well as ML and predicate offence prosecutions.
- m) Amend legal frameworks to address deficiencies in the criminalisation of financing terrorist acts and revise prosecutorial policies to ensure that TF can be effectively prosecuted.
- n) Amend legal frameworks for CFT TFS obligations to require all natural and legal persons to freeze the funds and other assets of designated persons or entities without delay and without prior notice and to establish penalties for non-compliance with TFS obligations (freezing obligations and prohibitions) so they apply to all natural and legal persons and are proportionate and dissuasive.

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E. Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 – Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
MODERATE	MODERATE	LOW	LOW	LOW	LOW
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
LOW	SUBSTANTIAL	SUBSTANTIAL	LOW	LOW	

Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

R.1 - Assessing risk & applying risk-based approach	R.2 - National cooperation and coordination	R.3 - Money laundering offence	R.4 - Confiscation & provisional measures	R.5 - Terrorist financing offence	R.6 - Targeted financial sanctions – terrorism & terrorist financing
PC	LC	PC	LC	LC	PC
R.7 - Targeted financial sanctions – proliferation	R.8 - Non-profit organisations	R.9 - Financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
NC	LC	LC	PC	PC	NC
R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
PC	PC	NC	PC	PC	PC
R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 - DNFBPs: Other measures	R.24 - Transparency & BO of legal persons
PC	PC	PC	PC	PC	PC
R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
PC	PC	PC	PC	PC	C
R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 – Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
LC	LC	C	PC	NC	LC
R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 - Other forms of international cooperation		
LC	PC	LC	LC		

MUTUAL EVALUATION REPORT OF VIETNAM

Preface

This report summarises the AML/CFT measures in place in Vietnam as at the date of the on-site visit from 4-15 November 2019. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Vietnam's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Vietnam, and information obtained by the evaluation team during its on-site visit to Vietnam.

The evaluation was conducted by an assessment team consisting of:

- Mr. Ahmad Farhan Sharifuddin, Bank Negara Malaysia, Malaysia (financial expert)
- Mr. Daniel Burnicle, Australian Federal Police, Australia (law enforcement expert)
- Mr. Duarte Chagas, Gaming Inspection and Coordination Bureau, Macao, China (legal expert)
- Mr. Jesse Baker, U.S. Department of the Treasury, United States (financial expert)
- Mr. Nesar Yosufzai (FIU expert)
- Mr. Sok Heng Hak, Council of Ministers, Cambodia (legal expert)
- Ms. Zhang Yi, People's Bank of China, China (financial expert)

The assessment process was supported by Mr. David Becker; Ms. Lauren Hirsh; Mr. Mustafa Akbar; Ms. Henna Goodrick; and Mr. David Shannon of the APG secretariat.

The report was reviewed by Md. Khairul Anam, Bangladesh Financial Intelligence Unit; Mr. Rocky Yuen, Department of Internal Affairs, New Zealand; and the FATF Secretariat.

Vietnam previously underwent an APG Mutual Evaluation (ME) in 2009, conducted according to the 2004 FATF Methodology. The 2009 ME report has been published and is available at www.apgml.org.

The 2009 ME concluded that Vietnam was compliant with one Recommendation; largely compliant with three; partially compliant with 25; and non-compliant with 18 Recommendations. Two Recommendations were found to be not applicable. Vietnam was rated compliant or largely compliant with one of the 16 Core and Key Recommendations.

Vietnam entered the APG's enhanced follow-up process in 2012. In 2013, Vietnam exited enhanced follow-up and was placed on regular follow-up, following the enactment of the Law on AML 2012 and other developments, which resulted in four Recommendations re-rated to a level equivalent to largely compliant. At the end of the APG's 2nd round follow-up process in 2014² Vietnam had nine Core and Key Recommendations (R.3, R.5, R.13, R.23, R.35, SR.I, SR.III, SR.IV, SR.V) remaining at the non-compliant/partially compliant level.

² APG decided to phase out of the APG's 2nd round follow-up process from 2014.

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Vietnam was subject to FATF's International Cooperation Review Group (ICRG) process from October 2010 until removal from the process in February 2014. Significant progress was made by Vietnam while under ICRG review, including amending the ML and TF offences; introducing corporate criminal liability; enacting the Law on AML 2012 and Law on Anti-Terrorism 2013, as well as implementing Decrees; and introducing a legal framework for TFS related to terrorism and TF.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1. The Socialist Republic of Vietnam (“Vietnam”) is located east of the Indochinese peninsula in Southeast Asia, covering an area of 331,698 km² with a border of 4,550 km. The north of Vietnam is bordered by China, the west is adjacent to Lao PDR and Cambodia, the southwest is bordered by the Gulf of Thailand, and the east and the south are adjacent to the East Sea where there are more than 4,000 large and small islands.
2. Vietnam is a lower middle-income jurisdiction with a population of 97 million.³ Since 1986, Vietnam has implemented the ĐổiMới economic reforms, moving to a market economy with state management. Vietnam has seen steady economic growth from 2012 (5.25% p.a. of GDP) to 2017 (6.81%), with income per capita of approximately USD 2,109. Vietnam’s geographical location and available human capital have made Vietnam an attractive destination for foreign investment.
3. Vietnam is a socialist rule-of-law state and has only one ruling political party, the Communist Party of Vietnam. The National Assembly is the highest representative body and the highest-level body of state power in the country. The Government is the executive body of the National Assembly, subject to supervision of the National Assembly, the National Assembly Standing Committee and the State President. The People's Courts are judicial authorities exercising judicial power, and the Supreme People's Procuracy (SPP) is the prosecutorial body supervising judicial activities in Vietnam.
4. Vietnam has a socialist legal system based on the civil law system⁴ where legislation is the most important source of law; courts are subordinate to the legislature and must make decisions based on legislation; and policies as set out by the Communist Party.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

5. Vietnam is exposed to a range of ML threats. Continuing economic growth and diversification, increased international trade and a long and porous land border suggest Vietnam’s exposure to illicit finance is increasing and is expected to continue to do so in coming years. According to estimates from Global Financial Integrity, the 2015 value of both illicit inflows into Vietnam and outflows from Vietnam was over USD 9 billion (inflows 9.7 billion and outflows 9.1 billion).⁵
6. Vietnam’s long border with China, Lao PDR and Cambodia makes it vulnerable to significant instances of bulk cash smuggling and wildlife and drug trafficking. Vietnam is also located near the golden triangle area, which is a major drug production centre both regionally and globally, further increasing its vulnerability to drug trafficking.
7. Sources of illicit funds include public corruption, remittances from Vietnamese organised crime groups, fraud, gaming, prostitution, counterfeiting of goods, trafficking in persons, drugs, wildlife, and related commodities. Vietnam remains a predominantly cash-based economy with high-value items often purchased with cash, including real estate and luxury vehicles. The occurrence of customs fraud and the over and under-invoicing of exports and imports could be indicators of trade-based ML.

³<https://www.worldbank.org/en/country/vietnam>

⁴<https://oxfordbusinessgroup.com/overview/law-land-look-country%e2%80%99s-legal-system>

⁵<https://gfintegrity.org/report/2019-ifff-update/>

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8. There has been no evidence of threats from transnational terror groups to Vietnam. Vietnam is exposed to some domestic terrorism and TF threats. Between 2009 and 2017, Vietnam successfully stopped four plots involving 59 people belonging to the Viet Tan organisation. These plots, together with the 2017 bombing of the Ho Chi Minh City's International Airport, suggest that Vietnam is exposed to some threats of domestic terrorism and TF.

Country's risk assessment & Scoping of Higher Risk Issues

9. Vietnam produced its first formal ML/TF risk assessment through National Risk Assessment on Money Laundering and Terrorism Financing (NRA), completed in April 2019. The work was conducted through coordination in an NRA Working Group⁶ comprising representatives from 16 ministries and agencies. In late 2019, Vietnam complemented the NRA with risk assessments on non-profit organisations (NPOs), legal persons and financing he proliferation of weapons of mass destruction (WMD). Prior to the NRA, Vietnam had not conducted specific or systematic ML/TF risk assessments.

10. The NRA assigned an overall ML risk rating of medium-high and a TF risk rating of low. The NRA assesses the threats arising from proceeds of 17 predicate offences and criminal proceeds originating from abroad. The most significant threats were assessed to include corruption, illegal gambling, drug trafficking, tax evasion, wildlife trafficking, fraud, smuggling of currency and goods and human trafficking. Prior to the completion of the NRA, fraud and drug trafficking were identified in the 2009 MER as the major proceeds-generating predicate offences.

11. The assessment team noted that there were gaps in the scope of the NRA as it did not consider all of the FATF designated categories of offences. Some categories of predicate offences were not assessed as they do not occur in Vietnam or there was insufficient information available, which suggests further analysis is needed on all predicate offences. In particular on the missing categories of predicate offences, which include organised crime and sexual exploitation, including of children.

12. The NRA serves as a foundation for Vietnam's understanding of its ML/TF risks. However, the assessment team notes that the ML threat and risk assessment on some of the predicate offences and sectors lacked deeper analysis and consideration of a wider range of data, which may impact the assigned risk ratings. The assessment relies on measurable quantitative data, with limited qualitative judgment with due consideration of context and materiality.

13. The ML sectoral assessments were conducted on the basis of the threats and vulnerabilities per sector. The banking and illegal remittance sector were identified as high-risk, followed by real estate, foreign currency exchange and remittance companies, securities firms and casinos. The assessment team noted that there were gaps in the scope of the NRA as it excluded analysis of risks associated with foreign trusts that are able to operate in Vietnam.

14. The NRA finds that many real estate transactions use cash and open source material indicate that some purchasers use gold as a mode of payment.⁷ Real estate is a major investment sector and is considered one of the significant sectors at risk of being abused for ML. Many real estate purchases include transactions through the formal banking system. It is noted that criminals often buy real estate in the names of family members, or transfer and give real estate as gifts.

⁶ The NRA was conducted using the World Bank risk assessment tool

⁷<https://www.bangkokpost.com/world/1685260/you-can-still-buy-a-house-with-gold-bars-in-vietnam>

15. The NPO risk assessment concluded that the TF risk of NPOs in Vietnam is low. The ML/TF risks related to virtual assets (VA) have not been assessed, but a 2018 study on the legal framework⁸ related to virtual asset service providers (VASPs) confirmed that some risks exist due to the anonymous nature of the assets.

16. The risk assessment on legal persons identifies the risks for all categories of legal persons as medium for ML and low for TF. The ML threats and vulnerabilities were found to be higher amongst single member limited liability companies, multi member limited liability companies and joint stock companies. The key vulnerabilities identified by Vietnam include the use of individuals through nominee arrangements to obscure the relationship between the beneficial owner and the legal owner, including the use of complex ownership and control structures.

Scoping of higher risk issues

17. During the mutual evaluation on-site visit, the assessment team focused on the following higher risk issues, based on material submitted by Vietnam and information from open sources:

- (a) authorities' capacity and capability (resources and skills) to implement an effective, risk-based AML/CFT system and challenges related to inter-agency cooperation;
- (b) the impact of corruption on Vietnam's AML/CFT efforts;
- (c) the following key predicate offences and the associated ML activity:
 - smuggling products related to wildlife crime
 - illegal drugs
 - casinos and illegal gambling
 - human trafficking
 - organised crime
- (d) threats from the scope and nature of the cash economy, including the purchase of luxury items and cross-border transportation of goods and currencies;
- (e) the banking sector (both domestic and international) due to its prominence in Vietnam, international money flows and the high vulnerability to ML and TF, recognising specific vulnerabilities related to domestic politically exposed persons (PEPs); and
- (f) The prevalence of cash and use of gold in purchasing real estate.

Materiality

Nature of the economy

18. Vietnam is a lower-middle income jurisdiction with a gross domestic product (GDP) of approximately USD 245 billion in 2018. Poverty rates have declined sharply, from over 70% in 2002 to below 6% in 2018 and GDP per capita has increased by 2.5 times during the same period⁹. Vietnam's economic growth reached an 11-year high of 7.1% in 2018. Annual inflation has been stable, with an average of 3.5% in 2018.

⁸ Report on comprehensive review and assessment on the actual situation of legislation and practices on virtual assets and currencies in Vietnam and internationally: identifying and proposing initiatives for legislative completion. No. 255, Ministry of Justice, 29 October 2018.

⁹<https://www.worldbank.org/en/country/vietnam/overview>

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19. Vietnam's financial sector is dominated by the banking sector, which covers approximately 94.7% of financial sector assets. 43.4% of the banks are state-owned. The insurance and securities sectors account for 3.5% and 1.8% of financial sector assets respectively. Other small financial service providers in Vietnam comprise of remittance companies which provide limited remittance services and money-changers. Intermediary payment service providers were only designated as REs just prior to conclusion of on-site visit.

20. The DNFBP sector in Vietnam is relatively small and includes casinos, prize winning electronic games companies, lawyers and notaries, accountants and auditors, dealers in precious metals or stones and real estate agents. The biggest DNFBP sector is the real estate sector, which accounts for nearly 5% of GDP and is a major investment sector.

21. in October 2017 the SBV banned the use of virtual currencies for payment, and the SEC banned publicly-listed companies, and securities and fund management companies from issuing, transacting or brokering in cryptocurrencies. However, open source searches indicate significant cryptocurrency investment and mining in Vietnam, which do not necessarily breach either of these prohibitions. VA and VASPs are not regulated for AML/CFT purposes in Vietnam.

Financial inclusion and reliance on cash

22. Vietnam is a largely cash-based economy surrounded by other neighbouring cash-based economies (Cambodia and Lao PDR). The World Bank indicates that 31% of the adult population had a transaction account in 2017, and 23% were transacting electronically. 69% of adults paid bills in cash in 2017 (down from 92% in 2014).¹⁰

23. The economy is still substantially dollarized with US dollar holdings estimated at \$60 billion or 25% of GDP.¹¹ The SBV is taking steps to limit dollarization, including a recent amendment to regulate the provision of loans in foreign currencies to Vietnam residents.

International remittance

24. Vietnam is a significant recipient of international remittance, receiving approximately USD 12.3 billion in 2015. USD 7 billion was attributed to the United States—Vietnam remittance corridor.¹² These figures do not include unrecorded or informal underground remittance flows. In the NRA, the ML/TF risks associated with remittances were assessed as high for the illegal remittance sector and medium-high for the regulated remittance sector.

Exposure to trade and finance with the DPRK or Iran

25. Vietnam is exposed to potential PF activity owing to its increasing global and regional linkages to the international financial system, large maritime sector and exposure to illicit maritime activity in the region, growing needs for raw materials and other imports for economic development, and historical ties to some high-risk countries.

26. Vietnam and the DPRK have been close diplomatically since the start of the ĐổiMới in 1986. Vietnam was a historically significant market for DPRK coal and other exports before these exports

¹⁰<https://ufa.worldbank.org/en/country-progress/vietnam>

¹¹ IMF: Vietnam 2019 Article IV Consultation—Press Release, Staff Report; and Statement by the Executive Director for Vietnam <https://www.imf.org/en/Publications/CR/Issues/2019/07/16/Vietnam-2019-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-47124>

¹²<https://openknowledge.worldbank.org/bitstream/handle/10986/23743/9781464803192.pdf?sequence=3&isAllowed=y>

were banned by various UNSCRs. While there are still full diplomatic relations with the DPRK, Vietnam has committed to implementing UN Security Council trade and sectoral sanctions and is taking steps to reduce its exposure to trade with the DPRK.

Structural Elements

27. Indicators for governance and integrity from the 2008 and 2018 World Bank World Wide Governance Indicators Country Snapshots¹³ show that Vietnam has made progress on all indicators, notably on rule of law and control of corruption. The rank scores are summarised below.

Table 1.1. Governance Indicators 2008 and 2018

World Bank World Wide Country Snapshot

Indicator	Percentile rank (0-100) 2008	Percentile rank (0-100) 2018
Voice and Accountability	8.17	9.36
Political stability & absence of violence / terrorism	49.52	53.81
Government effectiveness	47.09	53.37
Regulatory quality	30.10	36.54
Rule of law	38.46	54.33
Control of corruption	28.16	37.98
Average	33.58	40.90

28. Freedom House's 2017 Freedom of the Press report classifies Vietnam's press as 'Not Free' with a global ranking of 177th out of 199 countries and territories. Although the Constitution and law provide for freedom of speech and press, in practice these freedoms are restricted. The World Bank governance indicator for 'voice and accountability' as included in the table above remains in the bottom 10th percentile.

Background and other Contextual Factors

Issues of corruption

29. Vietnamese authorities identify corruption (including embezzling property, receiving bribes and abusing positions of power) as a major predicate for ML and a major challenge. Vietnam has taken a strong approach towards prosecution and punishment of corrupt individuals over the last few years but corruption remains a significant challenge, and occurs at all levels and in all sectors.

30. Despite the improvement in the World Bank governance indicator ranking for 'control of corruption', corruption remains a significant issue in Vietnam. Vietnam is ranked 117th out of 180 countries in the Transparency International Corruption Perception Index 2018.¹⁴

AML/CFT strategy

31. Vietnam issued an AML/CFT National Action Plan (Post-NRA Action Plan) following the completion of the NRA in April 2019. The SBV is responsible for monitoring and reporting on its

¹³<http://info.worldbank.org/governance/wgi/#reports>

¹⁴<https://www.transparency.org/cpi2018>

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implementation to the Prime Minister. Prior to the launch of the Action Plan, Vietnam had issued four action plans between 2010 and 2014, mainly targeting the reforms of the AML/CFT laws, regulations and policies.

32. The assessment team noted that the predominant purpose of the Post-NRA Action Plan is to address specific short-term systemic vulnerabilities including legal, institutional and capacity gaps. The Plan does not specifically articulate the overarching intent, approach and priorities to address Vietnam's ML/TF risks. The relevant competent authorities have issued their own agency-specific action plans with similar aims.

Legal & institutional framework

33. The institutional framework for AML/CFT is as follows:

- National Coordinating Committees for AML and CFT (NCCs): is an interagency committee assisting the Prime Minister in directing and coordinating activities on AML and CFT.
- Anti-Money Laundering Department (AMLD): is designated as Vietnam's Financial Intelligence Unit (FIU). AMLD is under the Banking Inspection and Supervisory Agency of the SBV.
- The State Bank of Vietnam (SBV): is the central bank of Vietnam and is the designated competent authority to license banks and other FIs. SBV is the AML/CFT supervisor for monetary, banking and foreign exchange activities and gold bar shops. SBV issues guidance on AML/CFT implementation.
- Ministry of Public Security (MPS): is the designated ML/TF investigation authority responsible for leading and coordinating detection and investigation of crimes related to AML/CFT and related predicate offences.
- The Supreme People's Procuracy (SPP): is the prosecutorial agency in Vietnam.
- The Supreme People's Court (SPC): exercises judicial authority in Vietnam and is at the highest level in the People's Court system. SPC is responsible for judging cases of ML, terrorism, TF and other crimes in accordance with the Penal Code.
- The Government Inspectorate: conducts overall state management on all inspection activities in Vietnam, resolving complaints and denunciations, and preventing and combating and is the focal agency for anti-corruption.
- Ministry of Justice (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. The Ministry conducts state management on construction and law enforcement, legal document inspections, legal education, enforcement of civil judgments and administrative judgments, and management of law enforcement on handling administrative violations.
- Ministry of Finance (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.
- 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.
- Department of Insurance Management and Supervision: is within the MOF and manages and supervises the implementation of AML/CFT measures in the insurance sector.

- *Department of Finance of Banks and Financial Institutions*: is within the MOF and undertakes state management of casino activities and electronic games. The department 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.
- *The General Department of Customs (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.
- *Ministry of Defence (MOD)*: has prime responsibility for managing issues related to UN Security Council resolutions (UNSCRs). Since November 2019 is the designated focal point for coordination on combating PF. The Steering Committee on Prevention of Terrorism, the ministries and ministerial-level agencies and the provincial-level People's Committees are responsible for the implementation of PF-related tasks.
- *Ministry of Foreign Affairs (MOFA)*: oversees Vietnam's obligations related to international treaties and conventions, including the UNSCRs and is the focal point for managing activities of foreign non-governmental organizations.
- *Ministry of Planning and Investment (MPI)*: with its provincial local agencies the MPI is responsible for company incorporation and the registration, management and supervision of business enterprises under the Enterprise Law.
- *Ministry of Construction (MOC)*: is responsible for the management, supervision and inspection of the implementation of AML/CFT measures in the real estate sector.
- *Ministry of Industry and Trade (MIT)*: regulates the wholesale, import and export of precious metals, except for retail traders in precious metals or stones.
- *Ministry of Home Affairs (MOHA)*: is responsible for state management of organizations and activities of foundations including inspections and supervision.
- *The Committee for Foreign Non-Governmental Organization Affairs*: assists the Prime Minister in directing and settling matters related to foreign NGOs in Vietnam.
- *People's Committees*: are responsible for enforcing and directing the dissemination and education of AML laws in the locality; coordinating with competent state agencies to implement AML guidelines, policies, strategies and plans; detect, promptly and strictly handle violations of regulations on AML according to relevant committees.

Financial sector, DNFBPs and VASPs

34. This section gives general information on the size and make-up of the financial and DNFBP sectors in Vietnam. Not all of the financial and DNFBP sectors are of equal importance, given the specific risks and context of Vietnam's financial sector. The level and types of ML/TF risks affecting individual FIs and DNFBPs vary greatly, as do the ML/TF risks facing particular sectors.

35. The assessment team ranked the sectors on the basis of their relative importance in the Vietnam context given their respective materiality and level of ML/TF risks. The assessors used these rankings to inform their conclusions throughout this report, weighting positive and negative implementation issues more heavily for important sectors than for less important sectors. This approach applies throughout the report, but particularly in Chapter 6 on IO.3 and Chapter 5 on IO.4.

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36. Based on their relative importance and Vietnam's risks, context and materiality, implementation issues have been weighted most heavily for the banking sector, followed by insurance, securities and real estate sectors. Significant weight is also given on VASPs based on the estimation of individuals involved in the trading of virtual assets and the estimated size of daily transactions. Lesser weight is applied to other FIs and DNFBPs.

37. All relevant FIs and DNFBPs are covered for AML/CFT obligations in Vietnam, noting that the intermediary payment service providers are included in AML/CFT obligations at the time of the on-site visit. The regulatory framework suffers from a number of technical deficiencies related to preventive measures especially in the areas of domestic PEPs, CDD and STRs which contribute to a negligible extent of effectiveness by REs, especially those institutions that are not subject to any global-wide internal AML/CFT policies and correspondent banking relationships. The majority of REs are locally owned, as such significant weight applies to the impact of these technical deficiencies. Lack of supervision to reinforce obligations undermine the scope of implementation of measures.

Financial Sector

38. Table 1.2, below, lists the types of financial institutions in Vietnam's financial sector and their regulatory and supervisory authorities as at December 2018:

Table 1.2. Financial Sector in Vietnam

Sector	Number of Entities	Regulator for Fit & Proper	AML/CFT Supervisor	Level of ML Risk in NRA
Banks	46	SBV	SBV	High
Remittance Companies	36		Branches of SBV	Medium-High
Foreign Currency Exchange Agents	605	SBV	Branches of SBV	Medium-High
Stock Companies	83	SSC	SSC of MOF	Medium
Fund Management Companies	46	SSC	SSC of MOF	Medium
Futures Companies	18	SSC	SSC of MOF	Medium
Insurance Companies	18	MOF	Insurance Administration and Supervision Department (MOF)	Medium-Low
Intermediary Payment Service Providers	30	SBV	SBV	
Micro Finance Institutions	4	SBV	SBV	Low
People's Credit Funds	1	SBV	SBV	Low
Vietnam Post	1	Ministry of Information and Communications	SBV	Medium-Low

39. Vietnam's financial sector is dominated by the banking sector, which covers 94.7% of financial sector assets. The banking sector is comprised of state-owned banks (43.4% of total market share), joint-stock commercial banks (41.6%), joint-venture and wholly owned foreign banks (10.3%), policies banks (1.8%) and cooperative banks (0.3%). The remaining are those entities from the non-bank credit

sector, which include finance and leasing companies (1.6%) of which majority are owned by the banks, and the People's Credit Funds (1.0%). Other small non-bank credit institutions include local development investment funds and micro-finance institutions.

40. Majority of the insurance sector is dominated by life insurance companies (i.e. 80.1% of the market share) and the remaining 19.9% are the non-life insurance companies which are not REs.

41. The securities sector comprises securities companies (65.4% of the total market share) and fund management companies (34.6%). The size of bond market is about 28.6% of the total GDP and the shares are traded on the Ho Chi Minh Stock Exchange and Hanoi Stock Exchange. Over 51% of the securities companies have foreign ownership.

DNFBPs

42. The DNFBP sector in Vietnam is relatively small and includes casinos, prize winning electronic games, lawyers and notaries, accountants and auditors, dealers in precious metals or stones and real estate agents. The largest DNFBP sector is the real estate sector, which accounts for nearly 5% of GDP and in 2018 had 1,304 agents. In Vietnam the casino sector is small with eight licensed casinos and 46 licensed prize winning electronic game machines enterprises. The legal sector has 11,800 lawyers across 4,100 entities and 2,398 notaries across 1,026 entities. Vietnam reported that the accounting sector has 300 registered accountants across 109 firms, however there are indicators of much higher numbers as the most recent World Bank ROSC references 1700 CPAs licenced by the MOF in 2016, but did not provide data on the wider accounting profession¹⁵. Vietnam has 21 credit institutions (CIs) with gold-bar trading activities, 15 businesses are allowed to trade gold bars. There are 1,154 enterprises operating in the precious metals and gemstones trading sector and more than 5,979 household businesses producing fine jewellery.

43. Table 1.3 lists the reported types and numbers of DNFBPs enterprises in Vietnam and their regulatory and supervisory authorities as at December 2018:

Table 1.3. DNFBP enterprises in Vietnam (2018)

Sector	Number of Entities	Regulator for Fit & Proper	AML/CFT Supervisor	Level of ML Risk in NRA
Real Estate Agents	1,304	MOC	MOC	Medium-High
Casinos	8	MOF	MOF	Medium
Trust and Company Service Providers	450	None	None	Medium-Low
Gold bar trading*	21 CIs and 15 enterprises	SBV - gold bar shop	SBV - gold bar shop	Medium-Low
Other Precious metals and gem dealers*	1,154	None	None	Medium-Low
Accounting firms	109	MOF	MOF	Low
Lawyers	4,100	MOJ	MOJ	Low
Notaries	1,026	MOJ	MOJ	Low

¹⁵ World Bank Report on the Observance of Standards and Codes (ROSC) Accounting And Auditing Module, Vietnam 2016 - <https://documents1.worldbank.org/curated/en/220021512482581847/pdf/121901-ROSC-PUBLIC-FinalROSCEN.pdf>

CHAPTER 1. ML/TF RISKS AND CONTEXT

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*For wholesale, import and export of precious metals and gems are regulated by Ministry of Trade and Industry, but for retail traders there is no supervisor. Source: SBV

VASPs

44. There is no legal framework governing the operation of VA and VASPs in Vietnam. VASPs are not REs. The SBV banned the use of virtual currencies for payment in October 2017, and the SEC banned publicly-listed companies, and securities and fund management companies from issuing, transacting or brokering in cryptocurrencies. The legal basis for the regulation/supervision of virtual currency in Vietnam is unclear. Open source searches indicate significant cryptocurrency investment and mining in Vietnam. Vietnam has not undertaken an in-depth assessment of the size and breadth of use of virtual assets across all sectors of Vietnam and the ML/TF risks and vulnerabilities associated with VA and VASPs are not known. Vietnam had undertaken limited consideration of AML/CFT issues related to VA and VASPs in October 2019 just prior to the on-site visit.

Preventive measures

45. Preventive measures are primarily set out in the Law on AML 2012 and the associated Decrees and Circulars, and the Law on Anti-Terrorism 2013. The assessment team notes that preventive measures applied by FIs and DNFBPs are rules-based and do not take into consideration Vietnam's ML/TF risks. Vietnam has not exempted specific sectors or activities from the AML/CFT requirements.

Legal persons and arrangements

46. Legal persons in Vietnam are referred to as "juridical persons", and are divided into commercial and non-commercial legal persons.

47. Commercial legal persons are those whose primary purpose is seeking profits (Article 75 of the Civil Code). The Law on Enterprises 2014 classifies the various forms of commercial legal persons:

- (a) Limited liability Companies (Clause 4, Article 4) including:
 - Multi-member limited liability companies (see Article 47); and
 - Single-member limited liability companies (see Article 73).
- (b) Joint-stock companies (Article 110);
- (c) Partnerships (Article 172); and
- (d) Private companies/sole partnerships (Article 183).

Non-commercial legal persons

48. Non-commercial legal persons are those whose primary purpose does not involve seeking profits and whose profits may not be distributed to its members (Article 76, Civil Code 2015). Non-commercial legal persons and the various decrees setting out their creation are set out below:

- (a) Associations - Decree No. 45/2010
- (b) international NGOs - Decree No. 12/2012
- (c) Social Funds and Charity Funds - Decree No. 30/2012

49. Express trusts and similar legal arrangements are not able to be formed under Vietnamese law. However, there is no prohibition on express trusts created under the laws of another jurisdiction and trustees of those trusts from operating in Vietnam (including forming relationships with FIs and DNFBPs).

Supervisory arrangements

50. SBV has the responsibility for AML/CFT supervision in the banking sector and focuses on formulating AML/CFT regulations. SBV's supervision of AML/CFT is not consolidated, and sectoral prudential supervisors conduct specific AML/CFT supervisory activities, not informed by risk. Foreign currency exchange and intermediary payment service providers are supervised by local branches of SBV, and MOF is the supervisor for securities and insurance companies.

51. For DNFBPs, MOF supervises casinos, prize-winning games and accountants. MOC supervises real estate exchange companies and MOJ supervises notaries and lawyers. MIT is nominated to supervise entities dealing in precious metals and precious stones (including gold), and MPI to supervise entities providing investment trust and company services, but dealers in precious metals and stones and TCSPs are not considered in the AML/CFT supervisory framework. The assessment team notes that in practice, AML/CFT supervision for DNFBPs rarely takes place, apart from casinos on very limited occasions.

International Cooperation

52. Vietnam's long land border and mountainous topography create favourable conditions for criminals to illegally transport goods and currencies across the border. This contributes to Vietnam's significant ML risks arising from drug and wildlife trafficking, illegal cross-border transportation of goods and currencies, human trafficking and smuggling. Further, the risks associated with illegal remittance are inherently international, increasing Vietnam's need to actively pursue international cooperation.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

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Key Findings and Recommended Actions

Key Findings

- a) Vietnam has a developing understanding of its ML/TF risks mainly informed by a recently completed national risk assessment (NRA). The multi-agency process to conduct the NRA and activities to share the NRA results reflect good coordination among the Vietnamese authorities and the NRA itself serves as a good foundation for Vietnam's understanding of its ML/TF risks. These processes have generally improved understanding of ML/TF risks of the public and private sectors to a certain extent, however the understanding of ML risk especially beyond the NRA by competent authorities still requires major improvements. The private sectors' awareness of ML/TF risks is mixed across sectors with smaller FIs and DNBFPs require significant improvements.
- b) The findings of the 2019 NRA appear reasonable, although there are some deficiencies in the scope of the NRA as does not cover all the FATF designated categories of offences including organised crime, sexual exploitation and environmental crimes (including illegal fishing), and the conclusions on some of the predicate crimes and sectors warrant more scrutiny. Risk assessments on non-profit organisations (NPOs), legal persons and financing the proliferation of weapons of mass destruction (PF) in late 2019 complement the NRA, Risks of virtual assets (VA) and VA service providers (VASPs) have not been assessed. Law enforcement (LEAs) and other authorities do not regularly produce threat assessments and other assessments of ML/TF risks.
- c) The risk of terrorism and TF in Vietnam are considered low which appears to be reasonable. However, it is not clear that the risks associated with the potential of Vietnam being a transit country for TF are fully understood by the authorities, noting that Vietnam is allocating resources to conduct further analysis on the external threats of TF.
- d) Vietnam issued an AML/CFT National Action Plan (Post-NRA Action Plan), which provide aspects of national policies and high-level strategies to address legal, institutional and capacity gaps and risks to a limited extent. The new agency-specific action plans developed by each of the ministries and agencies include overarching principles and general measures to be imposed to address institutional and capacity gaps, but do not sufficiently focus on actions to address the identified risks. Notwithstanding, it is acknowledged that addressing the legal, institutional and capacity gaps is an important step for Vietnam to further address the identified ML/TF risks and the Post-NRA Action Plan has initiated changes to laws, regulations and policies related to AML/CFT.
- e) Vietnam has not implemented a comprehensive risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF based on assessed risk. The objectives and activities of the competent authorities are not yet consistent with the identified ML/TF risks.
- f) Enhanced measures for identified high-risk areas such as the banking, real estate, foreign exchange and remittance sectors are not implemented. Similarly, Vietnam does not apply simplified measures for lower risk sectors.
- g) At a policy level, there is well established inter-agency cooperation and coordination through the two National Coordination Committees (NCCs) for ML and TF. Some operational-level coordination mechanisms are in place, however, the extent of effectiveness of these operational coordination mechanisms is unclear.

- h) In November 2019 Vietnam nominated the Ministry of Defence (MOD) as a focal point for the implementation of measures to combat the proliferation of weapons of mass destruction and PF, however there is no specific national coordination and cooperation framework for combating PF.

Recommended Actions

- a) Update the understanding of ML/TF risk through additional assessments, including threat assessments (on organised crime, human trafficking, sexual exploitation, illegal cross-border transportation of goods or currencies and environmental crimes), and sectoral assessments (on VA / VASPs, foreign trusts, casinos, dealers in precious metals and stones, legal professionals). In conducting the assessments, consider a broader range of information including intelligence analysis, strategic analysis, national and international research/ reports and increase the involvement of the private sector in the assessment process.
- b) Adopt a national action plan with clear overarching AML/CFT national policies guided by identified threats and sectoral risks. Individual agencies should ensure their agency level plan adopt and incorporate the national action plan based on risk. Implement mechanisms at the national and agency levels to monitor the implementation and progress of the action plans.
- c) Implement risk-based approaches across key authorities to prioritise capacity building and allocate resources to develop and implement measures to prevent and mitigate ML/TF risks. This includes step by step implementation by SBV, MPS, Supreme People's Procuracy (SPP), Supreme People's Court (SPC) and other key authorities to ensure the objectives and activities are consistent with the AML/CFT national policies and identified risks. In order to utilise resources more effectively, apply enhanced measures for identified high-risk areas such as banking, real estate and other relevant sectors and consider to apply simplified measures for lower risk sectors.
- d) Enhance operational level cooperation and coordination by establishing or enhancing mechanisms which focus on areas identified as high-risk in the NRA to ensure proper and regular cooperation and coordination to combat ML/TF. This may include joint task forces among the key LEAs to combat higher risk crimes and joint supervision among the licensing and supervisory authorities on the higher risk sectors.
- e) Ensure the relevant competent authorities cooperate and coordinate in the development and implementation of policies and activities to combat PF, either by incorporating this into the enhanced Post-NRA Action Plan or any new national or agency specific action plans.
- f) Continue to engage REs, based on risk and context including smaller FIs and DNFBPs to improve their awareness of Vietnam's ML/TF risks. These include dissemination of the findings of the NRA and future assessments, including through outreach programmes to ensure all REs have a basic understanding of their AML/CFT obligations and associated risks.

53. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34 and elements of R.15.

Immediate Outcome 1 (Risk, Policy and Coordination)

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Vietnam's understanding of its ML/TF risks

54. Vietnam has a developing understanding of its ML/TF risks mainly informed by a recently completed NRA. The assessment team based this conclusion on: a review of the available risk and threat assessments; and discussions with Vietnam government departments, LEAs, regulatory agencies, and regulated sectors.

55. Vietnam completed its first NRA in April 2019. The joint agencies process to conduct the NRA between September 2016 and April 2019 and activities to share the NRA results reflects good coordination among the Vietnamese authorities. The results of the NRA were shared to a reasonable extent across government and the private sector. The NRA is viewed as a good foundation for Vietnam's understanding of its ML/TF risks however the understanding of ML risk especially beyond the NRA by competent authorities still requires major improvements.

56. Authorities completed risk assessments on NPOs, legal persons and PF in late 2019 to complement the NRA. The risks arising from virtual assets and VASPs have not been assessed.

57. LEAs and other authorities do not regularly produce threat assessments and other assessments of ML/TF risks.

58. The only prior consideration of ML risk in Vietnam by authorities occurred during the 2009 MER though there was no specific or systematic risk assessment conducted prior to the 2019 NRA. The authorities have previously recognised that the risks associated with drug trafficking and corruption warrants careful consideration, as evidenced by the high number of predicate investigations and confiscations in relation to these offences over the last few years.

59. The NRA process conducted using the risk assessment tool developed by the World Bank, provides the national ML risk rating as "medium-high" and the risk rating for TF as "low" which appear to be reasonable. The understanding of ML/TF risks by the competent authorities, which are strongly based on the results of the NRA, are consistent among the authorities. The understanding of ML/TF risks beyond the NRA is not well demonstrated.

60. The NRA Working Group was established by the SBV in September 2016 and comprised representatives from 16 ministries and agencies. Information and statistics were collected from relevant public and private sector entities including 26 banks, 18 insurance companies, 32 e-prize winning game enterprises and six casinos. The participation of remaining private sectors in the NRA was not shown. The draft NRA report was circulated to the members of NCC and selected REs for comment, and the SBV also conducted two seminars in June 2018 with public and private sector stakeholders. The finalised NRA was endorsed by the Prime Minister in April 2019.

61. Findings of the NRA have been shared widely. Between May and July 2019 the SBV conducted six workshops for the purpose of sharing the results of the NRA with the relevant competent authorities and REs.

62. While the overall conclusion of the NRA appears to be reasonable, the ML threat and risk assessment on some of the predicate crimes and sectors lacked thorough analysis and consideration of a wider range of data, which may impact the assigned risk rating. The assessment mainly relies on measurable quantitative data, rather than qualitative judgment with due consideration of context and materiality. While the Vietnamese authorities indicate that the assessment has taken into consideration

qualitative sources, however it is not clear to what extent these qualitative data from all sources available has been considered in deriving the final risk rating. These include data from intelligence and expert research or reports, strategic intelligence analysis, trends and typologies related to ML/TF especially with regard to crimes and sectors which are inherently deemed to be exposed to higher ML risks based on Vietnam's overall risk and context. However, it is acknowledged that despite the deficiencies noted, it does not invalidate the findings of the NRA which assists Vietnam to better understand its ML/TF risks and serves as a good foundation. Notwithstanding, major improvements are required in future risk assessments to further strengthen the understanding of these risks.

63. There are separate risk assessments conducted on NPOs and legal persons, which were completed just prior to the on-site visit in September 2019 and November 2019 respectively. The NPO risk assessment concludes the TF risk of NPOs as "low". The risk assessment of legal persons identifies the ML and TF risks for all categories of legal persons in Vietnam as "medium" and "low" respectively. Please refer to the analysis under IO.5 and IO.10 for further details. In November 2019, the PF risk assessment concluded that the PF risk in Vietnam is "low" (see IO.11).

64. There is no specific ML/TF risk assessment conducted on VA and VASPs¹⁶. In 2018, Vietnam finalised a study on the legal framework with a view to regulate VA and cryptocurrencies. The study indicated that while there is no clear legal framework for VA in Vietnam, transactions in relation to VA can still be carried out. The study also recognised ML/TF risks arising from the anonymous nature of VA.

65. ML/TF risks associated with foreign trusts were not considered in the NRA. While trusts cannot be created under Vietnamese law, foreign trusts can be formed and operate in Vietnam (see IO.4 and IO.5).

Understanding of ML risk

66. The overall scope of the NRA process appears to be reasonable. The NRA covers ML threat assessment arising from proceeds of 17 predicate offences and criminal proceeds originating from abroad. The NRA considers ML international threats which are mainly based on the data from mutual legal assistance, intelligence, foreign counterparts (i.e. FIUs) and cross border transactions. The ML sectoral risk assessment is based on the ML threats and vulnerabilities including the prevalence of specific crimes within the sector. The NRA further identifies institutional and capacity gaps across the public and private sectors, and proposes recommendations to mitigate those gaps.

67. The NRA concludes the overall ML risk of Vietnam as "medium-high" which is considered as reasonable. The NRA also reasonably identifies high-risk external threats which include drug offences, tax evasion, abuse of power and corruption, and the Vietnamese authorities recognise their close proximity with the golden triangle has further heightened the risk of ML external threats. The ML threat of the 17 predicate crimes and the sectoral ML risk for FIs and DNFBPs, as provided by the NRA, are summarised in Tables 2.1 and 2.2 respectively:

¹⁶ The FATF methodology, which specifically included references to VASPs was updated in October 2019 just prior to the on-site visit.

Table 2.1: ML Threats Assessed in the NRA

2	Predicate Crimes	ML Threat	Crimes	ML Threat
	1. Embezzling property (corruption) 2. Organising gambling (without licence) 3. Drug trafficking	High	11. Cross-border smuggling of goods and/or currencies 12. human trafficking	Medium
	4. Receiving bribe 5. Abusing trust in order to appropriate property 6. Abusing positions and/or powers to appropriate property 7. Gambling (illegal gambling) 8. Tax evasion, 9. Protection of precious and rare wild animals (illegal wildlife trafficking) 10. Appropriating property through swindling (fraud)	Med-High	13. Making, storing and/or circulating counterfeit money, treasury bills and/or bonds 14. Manufacturing and/or trading in fake goods 15. Manufacturing, stockpiling, transporting &/or trading banned goods 16. Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means 17. Smuggling	Low

Table 2.2: Sectoral Risk Assessments

Sectors	ML Threat	ML Vulnerabilities	ML Risk
Banks	High	Medium-High	High
Underground Remittance	High	High	
Real Estate Agents	High	Medium	Medium-High
Foreign Currency Exchange and Remittance Co.	Medium-High	Medium	
Securities Firms	Medium	Medium	Medium
Casinos	Medium	Medium	
Insurance Companies	Medium Low	Low	Medium-Low
Trust and Company Service Providers	Low	Medium-Low	
Dealers in Precious Metals or Stones	Low	Medium	Low
Local Development Investment Funds	Low	Medium-High	
Accountants and Auditors	Low	Low	Medium
Lawyer, Notaries & Independent Legal Experts	Low	Low	
People's Credit Funds	Low	Low	Medium
Micro Finance Institutions	Low	Low	

68. There are gaps in the NRA's consideration of some designated categories of offences. The exclusion of high-risk predicate offences for Vietnam including organised crime, sexual exploitation and environmental crimes (particularly illegal fishing) noted as particular concerns. The Vietnamese authorities indicate the NRA's consideration of predicates offences is based on the availability of data from the AMLD, investigations, prosecutions, mutual legal assistance and experience of the LEAs. While the MPS indicated that the exclusion of other FATF designated categories of offences from the NRA is based on either the crimes not occurring in Vietnam or insufficient information available on the crimes. This suggests further analysis under the NRA (or through a separate analysis) is necessary on all designated predicate offences.

69. Vietnamese authorities indicate that the risk of organised crime is considered when assessing the threat of all 17 predicate offences, however specific findings on the linkages of the predicate offences with organised crimes were not demonstrated. As a large cash-based economy, Vietnam's economic growth and cash economy has provided an environment within which organised crime groups thrive. These criminal groups can operate and derive proceeds, from a range of areas, including human trafficking, prostitution, gambling, wildlife trade and drug trafficking (amongst others). In addition, organised criminal activity is often associated with the purchase of property and the use of front companies to disguise ownership. Sexual exploitation including child sexual abuse appears to remain a concern in Vietnam (see below). Open sources information also suggest Vietnam is exposed to environmental crimes especially illegal fishing. This is evidenced by the issuance of a yellow card by the European Commission in October 2017 because of its limited attempt to eliminate illegal, unreported, and unregulated fishing.

70. The NRA assesses the ML threats for human trafficking as "medium". Vietnam is a source, transit, and destination country for human trafficking. The NRA notes that the fundamental reason in the increase in human trafficking is due to the high profits generated. In addition, there are numbers of domestic and international reports, including the 2019 US Trafficking in Persons Report and UNICEF Report on Child Sexual Abuse 2019 among others, that suggest Vietnam is highly vulnerable to human trafficking and the trafficking is mainly for the purpose of modern slavery including sexual exploitation, which may suggest the risks associated with human trafficking are higher than assessed in the NRA. It is not clear the extent to which the NRA has considered this information and as noted above, sexual exploitation is not separately considered under the NRA.

71. The NRA identifies illegal cross-border transportation of goods or currencies as "medium" risk. With a large cash-based economy surrounded by other neighbouring cash-based countries, cash is easily moved across Vietnamese borders, which has heightened the overall ML risk. The illegal cross-border transportation of goods and currencies may also be associated with the underground remittance sector, which is also identified as high-risk in the NRA.

72. In term of sectoral risk, the NRA has reasonably assessed the risk of banks, underground remittance and real estate agents as "high" ML risk, taking into account the context and materiality of the sectors. The on-site visit confirmed the high-risk nature of the real estate sector, which is the major DNFBP in Vietnam. This is mainly driven by the usage of cash and gold, which are highly vulnerable to ML risk, and are used as a means of payment for domestic purchases. There is no indication of the use of VA in Vietnam as payments for property in Vietnam, though very limited consideration has occurred on this means of payment to date.

73. With regard to other sectors, the NRA attributes the ML risk of casinos as "medium". While it is acknowledged that the size of casino sector in Vietnam is small, it is not clear whether the NRA considered other quantitative and qualitative data with regard to the high exposure of casinos to cash, which may suggest a higher ML threat for casinos. The lack of AML/CFT supervision conducted on the casino heightens the ML risks of this sector (see IO.3).

74. The NRA identifies the ML risk of dealers in precious metals and stones as "medium-low" with ML threat rated as "low" noting that the size of the sector within the Vietnamese economy is relatively small. However, gold, which is an attractive vehicle for ML, is a large sector in Vietnam and the NRA notes that cash transactions are common and account for a large percentage of payments. The NRA further provides that the entities operating in gold trading sector have limited AML knowledge and inadequate systems to manage ML risks. In addition, there are indications that retail jewellery companies also have also applied for licenses to operate as a currency exchange service provider which

increases the potential ML/TF risk. This suggests that ML risk associated with precious metals and in particular gold warrants further consideration.

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75. As for the lawyers, notaries and other independent legal experts (rated as “low” ML risk), the NRA provided that the legal professionals do undertake transactions in the real estate sector, which is considered high-risk. The absence of STRs submissions by legal professionals is the primary justification in the NRA for the “low” risk rating of this sector. A more comprehensive sectoral risk assessment will allow for a more nuanced understanding of the ML risks associated with legal professionals, especially when the sector does not understand their AML/CFT obligations (see IO. 4). In addition, it is not clear to what extent does the NRA consider other quantitative and qualitative data especially on the involvement of legal professionals in other higher risk activities including setting up of companies and managing client accounts.

Understanding of TF risk

76. The assessment of TF risk as “low” appears to be reasonable. Between 2009 and 2017, Vietnam has successfully stopped four terrorist plots linked to Viet Tan organisation, suggesting that Vietnam are exposed to some terrorism risks. A further case of the bombing at Ho Chi Minh City’s International Airport in April 2017 highlights that terrorist acts are possible. In assessing the TF risk, the NRA considers whether there have been cases of trafficking of valuable commodities, weapons and explosives from abroad or within Vietnam and actual cases of fire and explosion in Vietnam. The NRA considers Vietnam’s exposure to the threats by foreign terrorist groups however the assessment is more on terrorism activities rather than TF. Vietnam has not detected any cases of Vietnam being used as a transit for TF. However, it is not clear whether the external threats of TF and the potential of Vietnam to be used as a transit country for TF is understood and whether this has been fully assessed, noting that Vietnam is allocating the necessary resources to conduct further analysis on the external threats of TF.

National policies to address identified ML/TF risks

77. Upon the completion of the NRA in April 2019, Vietnam issued a Post-NRA Action Plan endorsed by the Prime Minister which has initiated changes to laws, regulations and policies related to AML/CFT. The SBV is responsible to monitor the implementation of the Post-NRA Action Plan and to report to the Prime Minister on the implementation progress of the action plans. Prior to the Post-NRA Action Plan, Vietnam had issued four action plans between 2010 and 2014 mainly targeting the reforms of the AML/CFT laws, regulations and policies, including criminalisation of ML and TF (to a certain extent), and preventive measures.

78. While the Vietnamese authorities intend that the Post-NRA Action Plan should address the ML/TF risks identified by the NRA, in substance the Post-NRA Action Plan appears to primarily address specific short-term systemic vulnerabilities including legal, institutional and capacity gaps. While these reforms are important steps for Vietnam to further address the identified ML/TF risks, these measures lack prioritisation of actions based on the risks identified, with all actions due to be completed by 2020.

79. The Post-NRA Action Plan has elements of a national policy, but does not specifically articulate the overarching intent, approach and priorities to address ML/TF risks for Vietnam. Out of the 52 action items provided, only two action items address ML/TF risks based on the findings of the NRA. These include SBV requesting REs to enhance the monitoring of transactions with high-risk crimes, and MPS, SPP and SPC promoting investigation, prosecution and adjudication of ML cases that parallel with high-risk crimes. These action plans have yet to be translated into effective and sustainable implementation.

80. Based on the Post-NRA Action Plan, the relevant competent authorities have issued their own agency-specific action plans. Similar to the Post-NRA Action Plan, the agency-specific action plans are more related to overarching principles and general measures to address institutional and capacity gaps rather than the identified risk. This includes the action plan issued by the MPS directing the LEAs to intensify ML investigations parallel with the predicate offences, to organise training courses for officials of the MPS and to strengthen cooperation among LEAs. The MOC has issued a letter to Construction Departments and real estate agents in July 2019 to request the implementation of AML measures in the sector. In August 2019, the SPP instructed the provincial and district level SPP to review and assess evidence for prosecuting ML/TF offences. At the same time, the SBV also instructed REs under their purview to implement regulations on AML including to update their internal regulations. These letters and instructions were issued just prior to the on-site visit, which has not provided opportunity for full implementation.

Exemptions, enhanced and simplified measures

81. Vietnam has not applied enhanced and simplified AML/CFT measures based on high or low risk respectively based on findings of risk assessments. No enhanced measures have been applied to higher risks sectors such as the banking, underground remittance, real estate and foreign exchange and remittance to mitigate the risks. Similarly, no simplified measures have been implemented in sectors where risks are lower, noting that Vietnamese laws allow for REs to apply simplified CDD measures for customers assessed to be of low risk (see c. 1.8). There is no indication that authorities have assessed how these simplified measures have promoted financial inclusion in Vietnam. It is recognised that Vietnam has not exempted any sector from applying the FATF Recommendations based on risk (see c. 1.6).

Objectives and activities of competent authorities

82. Overall, Vietnam has not implemented a comprehensive risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risk. The objectives and activities of the competent authorities are not yet consistent with the ML/TF risks identified by the NRA. Whilst the Post-NRA Action Plan and agency-specific action plans are positive steps, the investigations and prosecutions of ML on related predicate crimes are not consistent with the identified risks and supervisory authorities are not conducting supervision on a risk-sensitive basis. As analysed in other respective Immediate Outcomes, the activities of competent authorities are only aligned with the identified ML/TF risks to a negligible extent.

83. There are no clear indications that the criminal justice system focuses its resources and efforts on ML, including areas of higher ML risk. LEAs did not demonstrate they have adopted a risk-based approach for investigations as intended in the NRA though MPS has indicated that a special unit responsible for AML was created just prior to the on-site visit. Despite the low TF risk, it appears that Vietnam has relatively extensive resources in place (see the analysis of IO.9). AMLD indicates that there was an increase in its resources in June 2019, however, the increase is on the basis of improving the overall function of AMLD and not for the re-alignment of resources based on the identified risk. The objectives and activities of AML/CFT supervisors and the associated allocation of resources to AML/CFT supervisory activities have not been adjusted due to the findings of the risk assessments.

National coordination and cooperation

84. The framework for national coordination and cooperation at a policy level is well structured and operates well. At a policy level, there is inter-agency cooperation and coordination through the two

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

2

separate NCCs for AML and CFT and chaired by the Deputy Prime Minister and the Prime Minister respectively. The NCCs are also designated to assist the Prime Minister in directing and coordinating national efforts for the purpose of prevention and combating ML and TF in Vietnam. During the period under review, the NCCs have played a key role in the development and implementation of AML/CFT legislation and the conduct of the NRA. The NCCs have a strong statutory basis and reflect political level leadership and commitment to AML/CFT efforts.

85. The NCC on AML (chaired by the Deputy Prime Minister) was established in April 2009 and comprised 15 ministries and agencies. Over the past four years, the NCC convened eight times to discuss issues pertaining to the implementation of the national action plans, inter-agency coordination and the NRA. The NCC on CFT, which was established in November 2015 and chaired by the Prime Minister, has formally met four times to discuss issues regarding the implementation challenges of CFT measures. These include who takes the lead in investigating terrorism and TF and cooperation mechanisms among authorities.

86. There are challenges with operational-level coordination and cooperation on AML. Competent authorities are not connected through a broader AML operational level coordination arrangement. The authorities however indicate that there are several specific operational level coordination mechanisms and agreements which include the supporting standing committees to execute the decisions of the NCCs, bi-lateral working arrangements and information sharing, and an ad-hoc working group on specific cases or issues. However, the outputs from these existing mechanisms for operational activities related to ML were not demonstrated. The regulation on coordination regarding the exchange of information for investigation, prosecution and adjudication of ML cases among the MPS, SPP and SPC is a welcome development, but it was introduced just prior to the on-site visit and was yet to better support effective operational level cooperation on AML matters.

87. Vietnam's mechanisms for operational level coordination and cooperation on TF appear to be more robust compared to ML. The provincial Steering Committee for Terrorism Prevention (Steering Committee) coordinates at the provincial levels with regard to CFT measures. In addition to its regular meetings, the Steering Committee has organised 313 conferences from 2013 to 2018 to raise the awareness of the provincial agencies. The SBV also established a CFT coordination committee for the banking sector led by the Deputy Governor of the SBV. Members of this coordination committee are the heads of department within the SBV and the banking institutions. The CFT coordination committee meets once a year to direct and issue CFT action plans in the banking sector which mainly cover CFT preventive measures for the banking institutions such as transaction monitoring, STR submission, red-flag indicators and training on CF.

88. There is no specific national coordination and cooperation framework for combating PF. Vietnam's November 2019 PF risk assessment found that the coordination and cooperation between the competent authorities was fragmented due to the absence of a focal coordination agency for PF. In addition, the authorities recognised that there is limited collaboration and information sharing for PF. Based on the PF legal framework that was established during the on-site visit, the MOD is the national focal agency for PF while the High Command of Chemical, which is an agency under the MOD, is the standing agency.

Private sector's awareness of risks

89. The SBV disseminated the full NRA report to the relevant ministries and agencies. It is not clear if all REs received the full report, even though all REs have access to the executive summary of the NRA. The participation of the private sector, especially selected banks and insurance companies in the

NRA process were confined to the provision of data and a review of draft report. It is unclear how private sector feedback was considered and whether it influenced the adopted NRA.

90. Prior to the endorsement of the NRA, the AMLD conducted six briefings on the NRA findings to public and private sector entities. Relevant competent authorities have instructed their respective REs to refer to the SBV's website for the NRA findings.

91. The private sector entities met with during the on-site appear to have a general awareness of the results of the NRA though this varied significantly both within and across sectors. Larger FIs (i.e. banks, insurance and securities firms) seem reasonably well aware of the ML/TF risks. However, while awareness of the risks identified in Vietnam within the financial sector appears reasonable, the awareness of this risk by smaller FIs including non-bank credit institutions and money-changers requires major improvements. The awareness of ML/TF risk identified in the NRA among DNFBPs is negligible. In light of the materiality of the banking, insurance and securities sectors to ML/TF risks, the assessment team places higher weight on these sectors.

Overall conclusion on Immediate Outcome 1

92. Vietnam demonstrates some of the characteristics of an effective system. In determining the rating, greater weight is given to Vietnam's understanding of its ML/TF risks and its national policies and activities to address the identified risks, which require major improvements. The completion of the NRA is a positive step to provide a good foundation for Vietnam in its understanding of the ML/TF risks. Despite the deficiencies noted in the NRA, the findings and overall conclusion of the NRA are still acceptable which can be used by the Vietnamese authorities to better strategise the overall risk mitigation through the enhanced Post-NRA Action Plan. Major improvements are also required in relation to objectives and activities that are in line with the national policies and identified risk, and operational level coordination mechanisms across the public sector, which lesser weight is given. The least weight is applied on the areas on exemptions, enhanced and simplified measures and the awareness of ML/TF risks by DNFBPs which require fundamental improvements.

93. **Vietnam has a moderate level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3

Key Findings and Recommended Actions

Key Findings

I06

- a) LEAs do not regularly develop, access or make use of financial intelligence and other information to develop evidence of ML/TF and predicate offences, or to trace criminal proceeds.
- b) The AMLD, as Vietnam's FIU, is the only agency that produces financial intelligence. Challenges with STR availability and quality limits the sources of AMLD analysis and intelligence products. The number of STRs and other reports received by AMLD is low overall, and does not provide a good basis for the AMLD's analysis, which undermines the AMLD's intelligence role. The level of STR reporting is not consistent with Vietnam's risk profile, with negligible reporting by higher risk sectors such as real estate, casinos and foreign currency exchanges.
- c) The AMLD lacks the information technology, processes and trained staff to undertake both operational and strategic analysis. The limited ability to develop financial intelligence significantly undermines use of financial intelligence by competent authorities in investigating ML/TF.
- d) The AMLD produces very limited operational analysis, which is of low quality. Strategic analysis has been produced in four instances. For those STRs disseminated by AMLD, there is limited indication that further analysis is undertaken on the STRs to strengthen or add value to these reports.
- e) Financial intelligence provided by the AMLD to LEAs focuses on predicate offences (rather than ML). Very few of AMLD disclosures ultimately contribute to ML or predicate offence investigations and prosecutions. While Vietnam has had some STRs related to TF, these have not led to TF investigations.
- f) There is a minimal exchange of financial information and intelligence between AMLD and other competent authorities to support their operational needs. The absence of coordinated and effective cooperation arrangements at the operational level significantly impedes the use of financial intelligence and information. Additionally, the absence of protected and secure channels for dissemination risks exposure of sensitive information.

I07

- a) Following the completion of the NRA in 2019 and just prior to the on-site visit, Vietnam required LEAs to increase their investigation of ML offences. In practice, prioritised investigations of ML had not commenced, and ML investigations do not regularly occur in parallel with predicate investigations. The lack of parallel investigations has contributed to the lack of ML cases.
- b) Vietnam lacks a clear national policy to prioritises the investigation of ML offences, with a focus on parallel investigations for the high-risk proceeds generating offences.
- c) LEAs have a range of powers and responsibilities to investigate and prosecute ML offences. However, Vietnam exhibited only three examples of ML prosecutions (related to embezzlement, fraud and gambling offences) in the last 10 years and has only three ongoing ML investigations (related to



fraud and smuggling). There were no examples of cases pursuing stand-alone money laundering activities, investigations involving foreign predicates or ML through legal persons.

d) In light of the number of investigations of proceeds-generating predicate offences, the extent of ML investigations, prosecutions and convictions is not commensurate to the ML risk profile of Vietnam. Where parallel financial investigations occur, they are conducted largely in support of proceeds of crime confiscation efforts rather than as dedicated investigations into laundering the proceeds of crime.

e) The MPS does not conduct ML investigations consistent with Vietnam's risk profile, does not have a dedicated ML investigation team to target ML activities and there appears to be a general lack of awareness of ML offences or the value of "following the money."

f) LEAs and competent authorities in Vietnam exchange information and cooperate during investigations, but do not conduct joint investigations. Cooperation is typically focussed on predicate crimes with little focus on parallel financial investigations for ML.

g) Dissuasive and proportionate sanctions have been applied in the only three ML prosecutions completed.

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a) Priority has been given to pursuing the confiscation of proceeds of crime, and Vietnam has some policies and strategies at the national and operational level to pursue confiscation. The prioritisation has not been reflected across all LEAs. Vietnam has set ambitious confiscation targets for financial crime and corruption which is commendable.

b) Vietnam restrains and confiscates the proceeds or instruments of crime to satisfy court judgment amounts (which represent the damage arising from a criminal offence).

c) Vietnam's confiscation results are, to some extent, reflective of the ML risk profile, particularly in relation to high-risk predicates such as embezzlement of property, organising gambling and drug trafficking. However, the confiscation relating to some corruption related predicates is low when compared to other predicate offences. Confiscation of proceeds and instruments relate primarily to domestic predicate offences.

d) The MPS and the SPP, as the primary authorities mandated to pursue asset freezing, face challenges in identifying and tracing property, particularly connected to complex crime types. Furthermore, when faced with complex matters and sophisticated defendants, LEAs have difficulties tracing and linking property to the defendants in criminal proceedings.

e) Vietnam did not demonstrate a regular approach to restraining the widest range of assets at an early stage or in response to detailed asset tracing investigations. While the law allows for restraint to take place without prior notice, authorities generally restrain assets at the point charges are filed.

f) While some guidance on asset management exists, Vietnam can improve the management of seized assets to ensure maximum value is recovered. There is no designated government authority to manage restrained, seized and confiscated property.

g) Even though the law allows for restraint to take place without prior notice, authorities generally restrain assets after charges are filed and the person(s) subject to investigation become aware of the criminal investigation, which creates significant challenges in preventing the dissipation of assets prior to restraint.

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h) The recovery rate of property subject to a confiscation order (the amount of property confiscated when compared to a judgment amount) is low and is an issue across all predicate offences, with an average recovery rate of approximately 29% of judgments for confiscated property being recovered.

i) Confiscation action for false or non-declared movements of cash or bearer negotiable instruments (BNI) also appears to be modest. LEAs do not appear to prioritise or have any strategy to effectively investigate the source of funds seized at Vietnam's borders, ports and airports.

Recommended Actions

106

a) LEAs and other investigation authorities should improve the development and regular use of financial intelligence and other relevant information, both through LEAs' own processes and intelligence developed by AMLD to prioritise financial investigations to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF. LEAs should provide feedback to AMLD on the usefulness of intelligence.

b) The AMLD should significantly enhance its analytical process by improving the analytical workflow that reflects criminal intelligence methodologies and integration of data holdings to make connections between persons, entities, assets and transactions. AMLD should collect sufficient financial information and provide value-added products to LEAs, prioritising proactive dissemination. The enhancement should cover operational and strategic analysis.

c) The AMLD's financial intelligence products should expand beyond predicates to include a focus on ML and the movement of criminal proceeds to be more responsive to the ML risk profile.

d) The AMLD should enhance its timely access to the databases of LEAs and make greater use of platforms to electronically exchange information, including the General Dept of Customs (GDC). The coordination and cooperation between the AMLD and the GDC should be improved to share information, including cross-border reports, and support Customs financial investigations.

e) Further resources should be allocated to the AMLD and other LEAs to improve the production and use of the financial intelligence in keeping with Vietnam's risk profile.

f) The AMLD and LEAs should develop improved systems, processes and staff capability, including adequate and relevant training to improve the quality of analysis and financial investigations that best supports the operational needs of LEAs to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF.

g) The SBV should ensure the operational independence of the AMLD in relation to its analysis and dissemination functions, arrangements for domestic and international cooperation and ability to obtain and deploy resources.

h) Cooperation and exchange of information and financial intelligence between the AMLD and other competent authorities should be enhanced to support their operational needs. Protected and secure channels for dissemination between the AMLD and other authorities should be developed and used to protect sensitive information.

I07

a) Clear national policies should be developed to raise awareness for all LEAs and prosecution authorities to prioritise and conduct ML investigations and prosecutions both in parallel to predicate offences and for stand-alone ML, in accordance with Vietnam's risk profile. The MPS and other LEAs should demonstrate the prioritisation.

b) Develop and implement ML investigation policies and procedures for each LEA with a focus on ML associated with key risks. This should include ML investigation training and the establishment of specialist ML teams focusing on parallel investigations for the high-risk proceeds generating offences.

c) Support better awareness and understanding of LEAs and prioritise the targeting of third party money laundering and using ML investigations to identify and target networks at the profit taking level of crime.

d) Build capacity across agencies to ensure that investigators and prosecutors are adequately resourced and trained to identify, investigate and prosecute ML activities possibly through establishing taskforces or similar arrangements for several competent authorities to jointly investigate ML, where appropriate.

e) The MPS should enhance information exchange and investigation cooperation channels with the GDC to effectively address cross border crimes and associated ML.

f) Continue to support investigation of transnational ML cases with formal cooperation (MLA).

g) The SPP should engage closely with the MPS to identify potential ML offences and prepare matters for prosecution to enhance prosecutions and application of sanctions.

I08

a) Vietnam should continue to review, and where necessary amend, policies and strategies at the national and operational level pursuing confiscation, including repatriation, sharing and restitution of criminal proceeds, instrumentalities, and property of equivalent value, in particular for areas identified to be high-risk.

b) The MPS should allocate greater resources (personnel & systems), budget and training to investigate assets associated with complex financial crimes and identify the owners of property held in complex structures.

c) LEAs and prosecutors should set and implement agency-level priorities to trace and restrain asset and pursue confiscation for high-risk ML predicate offences to enhance identification of instruments and proceeds for confiscation. In particular, LEAs should focus investigations on cash and high-risk assets such as real estate.

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- d) Prioritise improving intelligence, investigative and confiscation measures to deal with cash smuggling. The MPS and SPP should establish stronger channels of information sharing and investigation cooperation between the GDC and AMLD. LEAs should identify high-risk ports where cash smuggling is taking place and apply appropriate enforcement measures.
- e) Vietnam should consider making it a requirement that parallel financial investigations (including for the purpose of tracing asset confiscation) are conducted into all major proceeds generating investigations, in particular in tracing and linking property to defendants in corruption and high profile cases.
- f) Vietnam should consider establishing specialised teams to trace assets, especially in corruption cases and where large cash transactions take place. LEAs should consider forming specific taskforces for this purpose, where appropriate.
- g) Vietnam should explore further use of tax remedies to pursue and recover proceeds of crime where other criminal remedies may not be available.

94. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.1, R.3, R.4 & R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

Immediate Outcome 6 (Financial intelligence ML/TF)

95. The AMLD is Vietnam's FIU, and housed within the Banking Supervision Authority (BSA) of the SBV. It acts as the national centre to receive, analyse, and disseminate financial intelligence and other information related to ML and TF. The AMLD plays an instrumental role in coordinating AML/CFT efforts in Vietnam. It collects cash transaction reports (CTR), cross-border wire transfer reports (EFTs), STRs, and other information from REs and disseminates the financial intelligence to LEAs. It is an administrative FIU with no law enforcement powers, and is able to undertake AML/CFT supervision.

96. The AMLD has 36 staff in four divisions with 11 staff assigned to the collection and analysis of reports.

Use of financial intelligence and other information

97. Vietnamese LEAs make some use of financial investigations related to predicate offences, but limited use of financial intelligence and information. Noting the limited number of ML investigations and prosecutions (four ML investigations, three prosecutions, and three convictions in the last ten years), financial intelligence is not effectively developed or used by LEAs to develop evidence and trace proceeds related to ML and TF. The use of financial intelligence in the investigation of predicate offences is higher, however, it is still limited when compared with Vietnam's context and risk profile. LEAs do not develop or use financial intelligence to open ML files or parallel financial investigations when predicate investigations indicate a financial link.

98. LEAs in Vietnam, and MPS in particular, make limited use of the financial intelligence developed by the AMLD. When taking into account the risk and context of Vietnam, LEAs do not regularly request the AMLD for financial intelligence or other information for predicate investigations, asset tracing or ML/TF investigations.



99. The AMLD received 760 requests from competent authorities during the period 2013-2018. The information requested from the AMLD related primarily to defendants and suspects, particularly concerning predicate crimes. The AMLD has responded to all requests from investigative units of MPS, Tax Authorities, and GDC (customs). The AMLD has an internal procedure to prioritise 'urgent cases' for analysis. However, there are no specific prioritisation procedures both for STRs and any requests received from LEAs.

100. The MPS is the largest recipient of the AMLD's intelligence disseminations. During 2014-2018, MPS received 349 cases comprising of 1,832 STRs from the AMLD. Despite the large number of intelligence products produced, the AMLD disseminations only led to 24 cases where predicate offences were investigated, prosecuted and convicted. Only six ML cases had been investigated with only three of these resulting in convictions during that period. There were three on-going ML investigations at the time of the report¹⁷.

101. Table 3.1 outlines the list of disseminations and investigations for the period 2016 to 2019. The 'investigated cases' listed below may contain information from one or more STRs and additional information by the AMLD

Table 3.1: Use of Financial Intelligence

Year	STRs Received	STRs Analysed	STRs Disseminated	Investigated Cases	STRs leading to ML cases
2016	1,325	1,325	962	81	0
2017	1,474	1,474	530	57	1
2018	1,540	1,450	749	68	1
2019	2,156	1,032	1,118	148	7
Total	6,495	5,281	3,359	354	8

Source: AMLD

102. The intelligence developed by the AMLD is not well utilised in ML and TF investigations. Vietnamese authorities in particular, MPS, have not provided feedback to AMLD on the usefulness of financial intelligence. There are no dedicated ML investigation and prosecution units in the relevant agencies to prioritise ML cases and conduct parallel investigations (see the analysis of IO.7).

103. The AMLD has not provided any examples of spontaneous disclosure to the GDC, although the AMLD has responded to requests for information from the GDC. Additionally, the information provided by the GDC to the AMLD on cash and BNI disclosures lacks critical information on the source of funds and purpose of the transaction to initiate cross-border smuggling red-flags. There have been no investigations, prosecutions or convictions triggered by suspicious cash and BNI declarations.

104. The following case study is one of the limited examples of the use of STRs (as financial intelligence) disseminated by the AMLD to the MPS in an ML investigation which lead to prosecution of the suspects.

Case Study 1 – Case triggered by AMLD dissemination - Giang Van Hien (2014)

The investigation of Mr Giang Van Hien was triggered based on the STR disseminated by AMLD. Mr Giang Van Hien was the father of Mr Giang Kim Dat (Sales Manager at Vinashin Ocean Shipping Company) who was accused of embezzlement. The sales manager asked his father to open 22 bank accounts in foreign currencies at different banks to avoid the attention of competent authorities

¹⁷ A total of seven ML cases were under investigation by June 2021.

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and to layer the proceeds of crime and facilitate transfers from foreign partners involved in the criminal activity.

The foreign partners made 92 transactions to these accounts amounting to USD 16 million. Mr Gian Van Hien purchased 40 real estate properties under the names of his family members and bought and sold 13 luxury cars. He was aware that the money was the proceeds of crime and knowingly conducted the transactions.

In February 2017 Mr Giang Van Hien was sentenced to 12 years on ML charges. MPS initiated a second ML case 'Phan Sao Nam and his accomplices' which led to a conviction in 2018. This matter also arose as a result of STRs disseminated by AMLD.

STRs received and requested by competent authorities

105. STRs filed may not contain sufficient relevant information due possibly less than optimal training or negligible feedback to REs to allow the FIU to develop intelligence of possible criminal proceeds, ML and associated predicates or TF. STRs are reported from a narrow range of REs and there are concerns that the quality of STRs is not high. There are serious concerns about the extent to which accurate financial intelligence can be developed based on STRs because of the low level of reporting overall, non-existent reporting in some high-risk sectors, and general concerns about the poor quality of STRs filed.

106. The AMLD receives reports in both manual and electronic form with manual reporting more prevalent except for commercial banks who tend to report STRs electronically. Manual reporting poses challenges to the AMLD for subsequent retrieval and analysis.

107. In relation to customs matters, the GDC has made no requests for information from the AMLD in relation to ML, TF, or any predicate offences. However, the AMLD has submitted low number of requests for information to GDC to seek further information. AMLD also receives cross-border cash and BNI reports from GDC, and the reports are saved in the AMLD database. The reports are not used to develop financial intelligence or assist LEAs' development of intelligence or financial investigations. AMLD did not demonstrate any dossier triggered by cash & BNI reports or that the information was used in any ML case. While intelligence is not broadly shared between the GDC and the AMLD, no examples of feedback of financial intelligence were presented that the AMLD has received from the GDC. Additionally, Vietnam has not provided any examples of false CBNI declarations. Operational needs supported by FIU analysis and dissemination.

108. In addition to STRs, the AMLD receives EFTs from banks and CTRs from FIs and some DNFBPs. AMLD has very large holdings of EFTs and CTRs, but very small numbers of STRs (approximately 1,000,000 CTR and 60,000 EFT reports per month). As of December 2018, the AMLD held approximately 9,000 STRs filed since 2014, and 300 million transaction reports (EFTs and CTRs) with respect to 11 million customers.

Table 3.2: CTRs and EFTs received 2016-2018

Reporting entities	Report type	2016		2017		2018	
		Report	Transactions	Report	Transactions	Report	Transactions
Banks	CTR	26,759	40,307,687	27,364	43,816,710	27,254	51,504,203
	EFT	27,045	2,847,848	27,839	2,952,749	27,274	3,105,673
Casinos	CTR	805	7,552	867	9,417	904	8,039
Financial companies	CTR	1,247	13	1,021	57	1,017	103

Gold trading co.	CTR	785	3,116	734	2,174	375	1,105
Insurance co.	CTR	267	498	322	637	340	689
Lottery co.	CTR	29	63	270	763	173	551
People's credit funds	CTR	46	0	320	593	466	941
Real estate co.	CTR	0	0	0	0	0	0

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Table 3.3: Suspicious Transaction Reports received by AMLD

	State owned bank	Joint stock commercial banks	Foreign banks & branches	Insurance co.	Securities co.	Overseas remittance company	other (including FIs and DNFBPs)	Total
2014	413	352	84	24	1	-	-	874
2015	305	851	192	80	-	114	-	1,542
2016	236	456	237	25	-	372	-	1,326
2017	305	343	294	46	-	485	1	1,474
2018	380	322	523	25	-	285	5	1,540
2019*	543	325	410	25	-	41	9	1,353
Total	2,182	2,649	1,740	225	1	1,297	15	8,109

*as of 9/2019

Table 3.4: AMLD requests to REs for additional information 2013 - 2018

	2013	2014	2015	2016	2017	2018	Total
Requests per year	96	145	275	282	155	203	1,156

Table 3.5: MPS requests to AMLD in relation to TF – 2013 - 2019

Year	Requests	Response	Feedback
2013	9	9	No prosecutions or convictions
2014	26	26	
2015	23	23	
2016	25	25	
2017	39	39	
2018	29	29	
2019	33	33	
Total	183	154	

109. During the period 2014-2018, the majority of STRs received by the AMLD were disseminated to the MPS. Low numbers of investigations have been initiated by MPS based on the STRs it has received. MPS cannot process (analyse and investigate) and consider all the STRs it receives. The AMLD made 1,832 disseminations of STRs to the MPS, but as outlined above, the effective use of the financial intelligence developed by the AMLD is very limited. The very low levels of STR reporting from non-bank FIs and DNFBPs and the low quality of cross border declarations are significant gaps in the basic information available to the AMLD to support analysis and dissemination.

110. Over 80% of all STRs are filed by banks, but less than 1% were from DNFBPs and certain FIs (non-bank credit institutions and money-changers). This limits the ability of the AMLD to analyse and disseminate financial intelligence in relation to these sectors, some of which pose a higher ML risk for Vietnam. The real estate sector, remittance companies and casinos, for example, face higher ML threats,

which suggests that the number of STRs received are not in line with the level of ML risk in these sectors resulting in no intelligence developed to support increased numbers of ML investigations.

3 111. The AMLD provides training and outreach programs to REs in order to enhance their awareness of their reporting obligations and improve the quality of STRs. In particular, the AMLD noted that it engages with banking institutions to improve the AML/CFT measures within this sector. However, no such coordination and outreach occurs with respect to non-banking financial institutions and DNFBPs. Overall, the training and outreach has offered negligible improvements in the level and quality of reporting in particular by non-banking financial institutions and DNFBPs.

112. The AMLD receives some TF related intelligence reports from banks despite gaps with the statutory requirements for REs to report STRs in respect of TF (see R.20).

113. The GDC also provides the AMLD with information relating to cash and BNI declarations on a monthly basis. The cross-border cash reports dispatched by the GDC to AMLD are limited and lack crucial information including the source of funds and purpose of the transfer. Additionally, it is noted that the coordination and cooperation mechanism between AMLD and the GDC is weak, which can hamper the quality of AMLD's analysis especially in relation to cross-border crimes.

Operational needs supported by FIU analysis and dissemination

Analysis

114. The AMLD's analysis of STRs and other reports is very limited prior to dissemination to LEAs. AMLD lacks integrated analytical information technology tools to facilitate the analysis process.

115. The AMLD has some processes and operating procedures for operational analysis (2019 internal circular), including some elements of prioritisation. Despite this, concerns remain that very limited operational analysis is undertaken prior to dissemination, rather STRs (which form suspicion) are transferred to LEAs without analysis to 'add value' to the STR.

116. The AMLD has produced some strategic intelligence products that consider patterns of ML and associated predicates based on aggregated STR data. AMLD issued an internal circular in 2019 listing the data mining protocols and processes for strategic analysis. Four Strategic analysis reports were produced between 2015 and 2018¹⁸ covering: cash withdrawal (foreign currency) abroad (2015); bank cards (2017); remittances (2017); and payment intermediaries (2018).

117. The AMLD utilizes a limited number of databases to conduct its analysis (including the MPI's Business Registration Portal and the Taxation Authority databases), and its ability to utilise LEA and administrative data in its analysis is very limited. The process to obtain LEA data is largely manual and time-consuming. The AMLD has limited direct access to GDC (customs), Tax, Criminal Records, Immigration, and other LEA portals. The AMLD disseminations lack information from other databases, which significantly diminishes the value of disseminated reports.

118. Despite its relatively small staff numbers (36 staff with 11 staff allocated to analyse STRs and other financial information), the AMLD advised that it has analysed 100% of the STRs it received during the period 2014-2018 which further reinforces the finding that limited analysis is undertaken to enhance each report prior to dissemination to LEAs. Limited access to data sources, limited number

¹⁸ In 2020-2021 the AMLD is completing a further 4 strategic analysis reports. Topics include gambling activities; international money transfer (inward/outward); internal AML/CFT regulations and audit of FIs.



and low capacity of analysts, and lack of up-to-date guidance material further confirm that the AMLD's ability to provide value-added products to the LEAs is severely limited.

119. While the AMLD also receives cross-border cash and BNI reports from GDC, these have not been used by the AMLD to develop intelligence reports. However, the AMLD is planning to sign an MOU with GDC to further enhance the use of information through enhanced engagement and understanding of the benefits of these reports.

120. The AMLD has not sought any information about ML and TF from foreign counterparts. Therefore, AMLD analysis generally does not include information obtained from foreign counterparts. AMLD is not a member of the Egmont Group of FIUs and the international division of the AMLD is limited to information exchange concerning ML. the AMLD has not sought any information about ML and TF from foreign counterparts. This is not in keeping with the ML risk profile.

121. Noting the issues raised above, the process of analysing and disseminating financial intelligence requires a thorough review to incorporate the feedback of the LEAs on the usefulness of the AMLD's disseminations in order to support a proportionate number of investigations, prosecutions, and convictions based on the AMLD's dossiers.

122. In relation to TF, AMLD has disseminated 29 cases of financial intelligence disseminations to MPS between 2013 and 2019 based on TF-related matters reported by banks. These reports have not led to any investigations, prosecutions or convictions and it is unclear what analysis occurred in relation to them. Vietnam's NRA outlines that its TF risk is low, which may be a reason for the limited intelligence developed by the relevant agencies, including the AMLD, in relation to TF. The AMLD has not submitted any requests to foreign and domestic counterparts about TF, which is in line with a low risk for TF. REs have filed a number of TF-related reports to MPS and SBV.

Dissemination

123. Exchange of information between the AMLD and LEAs is facilitated via MOUs. However, the process of exchanging information and communication with the LEAs is manual (i.e. hard copy) which gives rise to delays in dissemination and concerns about data security. Whilst some protections are in place to secure the confidentiality of information, the exchange of information manually raises the risk of breaches of confidentiality and security of information and intelligence.

124. The number of disseminations is not proportionate to the risk profile or context of Vietnam. This is due to the limited quality of products developed by the AMLD, limited capacity of LEAs to investigate ML and financial crime cases and the focus of investigators and prosecutors on predicate crimes rather than ML. The following table highlights the number of STRs disseminated to the relevant competent authorities during the period 2014-2019.

Table 3.6: STRs disseminated

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

* As of September 2019

125. The vast majority of STRs within the category of Inspection Agencies are provided to the tax authorities. The disseminations made to other agencies include the GDC, MoF, MoD, Department of Corruption Prevention, High Command of Border Guard, MoFA, MoIT, Provincial Department of Civil Judgement Enforcement, Planning and Investment Departments, and Supervisory Department of Ministry of Construction.

126. The AMLD has disseminated the following cases to the relevant agencies (MPS, MOD, SPP, and any other agency authorized by law to conduct an initial investigation):

Table 3.7: Disseminations from AMLD(2014-2019)

Agency	Cases	Linked STRs
MPS	349	1,832
Tax Authorities	234	1,622
Other	44	101
Total	627	3,555

127. Financial Intelligence provided by the AMLD relates primarily to predicate offences and are directed to specific sections of MPS (i.e. areas dealing with specific predicate offences). The AMLD's dissemination is very limited relating mostly to asset tracking and providing leads for parallel investigations. However, the AMLD indicated that they actively provide information 'upon request' to LEAs though they have not provided information that the AMLD's disseminations (upon request and spontaneously) has led to parallel investigations and prosecutions other than the three ML convictions (see IO.7). In summary, the AMLD did not demonstrate that it has produced proactive analytical products that have been disseminated to LEAs. AMLD has only provided the records of STRs received and transferred to LEAs.

Table 3.8: Intelligence reports disseminated in relation to TF

Year	Cases	Linked Intelligence Reports
2014	1	3
2015	9	10
2016	1	1
2017	3	3
2018	2	2
2019	5	10
Total	21	29

128. The AMLD has no standard procedure outlining the process for spontaneous disclosures for TF. In addition to the spontaneous disclosures by the AMLD mentioned above, the MPS has requested AMLD to provide financial intelligence concerning 151 TF dossiers under its investigation.

Cooperation and exchange of information/financial intelligence

129. Competent authorities did not demonstrate a high degree of co-operation, coordination and exchange of financial intelligence. Competent authorities in Vietnam do not co-operate and exchange information and financial intelligence on a regular basis for AML/CFT, including internationally.

130. As outlined in IO.1, coordination and cooperation mechanisms at the operational level require improvement. The competent authorities in Vietnam have the legal power to cooperate. The AMLD has signed MOUs with Vietnam INTERPOL, MPS, and Taxation Department of MOF. However, Vietnam did not demonstrate how existing MOUs have enhanced cooperation between the AMLD, LEAs and other



key government agencies. It appears that there is a need for AMLD to further enhance the scope of cooperation and coordination with GDC (customs), Tax Authorities, MPS, and other competent authorities and improve the information sharing. Though AMLD has responded to all the requests received from LEAs, the information exchange does not take place electronically in encrypted form. Prioritisation of the requests is not sufficiently supported at the AMLD and LEAs do not regularly provide feedback to the AMLD, not only on the result of the dissemination but also on the usefulness of the information provided by the AMLD.

Overall conclusion on Immediate Outcome 6

131. Overall the development and use of financial intelligence by LEAs is very limited in Vietnam. The AMLD's intelligence development is limited and LEAs rarely request or make use of AMLD information in their predicate, asset tracing or ML investigations. The development of financial intelligence is hampered by the low numbers and quality of STRs and while CTRs, EFTs and cross border reports are reported, they do not appear to be used to enhance disseminated reports. AMLD makes little direct or indirect access to data sources and major deficiencies were flagged in the analysis process. The AMLD lacks the information technology, processes and trained staff to undertake both operational and strategic analysis. The AMLD transfers many STRs received from the reporting entities directly to LEAs rather than adding value through both operational and strategic analysis.

132. **Vietnam has a low level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

133. Vietnam's legal system provides a range of powers and responsibilities for LEAs to investigate and prosecute ML offences. The MPS is empowered to investigate ML as the primary ML investigation agency. The People's Army is empowered to investigate ML in limited circumstances (see R.30). Vietnam did not demonstrate that the People's Army has ever conducted a ML investigation. Accordingly, in practice it appears ML investigations are only conducted by the MPS.

134. ML investigations can be triggered in a number of ways, such as STRs disseminations, criminal investigations into predicate offences and referrals of matters from other agencies. For example, ML investigations by MPS can be identified in the course of an investigation conducted by another agency, such as the GDC. In these circumstances, there are strict legislative deadlines for such agencies to refer matters to the MPS or the People's Army to commence an ML investigation, normally within 7 days.

135. Despite the availability of mechanisms to conduct ML investigations and prosecutions, only three examples of ML prosecutions were provided covering the last 10 years and these were not aligned with risks in Vietnam. These related to embezzlement, fraud and gambling predicates (which are rated as high-risk in Vietnam's NRA). There were three ongoing ML investigations that had been initiated in the last two years related to fraud and smuggling (which are rated as medium-high and medium risk respectively)¹⁹.

¹⁹ A total of seven ML cases were under investigation by June 2021.

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136. In all of the above cases, the ML investigations were triggered by STR disseminations from the AMLD. No examples were provided showing that referrals from other agencies triggered ML investigations.

3 137. The number of ML cases is disproportionately low when compared with the financial intelligence provided by the AMLD. The AMLD provides various forms of financial intelligence to LEAs (particularly STRs), however, the financial intelligence provided focuses on the identification of predicate offences and not ML. As such, financial intelligence does not appear to be used effectively to commence and support ML investigations. In addition, given the issues raised under IO.6, the low number of ML investigations also raises some concerns about the ability of the AMLD to produce high quality financial intelligence products.

138. To date, ML offences in Vietnam are only investigated in very limited circumstances. MPS advised the assessment team that the MPS primarily focus investigations on predicate offences rather than ML. Further, where parallel financial investigations are commenced, they primarily focus on the identification of assets used in the commission of the offence (for the purposes of asset recovery). The lack of parallel financial investigations has likely contributed to the low number of ML investigations undertaken by Vietnam.

139. LEAs and competent authorities in Vietnam do not conduct joint investigations for predicate offences or ML investigations. Cooperation is limited to the exchange of information between LEAs and competent authorities during investigations. However as mentioned above, such cooperation is typically focussed on predicate crimes with little focus on parallel financial investigations for ML. Cooperation does not extend to engagement between the LEAs, competent authorities and the prosecuting agencies such as the SPP providing advice on the evidentiary requirements for a successful ML prosecution.

140. Despite the large number of proceeds generating offences in Vietnam (such as drug trafficking, corruption and embezzling property) which may give rise to ML activity and the relatively large number of financial intelligence products disseminated to the MPS, there have been few investigations and prosecutions for ML.

141. There are no legislative impediments to the initiation of ML investigations. However, Vietnam has only recently issued confidential official documents requiring LEAs to conduct ML investigations. Due to the confidential nature of the documents, the assessment team was not provided copies. In practice, ML investigations have not yet been prioritised.

142. The MPS appears to have the capability to investigate and prosecute a large number of proceeds generating predicate offences, such as corruption and drug trafficking. However, this capability is not applied to commence ML investigations or prosecutions.

143. The MPS and other investigative authorities appear to lack awareness and understanding of ML investigations and the value of “following the money.” This is exacerbated by the few resources, which are allocated for the purposes of ML investigations. In particular, there are no specialised teams to investigate ML and a lack of training in ML investigative techniques, financial investigations and asset tracing.

144. Vietnam lacks a clear national policy, which prioritises the investigation of ML offences, with a focus on parallel investigations for the high-risk proceeds generating offences. This has not been done to align with the recently completed NRA, which demonstrates a significant risk of ML activities. Greater cooperation between the other investigative agencies in Vietnam to prioritise the identification of ML



and/or indicators of ML and efficiently refer matters to the MPS for investigation would contribute to an increase in matters being investigated and prosecuted.

145. In addition to the ML offence under Article 324 of the Criminal Code (see R.3), Vietnam provided data in relation to an offence criminalising the storing or buying property obtained by crime (Article 323 of the Criminal Code). This offence is not used as an alternative to the ML offence under Article 324, and is only used in relation to minor property offending to prosecute persons who did not commit the predicate offence. The use of Article 323 is not considered an effective measure to investigate and prosecute ML due to the low values of the matters investigated and prosecuted. Between 2014 and 2019, Vietnam prosecuted 1,335 cases.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

146. ML activity is not investigated and prosecuted in keeping with Vietnam's risks and threat profile. Only four ML investigations have been conducted in the last 10 years, and only three ML investigations have led to convictions²⁰. Vietnam faces significant ML risks posed by high-risk proceeds generating crimes. As described in IO.1, Vietnam finalised and adopted its first National Risk Assessment (NRA) in April 2019 which identifies 17 predicate offences as major threats for ML. Embezzlement, organised gambling and drug trafficking were rated as the high-risk predicate offences. Predicate offences relating to corruption and tax evasion were rated medium high.

147. The four ML investigations mentioned above related to smuggling, embezzlement, fraudulently appropriating property and organising gambling. However, there have been no ML investigations with drug trafficking, corruption and tax evasion as the predicate offence. ML investigations are not prioritised by the MPS and there have been very few ML investigations in line with Vietnam's risk profile.

148. Table 3.9 shows the number of ML convictions and investigations compared with the number of predicate offences leading to convictions.

Table 3.9: Predicate offences and ML (2014 - 2018)

Predicate Crime	Predicate investigations & convictions	ML Investigations	ML investigations leading to ML 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

²⁰ For one of the three convictions, the sentencing took place ten days after the end of the onsite visit.

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3	Breaching regulations on the protection of precious and rare wild animals	342	0	0
	Drug Trafficking	76,787	0	0
	Illegal manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means	604	0	0
	Gambling	22,650	0	0
	Organizing gambling	2,452	1**	1***
	Manufacturing, stockpiling, transporting and/or trading in banned goods	2,478	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

* No data has been provided for 2019.

** ML investigations for Embezzlement and Gambling commenced prior to 2014. However, convictions for those ML offences took place after 2014.

*** Four defendants were convicted and charged with ML offences and offences regarding organisation of gambling

149. The investigation of ML to date is not consistent or proportionate with the number of predicate crime investigations undertaken in Vietnam. In May 2019, the Council of Judges of the Supreme People's Court issued a resolution on 'Providing Guidelines for Article 324 of Criminal Code on Money Laundering'. The Resolution came into force on 7 July 2019. The purpose of the Resolution is to provide additional guidance to the investigating agencies. The Resolution is a positive step to providing guidance and clarity to the MPS and SPP. In addition, the implementation of a planned ML investigation guide by the MPS is another positive step to generate awareness and prioritise the investigation of ML in the future.

Case study 2: Alibaba Real Estate

In 2018, Alibaba Real Estate was collecting funds from individuals to invest in property developments. The total collected by Alibaba Real Estate exceeded VND 50,000,000,000 (approx. USD 2,155,000). At that time, the Chairman of Alibaba Real Estate organised for a number of his family members to open bank accounts. The Chairman authorised the transfer of VND 13,000,000,000 (approx. USD 568,000) from the company to the bank accounts which belonged to investors to the accounts of family members. The funds were then used to purchase property and cash withdrawals.

The Chairman has been charged with fraud and his younger brother who opened a bank account was charged with money laundering.

Types of ML cases pursued

150. As noted above, there have been only four investigations of ML in the last 10 years, and two commenced more than five years ago which have led to prosecutions. A third case commenced in 2018 and was prosecuted in 2019. The ML investigations and prosecutions undertaken have focused

primarily on self-laundering activities. The three successful ML cases involved large amounts and appear to have been well prosecuted.

151. There were no examples of stand-alone ML cases the MPS has investigated. There have been no ML investigations and prosecutions involving foreign predicate offences or ML through legal persons. Vietnam has not sought or obtained foreign assistance or evidence as part of an ML investigation. Parallel financial investigations, when conducted, are primarily in support of proceeds of crime confiscation efforts rather than dedicated investigations into ML. This is not in keeping with Vietnam's risk profile.

152. MPS did not demonstrate that investigators focused on investigating stand-alone ML cases. Vietnam's focus on only self-laundering ML cases over the last 10 years, is further reason for the need for LEAs and prosecutors to undergo specialised training in ML and financial investigations.

153. Notwithstanding the above, Vietnam is seeking to increase the number of ML investigations which is positive. In particular, on 30 October 2019, the MPS issued the Document No. 4855 / QT-C03-P13 dated October 30, 2019 of the Ministry of Public Security on the process of investigation process of money laundering offenses to provide greater guidance to the investigating LEAs and to improve the effectiveness and outcomes of ML investigations.

Effectiveness, proportionality and dissuasiveness of sanctions

154. Proportionate and dissuasive sanctions were applied in the three ML cases that have been prosecuted in Vietnam. As discussed in R.3, the penalty for natural persons that commit ML offences ranges from 1 to 15 years imprisonment (depending on any aggravating circumstances), fines of VND 20 million to VND 100 million (approx. USD 850 to USD 4,000) and the confiscation of property. Commercial legal entities engaged in ML may also be subject to fines of between VND 1,000,000,000 to 10,000,000,000 (approx. USD 43,000 to USD 430,000). However, non-commercial legal entities cannot be held criminally liable (see R.3).

155. In the first case, the Vinashin Shipping Case (see IO.6), the defendant was sentenced to 12 years in prison for a ML offence. In the second, Nguyen Van Duong and Phan Sao Nam, four defendants were sentenced to between two to five years for ML offences and were subject to financial penalties. In the third case, Le Thi Hanoi, the defendant was sentenced to seven years for ML offences²¹.

²¹ For the Le Thi Hanoi case, the sentencing took place ten days after the end of the on-site visit.

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Case study 3: Nguyen Van Duong & Phan Sao Nam

In 2017, in the process of investigating a fraud case, police from the Investigation Security Agency in Phu Tho Province uncovered a large online gambling ring. From 2014, Phan Sao Nam had conspired with Nguyen Van Dong and several others to develop and operate the online gambling system, which was connected to a number of intermediary payment companies, allowing players to gamble virtual money on card games and convert their winnings to real money. The online gambling system was associated with its own virtual currency bought and sold by a network of agents.

An investigation into the online gambling ring was initiated. AMLD provided financial intelligence and information on accounts, suspicious and large value transactions and cash flow. The investigation uncovered almost 43 million gambling accounts and bets worth VND9.8 trillion (approx. USD418 million). Phan Sao Nam and Nguyen Van Duong made over VND3 trillion (approx. USD127 million) in profit.

To conceal the proceeds of crime, Phan Sao Nam and his co-conspirators generated fraudulent contracts and invoices, invested in real estate and construction projects, cars, and gold, and transferred money overseas and to relatives, who then returned the money.

105 persons were prosecuted for various offences, including six individuals for ML. 92 persons were convicted, including four ML convictions. Nguyen Van Duong was sentenced to 5 years imprisonment for ML, while Phan Sao Nam and another individual received a 3-year sentence (one sentence was suspended). One individual received a 2-year sentence for ML.

The court restrained VND 1.1tr (approx. USD 48,300,000), fined the defendants VND 2.3tr (approx. USD 97,500,000) and recovered approximately VND 506bn (approx. USD 22,000,000).



Case study 4: Le Thi Hanoi

In August 2018, the Police Department in the Vinh Phuc province received a report from an individual who suspected fraud. He had been requested to transfer all his personal funds to a specified bank account as he had been deceived into being involved with a parcel connected to a possible case of drugs and ML. A similar report was received from another individual in the Gia Lai province.

Le Thi Hanoi had used fraudulent ID documents to open a number of bank accounts and she had used the victims' funds to purchase and sell virtual assets (Bitcoin and Ethereum), intending to transfer the sale price to two Chinese nationals to obtain an 8% share. However, Le Thi Hanoi kept the proceeds of the fraud and did not transfer them onwards. Some of the funds were used to pay commissions to individuals assisting Le Thi Hanoi in trading in virtual assets.

A prosecution commenced in September 2018, initially for the fraudulent appropriation of property. In September 2019, there was a decision to pursue a ML prosecution instead of the predicate offence. In November 2019 Le Thi Hanoi was convicted and received a 7-year sentence for ML. VND 750m (approx. USD 33,000) connected to the case was seized and recovered.

156. The sanctions available, and those which have been imposed in ML cases appear to be dissuasive and proportionate to those available for other serious crimes in Vietnam. However, given the very small number of successful ML cases, it is not possible to assess the effectiveness, proportionality or dissuasiveness of these sanctions in practice, given that they have not been regularly pursued or imposed in the criminal justice system by Vietnam.

Use of alternative measures

157. There were no instances where Vietnam pursued alternative criminal justice measures where ML prosecutions are not possible.

Overall conclusion on Immediate Outcome 7

158. ML investigations have not yet been prioritised and are not pursued in line with the ML risk profile of Vietnam. The absence of dedicated ML investigation teams in any LEA or other competent authorities to target and investigate ML highlights an overall lack of awareness of ML offences or the value of "following the money". The almost negligible number of ML investigations and prosecutions over the last 10 years is evidence of low priority. The lack of joint agency taskforces in Vietnam hinders the ability of the LEAs to efficiently cooperate on ML investigations. Vietnam has only had three ML prosecutions, which resulted in a conviction with the application of dissuasive sanctions.

159. **Vietnam has a low level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

160. Vietnam pursues asset confiscation in connection to a wide range of predicate offences. Asset confiscation action can only be taken where a criminal defendant has been convicted of a predicate offence or ML.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3

161. Broadly, property is frozen, seized or restrained²² in order to satisfy court ordered judgments made against criminal defendants who have been convicted of predicate offences. These court ordered judgments represent an amount of damage arising from criminal offending. The assessment team were advised that assets are restrained and confiscated in order to satisfy these judgment amounts. This generally takes place after charges are filed and the person(s) subject to investigation become aware of the criminal investigation. In terrorism and TF proceedings the freezing, seizure and restraint is carried out immediately and without notice in accordance with Decree 122/2013.

162. The MPS and the SPP are the primary authorities mandated to pursue asset confiscation. Vietnam appears to pursue asset confiscation action only when there is a direct link between the relevant property (subject to confiscation actions), the predicate crime and suspect.

163. AML/CFT policy objectives have not sufficiently prioritised tracing and confiscating proceeds of crime and assets of equivalent value. Vietnam's 2019 AML/CFT action plan (Decision 474 of April 2019) broadly refers to asset confiscation. Notwithstanding this, the National Assembly implemented Resolution 111/2015, which provides some limited directives to LEAs to trace, freeze, restrain and confiscate assets linked to financial crimes and corruption. In particular, this directive seeks that the confiscation recovery rate (being the amount of a judgment recovered by asset confiscation) increases to 60% for financial crimes and corruption. It is noted this is an ambitious target and indicates policy intent to recover proceeds of crime.

164. In addition to this, in 2016 Vietnam launched the anti-corruption campaign called 'Burning the Furnace', which included directives to increase the confiscation of proceeds of crime²³.

165. Vietnam acknowledges that despite the focus on anti-corruption and financial crimes, actual confiscation rates for such crimes that are identified remain low. For abusing trust in order to appropriate property the percentage recovered is 7%, abusing positions to obtain property the recovery rate is 10% and receiving bribes the recovery rate is 37%. The low recovery rates may indicate that much of the proceeds of crime obtained through criminal activity is not recovered.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

166. Vietnam provided statistics which show that during the period 2014-2019, approximately VND 12.6 trillion (approx. USD 544 million) has been confiscated.

167. However, despite the large number of criminal cases and the high value of court judgement confiscation orders, only an overall amount of approximately 29% of judgment amounts are recovered through confiscated property. Table 3.10 below, demonstrates the difference between judgment amounts and actual recovery of confiscated property for the 17 predicate offences identified in the NRA.

²² In Vietnamese law, restraint of assets is referred to "distraintment" – see R4.

²³ Vietnam has not provided case numbers connected to 'Burning the Furnace' at the time of the onsite. However, by February 2021, there were a total of 163 cases connected to the initiative (86 under the Steering Committee for Anti-Corruption and 77 under local civil judgement enforcement agencies).

Table 3.10: Asset confiscation (2014 – 2019)


Predicate Offence	Judgments for Asset Recovery	Judgement amount (VND 1,000)	Actual amount recovered	Approx. USD equivalent	Percentage recovered
Human Trafficking	1179	47,529,938	17,163,847	736,909	36%
Fraudulently Appropriating Property (swindling)	12,726	30,785,390,829	9,115,195,275	391,349,970	29%
Abusing trust to appropriate property	6,419	2,754,504,469	183,527,408	7,879,529	7%
Smuggling	458	1,313,115,983	253,460,903	10,882,039	19%
Illegal cross-border transportation of goods and/or currencies	371	146,918,686	139,316,345	5,981,380	95%
Manufacture and/or trade in fake goods	188	60,963,423	21,321,282	915,403	35%
Tax evasion	198	950,014,729	339,150,837	14,561,034	35%
Making, storing, transporting and/or circulating counterfeit money, treasury bills and/or bonds	319	20,789,240	3,242,552	139,215	16%
Breaching regulations on the protection of precious and rare wild animals	431	16,996,870	4,650,479	199,662	27%
Illegal stockpiling, transport, trade in or appropriating drug	92,679	1,592,657,404	561,387,758	24,102,509	35%
Illegal manufacture, stockpiling, transport, use, trade in or appropriating military weapons and/or technical means	707	6,078,650	2,212,389	94,986	36%
Gambling	26,662	1,133,416,587	568,897,746	24,424,942	50%
Organizing gambling or running gambling dens	3,062	433,527,361	286,650,863	12,307,009	66%
Concealing or consumption of criminal proceeds	1,537	41,587,919	9,305,449	399,518	22%
Embezzling property	628	2,398,341,241	979,447,553	42,051,405	41%
Receiving bribes	120	80,942,362	29,632,157	1,272,221	37%
Abusing positions or powers to appropriate property	231	1,172,814,078	113,914,488	4,890,781	10%
Total (VND 1,000s)	147,365	42,955,589,769	12,628,477,331	542,188,520	29%
USD equivalent (approx.)	N/A	1,844,246,700	542,188,520	N/A	

168. Table 3.10 above shows Vietnam recovered VND 12.6 trillion (approx. USD 542 million) during the period 2014 to 2019 from a total of VND 42.9 trillion (approx. USD 1.8 billion) in court judgements.

169. The trends in total confiscations outlined in Table 3.11 show that Vietnam has increased the amount recovered in recent years.

Table 3.11: Confiscation- 2014-2019

	2014	2015	2016	2017	2018	2019
Judgement amount	847,164m	1,650,341m	19,883,269m	3,686,671m	7,304,016m	9,585,128m
Amount recovered	349,737m	478,131m	1,927,438m	585,528m	3,934,261m	5,353,381m
USD equiv.	15,015,538	20,527,980	82,752,237	25,138,942	168,912,774	229,840,989
Percentage	41%	29%	10%	16%	54%	56%

170. Vietnam advised that cash, bank accounts, real estate and vehicles were among the types of properties confiscated to satisfy judgement amounts. The purchase of real estate with cash and gold was identified as a common laundering method. Further, the ML threat for the real estate sectors has been rated as 'high' in the NRA. Vietnam is not able to capture the amounts confiscated by property type such as the value of the real estate compared to cash seized.

Case study 5: Cross-border transportation of gold

In 2016, a Cambodian national was arrested at the Tinh Bien international border gate in possession of 18 kg of gold (valued at VND 15,688,227,446 (approx. USD 673,555)).

The offender was convicted of illegally transporting goods across borders in 2017 and sentenced to 6 years' imprisonment prior to deportation. The 18 kg of gold was confiscated.

171. The MPS and SPP, as the primary agencies pursuing confiscation, face challenges in identifying and tracing property connected to complex and sophisticated crime types. It was noted that corruption cases often involve high profile and well-resourced defendants and LEAs have difficulty tracing and linking property to the defendants in such cases.

172. The MPS identified the intermingling of legitimate property and proceeds of crime and the use of associates or relatives to conceal beneficial ownership of property as areas which hinder investigations and asset recovery. The significant use of cash used in criminal activities and corresponding proceeds of crime, including for the purchase of high value assets, such as real property with cash, also presents a challenge for the identification of assets and beneficial owners connected to predicate offences. Further, the use of cash allows for the rapid dissipation of the proceeds of crime, into bank accounts of associates or across international borders.

173. In this respect, LEAs appear to target property that is easily linked to the predicate crime and the suspects. Despite, the level of ML threat to Vietnam, while LEAs have the legal basis, they do not have the capability or resources to trace, freeze, restrain and confiscate assets which are not directly connected to the crime or which are subject to sophisticated concealment. There are no specific taskforces or teams designated to target the proceeds and instruments of crime and it appears

cooperation between LEAs is limited when targeting proceeds of crime. Notwithstanding the challenges mentioned above, Vietnam provided one example of confiscation of a small amount of TF-related assets.

174. Vietnam's asset confiscation efforts focus on domestic predicate offences. Vietnam did not present any examples of confiscation of assets where the predicate offending took place in Vietnam, but the proceeds and instruments were recovered which were moved out of the jurisdiction.

175. However, Vietnam has successfully restrained and confiscated an instrument of crime for a predicate offence, which took place outside of Vietnam being investigated by the Spanish authorities. Vietnam acted in this instance on behalf of the Spanish authorities in response to an MLA request. Vietnam cooperates with foreign partners to pursue the recovery of assets in foreign jurisdictions and notes these can be lengthy processes.

176. Vietnam did not demonstrate a regular approach to restraining the widest range of assets at an early stage or in response to detailed asset tracing investigations. Authorities generally restrain assets at the time charges are filed and the person(s) subject to investigation become aware of the criminal investigation.

177. Effective management of restrained and seized assets was not well demonstrated. As noted above, Vietnam does have legislation and guidance documents relating to the management of restrained, seized and confiscated property during criminal proceedings. However, no government authority is specifically designated to manage restrained, seized and confiscated property. This presents some risk to the preservation of the potential recovery value of the property, particularly as family members or associates of the defendant may access the property whilst criminal proceedings (and investigations) are ongoing.

178. Use of tax remedies for the purposes of targeting and recovering the proceeds of crime or pursuing confiscation is not widely used by Vietnam.

Case study 6: Le Minh Quang

In 2015, the MPS investigated suspicious capital raising and the exchange of gold. The AMLD were provided financial information to the MPS which identified up to VND 384bn (approx. USD 17m) involved with the offences.

The principal offender was convicted of appropriating property through swindling and was sentenced to 20 years imprisonment.

The investigation resulted in the confiscation of the following assets:

- VND 466,780,000 cash (approx. USD 20,000)
- VND 393,000,000 from a bank account (approx. USD 17,000)
- 4.5kg of precious stones and metals
- 1 certificate for the use of land (for an area of 413.5 m²)

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

3

179. The illegal cross border transportation of goods and/or currencies are rated as a 'Medium' threat in the NRA and the team notes significant risks with the cash economy and cross border movement of criminal proceeds. Targeted action to intercept and confiscate smuggled cash, including false or non-declared movements of cash or BNIs appears to be modest. Border LEAs do not appear to prioritise resources to detect cash or BNIs being transported or effectively investigate the source of funds once seized at Vietnam's borders, ports and airports.

180. While Vietnam has a declaration system for cross border movement of currency and BNIs there are some gaps in its implementation and effectiveness. Individuals using passports entering or departing Vietnam are required to declare amounts exceeding VND 15,000,000 (approx. USD 650) and/or foreign currency exceeding USD 5,000. Other persons using border identity cards have lower thresholds. Details of declaration are collected by the GDC who provide the consolidated information to the AMLD on a monthly basis.

181. There are few detections of false or not declared movements of cash or BNIs by the GDC and few such matters referred to the MPS (or any other investigative agency) for investigation. The GDC have advised that almost all cases of cash detections were of low value, although comprehensive statistics of detections and amounts seized have not been made available. The GDC suggested that most detections related to persons avoiding banking controls, rather than high-risk crimes such as drug trafficking.

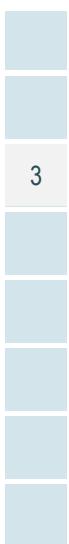
182. GDC indicated that it targets both inwards and outwards-undeclared movements of currency equally, however the GDC did not demonstrate that it has identified or prioritised high-risk areas (e.g. particular seaports, international airports or land border crossings) where high-risk predicate offences or ML is taking place. The GDC's prioritisation process appears to be routine with little regard to Vietnam's risk profile. GDC did not identify trends with cash smuggling routes . Vietnam did not demonstrate that high-risk cross border crimes are targeted.

183. Vietnam has provided some statistics on the number and value of currency declarations. The number of incoming declarations to Vietnam is generally low (between 3 and 23 per year in 2014-2018) but has increased recently, with 637 declarations in 2019. The total value of declarations in 2019 was approximately USD 16 million. The number of outgoing declarations is low with only 14 declarations in 2019 and a total of two in 2014-2018.

184. Between 2015 and 2018 Vietnam detected and confiscated cash and precious metal at the border on 14 occasions. The total value of cash seized is VND 8,628,034,084 (approx. USD 371,005) and 50kg of gold. It is unknown whether the GDC has detected BNIs transported across Vietnam's borders.

185. The GDC advised that due to the low values of cash being detected, further investigations are not generally conducted to determine the origin or destination of the funds. This is despite LEAs citing examples of cases where small amounts of cash were known to be connected to drug trafficking activities. In one instance USD 50,000 in cash was seized, which was known to be connected to drug trafficking activities. In this example presented to assessors, while the USD 50,000 was seized there was no follow-up investigative enquiries as to the source of the funds.

186. Overall, it does not appear Vietnam has a strategy to target the cross-border movement of cash or BNIs to reduce the risk of ML or to confiscate proceeds of crime.



Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities.

187. Vietnam's confiscation results reflect the jurisdiction's risk profile to some extent. As shown in Table 3.10 above, Vietnam has undertaken confiscation action of large amounts of proceeds and instruments of crime in relation to high-risk predicates such as embezzlement of property, organising gambling and drug trafficking. In addition to the large amounts confiscated the recovery rate for these predicates is higher than the average and largely in line with Vietnam's risk profile. However, the confiscation results relating to some corruption related predicates are low when compared to other predicate offences for example abusing positions and/or powers to appropriate property has a recovery rate of just 7%.

188. Vietnam demonstrated a low recovery percentage across most predicate offences, with an overall recovery rate of approximately 29% of the value ordered in confiscation judgments (see Table 3.10). This suggests while a higher percentage of property connected to high-risk predicates is subject to orders for confiscation, the full extent of the damage caused by the criminal offending is not being recovered. This reflects the gaps with relevant LEAs' investigative capability to identify, trace and restrain the widest range of property connected to predicate offences ahead of confiscation. As noted above, LEAs have encountered difficulties in recovering property when faced with sophisticated and complex financial arrangements or property held by persons other than the defendants.

189. The objectives of Resolution 111/2015, to reach a recovery rate of 60% for financial crime and corruption cases has not been met but set very high and provide scope for continued improvement in the recovery rates by Vietnam. Further, the results of the anti-corruption campaign "Burning the Furnace" undertaken by Vietnam enhances the priority of corruption investigations and is consistent with the NRA.

190. Where assets are identified and are clearly linked to the predicate offence, Vietnam appears to have a sound system of restraint and forfeiture with the courts handling a large number of cases. However, the recovery rate of 29% for confiscation orders shows a significant amount of proceeds and instruments remain out of reach of the authorities.

Overall conclusion on Immediate Outcome 8

191. The immediate outcome is achieved to a large extent and only minor improvements are needed. Policy priority has been given to pursuing the confiscation of proceeds of crime by MPS and SPP, but this is not reflected across all LEAs. Asset tracing, restraint occurs, but it is not always well supported. Vietnam does seek the recovery of proceeds of crime from persons involved in criminal activity once convicted. However, there is weakness in the recovery of proceeds of crime once a judgement has been made due to the difficulty linking property to the predicate offending or the offender. While some detections and confiscations have occurred, there are some weaknesses with targeting, detecting and investigating currency and BNIs smuggled across the border.

192. **Vietnam has a substantial level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

10.9

- a) Vietnam has criminalised TF under the Penal Code 2015. However, the stand-alone TF offence only criminalises financing of an individual terrorist or terrorist organisation. The limited scope of the TF offence leads to a focus on terrorism offences over TF.
- b) Vietnam has demonstrated its commitment at the national, ministerial and provincial levels to combating terrorism and TF. The Homeland Security Department and Investigative Security Agency within the MPS have demonstrated their ability to identify and investigate TF activity associated with domestic terrorist incidents. However, TF investigations are generally used to support terrorism investigations, particularly domestic matters, and do not lead to TF prosecutions.
- c) Vietnam recently issued TF investigation procedure formalised processes that were already occurring in practice and outlines the steps and coordination between agencies during investigation. It does not provide a procedure for investigation of financing terrorist acts.
- d) There have been no prosecutions or convictions for TF in Vietnam, which is generally consistent with the low TF risk profile. There were two investigations of TF offences in Vietnam that were initiated in 2019 and were ongoing at the time of the onsite visit. Other domestic terrorism investigations have identified TF activity but the cases were not pursued as TF prosecutions because under the Vietnamese legal system, where the financier is involved in the terrorist plot or terrorist organisation they must be prosecuted for terrorism and not TF.
- e) The application of criminal penalties has not yet been tested due to an absence of TF prosecutions. In addition, sanctions for legal persons are not dissuasive.
- f) Vietnam has investigated, prosecuted and convicted persons who engaged in financial aspects of domestic terrorism offences for other crimes, and has disrupted a number of potential TF activities. Vietnam has demonstrated an ability to identify the role played by the financier in a terrorism case and to follow the money in the course of a terrorism investigation. This level of action against persons who engage in TF activities is consistent with Vietnam's risk profile.

10.10

- a) There are some gaps in the legal framework for freezing the assets of designated persons and entities without delay pursuant to UNSCR 1267 and UNSCR 1373, including the absence of penalties for non-compliance with the freezing obligation for natural and legal persons, other than banks, and for breaching the prohibition on providing funds, assets, resources or services. There are no criminal sanctions for non-compliance with TFS obligations and the sanctions available are not proportionate or dissuasive.
- b) MPS maintains a publicly available "blacklist", which incorporates UNSC and domestic designations and triggers the obligations to freeze the assets of designated persons and entities and apply

prohibitions. However, the UNSC 1988 Committee sanctions list was only incorporated into the MPS blacklist during the ME on-site visit, allowing no time for implementation.

- c) Vietnam established a domestic designation mechanism for terrorism and TF in 2013. Between that time and the onsite visit, Vietnam had designated two entities and associated individuals for engaging in terrorism.
- d) The lack of proposals for UNSCR 1267 designations is in line with the low risk of TF in Vietnam. An absence of freezing assets and instrumentalities may also be consistent, but could also be due to deficiencies in the legal framework.
- e) Implementation of the TFS obligations by the private sector is weak and outreach has not been comprehensive. Changes to the UNSCR 1267 and 1988 lists are made available to reporting entities immediately but only some reporting entities actively monitor changes to the website. Larger domestic and foreign-owned banks have procedures in place to implement TFS, largely because of their need to maintain access to international capital markets. Smaller domestic banks monitor relevant UN lists to conduct name match checks for CDD, but do not apply any other monitoring measures. Some other NBFIs and DNFBPs implement the obligations by conducting name match checks for CDD, but many are not aware of the obligations. It was not demonstrated that VASPs implement TFS obligations.
- f) Vietnam has a large NPO sector. The outreach conducted by NPO supervisors is largely administrative, although Vietnam has recently begun some outreach on TF risk and preventative measures and MPS engages in enhanced monitoring of NPOs considered to be at a high-risk of TF abuse.
- g) MPS completed a NPO sector TF risk assessment immediately prior to the on-site, but there was insufficient time to provide the conclusions of the risk assessment to the NPOs, to include NPOs considered the highest risk for TF abuse. The assessment identifies some types of NPOs at higher risk of TF abuse and provides some recommended measures, although the assessment does not comprehensively assess the risk to the sector in Vietnam.
- h) Neither MOHA nor COMINGO take a risk-based approach to supervising their respective NPO sectors, although there are general measures in place such as a requirement to register and report financial information.

10.11

- a) Vietnam recently (during the on-site visit) enacted a Decree to implement TFS related to proliferation. However, the TFS obligations contained in this Decree are not yet enforceable due to a lack of penalties for non-compliance and there was insufficient time for Vietnam to implement the Decree and demonstrate effectiveness.
- b) The legal framework to implement TFS for PF had not yet been fully implemented by the end of the on-site visit, as the MOD has not published the obligations and the list of UNSCR 1718 and other PF-related designations, as required by Vietnam's legal framework.²⁴ Authorities did not previously disseminate notices on PF-related designations to FIs or DNFBPs.

²⁴ Since the on-site visit, MOD has published on its website a direct link to the UN Consolidated Sanctions List, as well as a link to Decree No. 81/2019.

- c) To date, Vietnam has not identified any funds or assets associated with designated persons or entities. In cases where sanctions violations have been identified, competent authorities have not taken steps to identify funds or other assets of designated persons and entities and prevent them from operating or executing transactions related to proliferation.
- d) Vietnam completed a PF risk assessment in November 2019, which will, once disseminated, help to improve the focused implementation of TFS by the private sector.
- e) Vietnam has not yet conducted outreach to the private sector on their new PF TFS obligations. FIs with an international presence or ownership conduct screening of customers, to identify those listed under relevant USNCRs, from a global compliance perspective and were doing so prior to the enactment of the Decree. However, DNFBPs, VASPs and other FIs (smaller domestic banks and NFBIs) lack awareness of their PF-related TFS obligations and do not have mechanisms to identify assets and prevent financial transactions related to proliferation.
- f) Vietnam has not commenced monitoring FIs, DNFBPs or VASPs with their PF TFS obligations. As there are no penalties for non-compliance with TFS obligations, competent authorities cannot enforce compliance.
- g) Vietnam previously had a close diplomatic and business relationship with the DPRK, and is making progress towards limiting its exposure to proliferation finance and sanctions evasion from the DPRK. Vietnam provided several cases where vessels attempted to deliver DPRK-origin goods, but were turned away from Vietnamese territorial waters or seized. However, Vietnam did not conduct any additional investigations into the individuals and entities behind the activity to determine if they were designated, or apply any TFS.

Recommended Actions

I0.9

- a) Vietnam should comprehensively criminalise the financing of terrorist acts; ensure that sanctions for TF are proportionate and dissuasive; and introduce full liability for legal persons that finance terrorist acts.
- b) Vietnam should further clarify and update TF investigation procedures, including the investigation of financing terrorist acts.
- c) Vietnam should emphasise prosecution of the TF offence, rather than relying on terrorism charges, and should strengthen LEAs', prosecutors' and judges' understanding of the scope and application of TF offence.
- d) MPS should make the greater use of AMLD's financial intelligence to pursue TF investigations.

I0.10

- a) Amend freezing obligation in Decree No. 122/2013 to require freezing by all natural and legal persons without delay and without prior notice.
- b) Establish penalties for non-compliance with TFS obligations (freezing obligations and prohibitions) so they apply to all natural and legal persons and are proportionate and dissuasive.

- c) Implement a standardised and prompt communications mechanism for notifying all sectors of updates to the MPS blacklist, especially those that are less likely to actively monitor the UN lists using automated systems or dedicated staff.
- d) Initiate in-person and periodic outreach to NBFIs and DNFBPs on UNSCR obligations. The outreach should be tailored and followed up with a requirement for entities to report on what they have done to ensure implementation of TFS obligations.
- e) Based on the recent NPO risk assessment, sustain outreach to NPOs that are assessed as having a higher level of risk for TF abuse, apply risk-based measures to these NPOs, and collaboratively develop best practices to address TF risk in Vietnam's context.

I0.11

- a) Amend legal frameworks to ensure full enforceability of TFS, including introducing dissuasive sanctions for non-compliance with PF TFS obligations.
- b) Prioritise effective implementation of the new PF TFS regime, including building understanding and capacity within MOD as the focal point and supervisor, and by establishing effective communication and collaboration mechanisms with other competent authorities.
- c) Initiate in-person and periodic outreach to non-bank FIs and DNFBPs on their legal obligations to implement TFS related to PF pursuant to the new Decree and issue guidance on possible sanctions evasion in the Vietnam context to guide vigilance and implementation. The outreach should be tailored and followed up with a requirement for entities to report on what they have done to ensure implementation of TFS obligations.
- d) Implement a standardised and prompt communications mechanism for notifying all sectors of updates to UNSCR designations.
- e) Establish and implement the mechanism for monitoring FIs, DNFBPs, and VASPs for compliance with TFS obligations established by Decree No. 81/2019 and apply penalties for TFS violations.
- f) Pursue the identification of PF-related funds and assets, and review whether there are impediments to identifying such assets in Vietnam.
- g) Conduct investigations into UN sanctions evasion activity in Vietnam's jurisdiction in order to identify any designated entities or individuals involved in order to implement TFS, if necessary.

193. The relevant Immediate Outcomes considered and assessed in this chapter are I0.9-11. The recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

Immediate Outcome 9 (TF investigation and prosecution)

194. As discussed under I0.1, Vietnam assessed the risk of TF as part of the NRA, which concluded that the risk of terrorism and TF in Vietnam is low. Whilst the NRA is more focused on terrorism activities than TF and it is not clear that the current trans-national TF risks associated with the potential of Vietnam being a transit country for TF are fully understood by the authorities. The authorities acknowledged that increased globalisation, regional terrorism/TF threats in South East Asia and rapid

technological development could expose Vietnam to increased terrorism/TF threats in the future. The assessment team concluded that overall, the low TF risk rating in the NRA appears reasonable.

195. Vietnam has not traditionally faced significant transnational terrorism or TF risks. Vietnam is primarily exposed to threats of domestic terrorism from groups that are opposed to the Vietnamese Government. The motivations of these groups are to overthrow the Government and cause public panic. While these groups have some presence outside of Vietnam, they do not have links to international terrorist organisations and there is no evidence that international terrorist organisations are conducting terrorist or TF activities in Vietnam. Since 2014, Vietnam has successfully stopped six domestically focused terrorist plots two involved the domestically designated entities the Viet Tan (including four accused) and the Provisional National Government of Vietnam (including 15 accused). Between 2016 and 2020 all of the accused were prosecuted and convicted for terrorism offences.

196. Vietnam has assessed that terrorism/TF vulnerabilities are low, given the relatively sound legal system and the ability to proactively prevent potential terrorist attacks, with specialised anti-terrorism units in place within the MPS from the national to provincial level.

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

197. As described under R.5, Vietnam has criminalised TF under the Penal Code 2015. However, the TF offence in Article 300 only criminalises financing of an individual terrorist or terrorist organisation.

198. Vietnam has had no prosecutions or convictions for the TF offence. However, there have been cases where TF activity was identified and investigated and Vietnam has successfully prosecuted and convicted the offenders for terrorism offenses. This is because under the Vietnamese legal system, where the financier is involved in the terrorist plot or terrorist organisation, they are guilty of a terrorism offence and must be prosecuted for terrorism and not the lesser offence of TF, which carries a lower penalty.²⁵ The level of identification and investigation of TF cases is in keeping with Vietnam's risk profile.

199. This means that in practice in Vietnam, the circumstances in which a person could be prosecuted and convicted for the TF offence are limited to situations in which a person provides money or property to a terrorist individual or terrorist organisation without themselves being involved in the terrorist plot or terrorist organisation. Other forms of TF activity can be prosecuted only as terrorism offences or ancillary offences to the terrorism offence. For this reason, specific TF charges are not often pursued.

200. As noted above, there have only been instances of domestic terrorism prosecuted and no cases involving foreign terrorists or terrorist organisations, which is consistent with the risk profile.

²⁵This prosecution policy has been confirmed in Judge's Council Resolution No. 07/2019 'Guiding the application of a number of provisions under Articles 299 add 300 of the Criminal Code', which was issued on 25 October 2019 but did not come into effect until 1 December 2019.

Case Study 7: Provisional National Government of Vietnam (PNGV)

On 22 April 2017, the security force at Tan Son Nhat International Airport (Ho Chi Minh City) found two manually-made petrol bombs hidden in two carton boxes. One bomb set fire and the other was defused. This incident led to a terrorism investigation by MPS in collaboration with MOFA, SBV (AMLD), PSP and PSC.

Prior to this incident, on 8 April 2017, there was another incident where 15 subjects threw petrol bombs, which set fire to 320 motorbikes at Bien Hoa city's Police Department.

Through a financial investigation, it was identified that Ms. Lisa Pham, one of the leaders of PNGV, located in the US, transferred VND 8,375,000 to Mr. Dang Hoang Thien's girlfriend, and assigned Nguyen Thi Chung to handover another VND 23,500,000 to Mr. Dang Hoang Thien to buy components and make explosive devices to carry out these terrorist attacks and to survey movement of terrorist targets.

In 2018, 15 individuals were prosecuted and convicted for terrorism offences and sentenced to imprisonment ranging from 5 to 16 years. Mr. Dang Hoang Thien was sentenced to 16-18 years imprisonment for terrorism against the people's government and Nguyen Thi Chung was sentenced to 10-12 years imprisonment for the same offence.

A warrant was issued for Lisa Pham's arrest. However, she was not prosecuted or convicted, as she is located in the US. In September 2019, MPS received a denunciation letter which stated that Lisa Pham had directed Mr. Tinh to transfer CAD 500 to Mr. Dang Hoang Thien in April 2017 in order to make petrol bombs. In October 2019 MPS initiated a TF investigation and sent MLA requests to both the US and Canada to verify Lisa Pham and another suspect's financial transactions and to serve the request for investigation upon those individuals. Vietnam had yet to receive a response at the time of the on-site visit.

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TF identification and investigation

201. Vietnam has demonstrated its commitment to combating terrorism and TF at the national, ministerial and provincial levels, as well as its ability to identify and investigate TF activity. The MPS Homeland Security Department and Investigative Security Agency are the designated counter-terrorism forces. They are the leading agencies in coordination with MOFA, MOF, SBV and other relevant agencies in TF investigation. All public security officials are trained in counter-terrorism, which includes a TF component.

202. At the provincial level, all 63 provinces have established divisions in charge of counter-terrorism. These specialised forces are responsible for coordinating with relevant ministries and agencies to implement measures to combat terrorism and TF. There are over 1,200 officers in charge of initial TF investigations across the provinces, including 132 officers that have been trained in TF investigation skills.

203. The MPS Investigation Security Agency is responsible for investigations of terrorism and TF offences. At the national level there are 171 officials responsible for TF investigations and 12 investigators trained in TF investigations skills. At the provincial level, there are 1127 officials authorised to take part in TF investigations and 45 investigators trained in TF investigation skills.

204. The MPS Homeland Security Department is the focal point for coordination of counter-terrorism and CFT efforts. They receive information and denunciations of terrorist and TF activity and then conduct an initial investigation to establish if there are sufficient grounds to decide to initiate a criminal case involving a full investigation, take testimony, examine the scene, search, seize, hold in custody and preserve exhibits and documents directly related to the case ('initial TF investigation'). They must transfer the case to the Investigative Security Agency for a full investigation within seven days for issuance of the decision. At the national level, the MPS Homeland Security Department has 96 officers in charge of initial TF investigations, including 33 officers trained in TF investigations skills.

205. On 1 November 2019, MPS issued a TF investigation procedure. The procedure describes the steps that should be taken in a TF investigation and the ways in which relevant authorities should coordinate. The procedure relates specifically to investigating the TF offence, which covers financing of terrorist organisations and individuals. It does not include a procedure for investigation of financing terrorist acts.

206. While this procedure was only recently issued, it formalised processes that were already occurring in practice. As outlined in the procedure, TF is identified through a range of sources, including previously convicted cases of predicate offences; news; reports of crime from Vietnamese citizens; professional operations of LEAs, including terrorism investigations; detections of matches to the MPS blacklist; STRs and reports related to terrorism or TF; and exchange of information from other countries or international organisations.

207. Vietnam also established a number of "hotlines" against terrorism through which representatives of 16 partner countries can contact MPS in order to promptly exchange information related to terrorism and TF. Through the "hotlines" against terrorism, MPS has received three reports related to TF. However, MPS conducted inquiries to verify these reports and determined that they were not related to TF. Therefore, they did not lead to full investigations. In addition, according to the Law on Anti-Terrorism 2013, any suspicion of terrorism and TF activity should be reported to both MPS and SBV-AMLD. Generally, initial reports are made by phone call and a detailed written report will be lodged at a later stage.

208. The MPS utilises financial intelligence to identify and investigate TF. During the period from 2014-2019, AMLD disseminated 27 STRs on TF related to 20 potential cases to MPS. MPS investigated and verified all of these 20 cases and found that none of them were related to terrorism or TF activity; therefore no further investigation was undertaken. During the period from 2014-2019, MPS has sent 168 requests for information to SBV. AMLD responded to all requests and provided information regarding accounts and transactions. AMLD took an average of 1-2 weeks to respond.

Table 4.1: Information exchange between the SBV and MPS (2014 - 2019)

Year	Spontaneous Dissemination	Dissemination Upon Request
2014	3	26
2015	10	23
2016	1	25
2017	3	39
2018	2	29
2019	8	26
Total	27	168

Source: AMLD.

209. Vietnam has advised that it conducts financial investigations as part of every terrorism investigation. Although this is not specified in the TF investigation procedure. Through the PNGV case (Case Study 7) and Viet Dynasty case (Case Study 8), Vietnam has clearly demonstrated an ability to identify the role played by the financier in a terrorism case and to follow the money in the course of a terrorism investigation. From 2014-2019, Vietnam has conducted 58 initial TF investigations and there are currently two full TF offence investigations that were initiated in 2019 and are ongoing.

Table 4.2: TF investigations (2014-2019)

	2014	2015	2016	2017	2018	2019	Total
Initial Investigations*	37	46	47	83	93	71	377
Terrorism	31	34	37	70	84	63	319
Potential TF	6	12	10	13	9	8	58
Investigation	0	1	0	2	1	5	9
Terrorism		1		1			2
Terrorism Against the People's Government				1	1	3	5
TF						2	2

* Initial investigations establish if there are sufficient grounds to initiate a criminal case involving a full investigation. Note: Number of cases are listed by year of investigation.

Source: Homeland Security Department - Ministry of Public Security.

Case Study 8: Case of Viet Dynasty

Following three explosions in Ho Chi Minh City and Hau Giang Police Headquarters between June and July 2018. An investigation of the bombings was conducted, led by MPS with participation from SBV, SPP and SPC. Financial investigations determined that the incidents were funded by Ngo Van Hoang Hung, the leader of Viet Dynasty, who is located in Canada. Ngo Van Hoang Hung sent a total of VND 313,750,000 (approx. USD 13,300), CAD 1,000 (approx. USD 700) and USD 100 through MVTS to five Vietnamese citizens. The five suspects confessed that they received and used the money to buy explosive materials, means of communication, surveil targets and for other personal expenses.

The MPS Investigative Security Agency wanted decisions in June and September 2019 for Mr. Ngo Van Hoang Hung on charges of terrorism against the People's Government and TF. MPS has requested INTERPOL to register an official wanted notice for Mr. Ngo Van Hoang Hung and sent two MLA requests through the SPP to Canada requesting verification of Mr. Ngo Van Hoang Hung's identity and seeking clarification of his criminal activity. Vietnam has not yet received a response to these requests.

TF investigation integrated with -and supportive of- national strategies

210. Terrorism and TF have been integrated in the action plans and guidance promulgated by Vietnam's National Steering Committee on Anti-Terrorism. Ministerial, agency and provincial steering committees are responsible for the implementation of regulations on CT and CFT within the scope of their responsibilities and powers. According to Vietnamese authorities, the concept of following the

money is a key part of counter terrorism efforts in Vietnam, as financial investigations into TF activity are conducted as part of every terrorism investigation.

211. TF investigation is used to support terrorism investigations and prosecutions and domestic designations under Vietnam's UNSCR 1373 regime. Financial investigations in terrorism cases have helped to identify two domestic terrorist organisations and related individuals that have been domestically designated in the MPS's blacklist and a further organization is currently under investigation and will soon be added to the MPS blacklist.

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212. Whilst Vietnam has shown a high-level commitment to combating terrorism and uses TF investigations to pursue this goal; overall TF investigations to pursue CFT goals was less apparent.

Effectiveness, proportionality and dissuasiveness of sanctions

213. It is not possible to assess the effectiveness, proportionality and dissuasiveness of sanctions for TF, as there have been no TF prosecutions and therefore no sanctions for TF have been imposed. As noted in the analysis of technical compliance, the penalties available for natural persons convicted of TF (5-10 years' imprisonment) are considered proportionate and dissuasive.

214. There have been instances where offenders have been convicted and sentenced to imprisonment for terrorism offences in cases involving TF activity. However, the full extent to which their TF activity was a factor in the conviction and sentencing is unclear.

215. In addition, there are concerns regarding the penalties available for corporate legal entities convicted of TF due to the option for only a 6-month suspension of operation to be imposed. Corporate legal entities cannot be held criminally liable for financing terrorist acts and there is no criminal liability for non-commercial legal persons. However, administrative penalties of suspension, registration revocation and dissolution can be applied to non-commercial legal persons that engage in TF activity.

Alternative measures used where TF conviction is not possible (e.g. disruption)

216. Vietnam places a strong focus on disrupting terrorist organisations and terrorist acts before they occur. When information is received from domestic or foreign sources regarding suspected TF activity, Vietnamese authorities take preventive measures, such as monitoring the money, property and movement of the organisations and individuals that are suspected of TF, in order to prevent TF or terrorist activity occurring. Thus, investigations may not advance to the stage where a TF charge is practicable.

217. SPP has prosecuted a number of cases involving TF activity as terrorism cases. There have been four cases, involving five individuals, where the offenders were using personal funds to purchase explosive precursors and other necessary substances to create explosive devices. These individuals were prosecuted and convicted of terrorism offences, however, their financing activity was a relevant factor in their conviction.

Overall conclusion on Immediate Outcome 9

218. There have been no prosecutions or convictions for the TF offence in Vietnam. However, there have been investigations, prosecutions and convictions for terrorism, in cases that involved TF activity. This is partly the result of the way in which Vietnam's legal framework for CFT operates. Vietnam has demonstrated an ability to identify and investigate TF activity, although the full extent to which it

factors into prosecutions and convictions is still unclear. The TF investigation procedure is not comprehensive, and the limited application of the TF offence reflects a focus on terrorism offences instead of TF. In the absence of TF prosecutions, no sanctions have been imposed for TF. However, there are concerns remain regarding the proportionality and dissuasiveness of the sanctions available. Vietnam adopts a disruptive approach to terrorism and TF and pursues prosecutions for terrorism offences where a conviction for TF is not practicable due to the scope of the offence and Vietnamese prosecution policies. The level of investigating and taking action against TF conduct is generally consistent with the low TF risk profile.

219. Vietnam has a substantial level of effectiveness for IO.9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

220. Vietnam authorities take terrorism, TF, and their UN obligations seriously, although there are some gaps in their legal framework to implement TFS related to terrorism (see R.6). The MPS plays a central role in implementing TFS for TF and serves as a focal point for interagency coordination and cooperation in that regard.

221. The MPS website prominently displays a link to the “Sanctions List of Terrorism-Related Organizations and Individuals”, known widely in Vietnam as the MPS blacklist. This list includes domestic and UN designated persons and entities. UN designations are included as well as direct link to the consolidated UNSC sanctions list (including UNSCR 1267/1989 and 1988).

222. The MPS blacklist provides the domestic legal mechanism by which Vietnam implements TFS for TF. New domestic and UNSC designations take effect immediately upon publication on the MPS blacklist. Because the MPS blacklist includes a direct link to the UNSC sanctions list, UNSCR designations take effect immediately upon publication on the UNSC website.

223. However, the link to the UNSC sanctions list was only added to the MPS website during the on-site visit. Previously, the MPS website included a link to the UNSC 1267 Committee sanctions list, which does not incorporate listings under UNSCR 1988. This means that until the on-site visit the MPS blacklist only included domestic and UNSCR 1267 designations and persons and entities in Vietnam screening against this list were not screening against the UNSC 1988 Committee sanctions list. While the update to the website addressed a technical compliance deficiency, Vietnam did not have time to demonstrate the impact of this change on the level of effectiveness.

224. Vietnam’s mechanism for communicating designations and de-listings is through its publication of the blacklist on the MPS website. FIs and DNFBPs (but not VASPs) are obliged to monitor the website. There is no notification, on the website or otherwise, when the list is updated. Given the mixed levels of understanding amongst FIs and DNFBPs of their TFS obligations (described further below) and the lack of monitoring obligations for VASPs, it is not clear that this communication mechanism is effectively ensuring that the private sector is aware of new designations and de-listings.

Designations

225. Vietnam has not made any proposal to the UNSCR 1267/1989 or 1988 Committees for designation, which is consistent with Vietnam’s low TF risk profile. MPS Department of Homeland Security Decision No. 2570/2018 provides a procedure for making designation nominations at the UN and domestically in Vietnam, which is led by MPS and coordinated with responsible agencies.

226. Vietnam has demonstrated that it can identify targets for domestic designation based on intelligence and investigations, but in practice Vietnam has only used these mechanisms following court rulings. Vietnam has designated two entities and associated individuals domestically under its UNSCR 1373 framework. The two entities are the Provisional National Government of Vietnam, designated on 30 January 2018, and Viet Tan, designated on 4 October 2016. There are 17 individuals associated with the first entity designation, and 5 with the second entity designation. Both groups are opposed to the Vietnamese Government and formal political opposition is prohibited under Vietnamese law²⁶.

227. The designated entity known as the Provisional National Government of Vietnam was established in 1991, and is the leadership is comprised of individuals from the former South Vietnamese regime. The group purportedly began planning attacks in Vietnam in 2015. Vietnamese authorities credit the group with conducting attacks that led to the destruction of property on 8 April 2017 and 22 April 2017.

228. The designated entity known as the Viet Tan, also known as the Vietnam Reform Revolution Party, was founded in 1981. The group aims to establish a multi-party political system in Vietnam. Vietnam authorities credit the group with engaging in planning to conduct acts of sabotage, kidnapping, and assassinations in Vietnam.

229. Vietnam's domestic designations have been made at its own motion. Information about the designated entities were shared with some other countries in 2019. However, Vietnam did not request these countries to make a designation and thus far these entities and individuals have not been designated by other jurisdictions, which may be in part due to shortcomings in the information and evidence provided. Vietnam has not received any requests from other countries to designate or take freezing actions under UNSCR 1373.

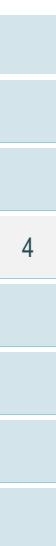
230. Vietnam has not issued any authorisations to designated persons for basic or extraordinary expenses and has not delisted any of the entities or associated individuals that it has domestically designated.

Implementation of TFS by REs and government agencies

231. Larger and internationally exposed FIs demonstrate high levels of awareness of their TFS obligations, while understanding is weak amongst smaller FIs and especially DNFBPs and VASPs. Most FIs and some DNFBPs reported that they receive occasional letters on TFS from MPS, SBV, and AMLD. No such letters have been issued to VASPs. These communications are typically statements of obligations contained in Decree No. 122/2013 or information regarding new or updated government decrees, circulars, and decisions. For example, SBV has sent two letters to credit institutions and foreign bank branches operating in Vietnam to implement relevant UNSCRs (Official Letter No. 202/NHNN-TTGSNH7 (11 January 2010) and Official Letter 387/NHNN-TTGSNH (5 June 2019)), which include guidance on TFS obligations. Vietnam has not provided other FIs, DNFBPs and VASPs with any written guidance on their obligations, best practices for TFS implementation, reporting or typologies, or conducted outreach on these topics.

232. As outlined above, it is the responsibility of FIs and DNFBPs to monitor the MPS blacklist for new designations or de-listings, which leads to reduced implementation due to the differing levels of

²⁶ Following the on-site visit, on 5 January 2021, Vietnam designated a third entity, Viet Dynasty, and 22 associated individuals. This took place after the period under assessment.



understanding of TFS obligations. VASPs are currently not regulated or supervised in Vietnam, and there is no obligation for VASPs to monitor the MPS blacklist.

233. Larger domestic and foreign-owned banks have procedures in place to implement TFS, largely due to reputational risk and because of their need to maintain access to international capital markets. These banks almost universally purchase third-party monitoring and screening services for various UN, supranational, and country-specific sanctions lists. These banks also implement stringent CDD measures and disseminate current typologies to their compliance departments. These banks were aware of the MPS blacklist and freezing requirements if they identify any transactions related to terrorism or TF, but do not rely on the blacklist for compliance with these obligations. Overall, guidance from their international parent organizations (in the case of foreign-owned banks) and reputational risk appears to be a much more significant driving factor for compliance by these FIs with TFS obligations than requirements from Vietnamese competent authorities or concerns regarding domestic sanctions for non-compliance.

234. Most smaller domestic banks use third-party software to monitor relevant UN lists to conduct name match checks for CDD, but in general do not appear to apply any other monitoring measures or demonstrate an awareness of more sophisticated typologies. In some cases, smaller domestic banks benefit from their correspondent relationships with larger domestic and foreign-owned banks, which may require them to implement more stringent monitoring, screening, and CDD measures to maintain these relationships.

235. Some other NBFIs and DNFBPs implement the obligations by conducting name match checks for CDD, but concerns remain that many may not be aware of the TFS obligations or apply customer screening. There are systemic weaknesses with implementation of internal controls by many FIs and most DNFBPs, including TFS (see IO.4). Vietnam stated that FIs/DNFBPs are aware of the requirement to freeze without delay and the administrative sanctions that apply for violations. Supervision for these controls is very weak or non-existent (see IO.3).

236. Outreach by competent authorities to these NBFIs/DNFBPs is mixed; some have never been contacted by Vietnamese competent authorities regarding their obligations, but in some cases were aware of them because they have to transact through banks, which impose some compliance requirements.

237. VASPs in Vietnam were not implementing TFS obligations at the time of the on-site visit.

Freezing actions taken

238. As described under R.6 there are technical compliance deficiencies in Vietnam's freezing obligation and not all natural and legal persons are required to freeze without delay or prior notice. Only some freezing obligations are enforceable and only against banks. Reporting entities are required to report frozen transactions to both MPS and the AMLD, although these obligations are detailed in two separate instruments and the degree to which REs are in practice aware of these distinct obligations and the proper sequencing is not clear.

239. Large banks reported a couple of transactions that were frozen, reported via written report to MPS and also via STR to the AMLD, and subsequently released after MPS provided feedback that the transactions were false positives and that they could proceed. Smaller FIs and DNFBPs did not report any transactions frozen. No accounts or other assets held in Vietnam by the two domestically designated entities or the 22 associated individuals were found, and therefore no assets or funds were frozen.

Case Study 9: False Positive and Freezing Mechanism

In 2015, a large domestic bank identified a customer with a name close to the name of a listed individual from the UNSCR 1267 sanctions list. The customer was attempting to conduct a transfer of USD500 to an individual in a jurisdiction assessed as having higher risk of TF. The bank reported this to the MPS Counter-Terrorism Department and AMLD (via STR) within an hour and immediately suspended transaction pending the results of a review.

The MPS reviewed the report, and also contacted the Embassy of the higher-risk jurisdiction in order to determine if they were able to provide any relevant financial intelligence information. The MPS confirmed that this customer was not the listed individual and had no relation to terrorism/TF. Within 3 days of receiving the report from the bank, MPS provided the results of their review and communicated back to the bank in order to release the transaction.

Targeted approach, outreach and oversight of at-risk non-profit organisations

240. Vietnam has a large non-profit sector, with 71,370 organizations operating nationwide or locally. Most of these are local membership associations that do not fall within the FATF definition of an NPO.

241. The MPS completed Vietnam's first NPO sector risk assessment in September 2019. The risk assessment considered the broader population of organizations and subsequently identified 543 domestic NPOs and 500 foreign NPOs that meet the FATF definition in three categories – charity and social funds, religious organizations, and international NGOs.

242. Vietnam's NPO sector risk assessment found the overall risk of TF abuse to be low, consistent with the overall TF risk of Vietnam. Overall, the assessment appears reasonable, however, there are some gaps in the understanding of TF risk (see IO.1). The assessment incorporated considerations of whether the NPOs had connections or activities in higher risk countries. The assessment is primarily based on information gathering and law enforcement activities, with no inputs evident from outreach and supervision activities, and it is therefore unclear if Vietnam had access to the data necessary to sufficiently understand the risk.

243. Vietnam's assessment found that of the NPOs, religious organizations had a slightly higher risk of abuse by terrorists, and in particular seven organizations that work primarily with a subset of Vietnam's population, although information was not provided as to why this is the case. While the assessment provides recommended measures that are consistent with an effective approach in identifying, preventing, and combatting TF abuse of NPOs, much of the focus is on information gathering and investigations and Vietnam did not demonstrate sustained outreach and risk-based monitoring. The NPO sector risk assessment was completed immediately prior to the on-site, and so the conclusions of the risk assessment had not yet been provided to the NPOs, including those NPOs considered at highest risk for TF abuse.

Monitoring

244. All NPOs are required to register with Vietnamese competent authorities to operate. Domestic NPOs are overseen by MOHA, and foreign NPOs are overseen by an interagency body called the Committee for foreign non-governmental organization affairs (COMINGO). COMINGO was created to

manage foreign NPO activities in Vietnam and the participants are MOFA, MPS, MOF, MOHA, SBV, MOPI, Government Office, Central Commission of Foreign Relations, and Vietnam Union of Friendship Organizations. MPS is responsible for overseeing the activities of foreign NPOs in Vietnam from a national security threats perspective. Neither MOHA nor COMINGO take a risk-based approach to supervising their respective NPO sectors.

245. Domestic NPOs report to MOHA and MOF annually regarding their performance, operations, financial management, and financial situation, including fundraising and expenses. Domestic NPOs are required to open a bank account in order to operate and can use cash for local activities and to purchase goods. Domestic NPOs reported that the vast majority of funding comes from domestic sources; if a foreign NPO provides funding or a donation to a domestic NPO for a project, the domestic NPO must submit documentation to MOPI which would include the source of the funds, amount, and how the funds will be used. This process is conducted in parallel by the foreign NPO, which must report similar information to COMINGO.

246. Foreign NPOs are required to report their donors, benefactors, and sponsors, and must have individual projects approved by Vietnam at the provincial level. This information is shared with COMINGO, to include approval decisions and project documents. COMINGO also organizes four interagency “mission teams” to work at the provincial level to supervise specific projects by NPOs, but this does not include supervision on TF.

247. COMINGO, as an inter-agency committee, does not have any formal international information sharing agreements; any information shared would be transmitted via MPS through their relationships and sharing agreements. COMINGO has not shared any information regarding TF abuse in the NPO sector. MPS indicated that it received information regarding a NPO that was designated for TF in another country that was attempting to start operations in Vietnam, and that it subsequently blocked the organization from registering and operating in Vietnam.

Outreach to NPOs

248. The MPS Department of Homeland Security is responsible for ensuring at-risk NPOs are not abused by terrorists. Following the NPO risk assessment, MPS conducted outreach and education on TF to 22 NPOs, including the seven NPOs identified as being at higher risk of TF abuse, and local police forces meet and engage with these seven NPOs frequently. More generally, MPS conducts thematic outreach and engagement with at-risk communities, and issues monthly bulletins to the National Steering Committee on TF, which include relevant reports on NPOs. Finally, the External Security Division of the MPS is a member of COMINGO, which facilitates information flows between component ministries and the MPS.

249. In addition to targeted efforts by the MPS Department of Homeland Security, MOHA organizes general trainings for domestic NPOs on new legal documents, providing NPOs with updates on new legal requirements and new government policies on AML/CFT. This training is conducted annually in three regions (north, central, south), but MOHA does not target high-risk NPOs in particular for engagement, or cover risks and typologies in its training that would help NPOs understand their vulnerabilities and comply with measures to protect themselves from the threat of terrorist abuse. The outreach conducted by MOHA is largely administrative and does not encompass the threat of TF abuse.

250. For foreign NPOs, COMINGO organizes two meetings annually, one each for NPOs operating in the north and south of Vietnam. COMINGO has provided information about the TF-related laws and other relevant regulations, but does not appear to cover risks and typologies that would help NPOs

understand their vulnerabilities and comply with measures to protect themselves from the threat of terrorist abuse. COMINGO does not work with foreign NPOs on TF.

NPO understanding of TF risk

251. Both domestic and foreign NPOs demonstrated an awareness of the NRA, and confirmed that the TF risk to their sector and organisation is low. NPOs were not aware of the recently completed NPO sector risk assessment, and Vietnam's outreach on TF risk has been minimal. More generally, NPOs viewed the government's regulations and requirements as very strict, and some demonstrated an awareness that funds linked to TF would need to be immediately frozen. Foreign NPOs demonstrated a more sophisticated understanding of TFS obligations and TF typologies, largely because of guidance from their global headquarters.

Deprivation of TF assets and instrumentalities

252. No assets and instrumentalities related to TF activities of designated entities and individuals have been identified and frozen, which is generally consistent with the low TF risk profile. However, it may also be a product of the gap in the freezing obligation to apply without delay and prior notice, as well as the potential impact of the lack of notifications of designations, lack of guidance on TFS obligations, and a lack of supervision and enforcement.

253. As noted in the analysis above, Vietnam's domestic designations of entities and individuals have not been made until after court rulings, which limits the potential for depriving terrorists of TF assets and instrumentalities, as there is time for assets to be moved. Vietnam has also not demonstrated efforts to identify assets indirectly owned or controlled by UN or domestically designated persons and entities.

254. As discussed under IO.9, Vietnam has conducted some investigations into TF activity in the jurisdiction, but this has not led to any prosecutions or convictions for TF, primarily because the individuals and/or entities were either self-funded, or they were prosecuted for the terrorism offence. As such, there have not been any TF-related confiscations in Vietnam.

Consistency of measures with overall TF risk profile

255. The NRA assessed Vietnam's TF risk as low. Regarding areas of potential risk, Vietnam noted that the domestic population in Vietnam has never demonstrated any violent or separatist intent, that there are no Vietnamese supporters of groups such as ISIS, and that information sharing with international partners has not produced any evidence of Vietnamese participation in terrorist organizations. The assessment acknowledges that with globalisation, Vietnam's deepening integration into the international system, and terrorism risk in the Southeast Asia region, there is some threat from transnational terrorism and TF. As such, the limited measures taken by Vietnam to date – especially as it relates to the incomplete understanding of TFS obligations amongst many FIs and DNFBPs, lack of implementation of TFS obligations by VASPs, insufficient enforcement and proportionate and dissuasive sanctions for non-compliance, and nascent efforts to address TF risk in the NPO sector – are not fully consistent with the risk.

256. Vietnam has generally implemented UNSCR 1267, but only recently began implementing UNSCR 1988. Vietnam's legal framework to implement the freezing mechanism without delay has some gaps, most critically that there are no penalties for non-compliance with the freezing obligations and they are therefore non-enforceable. The low level of implementation by many NBFIs, DNFBPs and VASPs is an area of concern that authorities need to address.

257. In relation to NPOs, Vietnam is beginning to assess and understand TF risk in this sector but must take steps to implement sustained risk-based outreach and targeted supervision.

Overall conclusion on Immediate Outcome 10

258. Vietnam has a legal framework for using TFS as a tool to combat terrorism and related TF, but fundamental improvements are required as it relates to the implementation of TFS, the level of understanding among REs of their TFS obligations, and the implementation of a risk-based approach to NPO sector outreach and supervision. The lack of designation proposals under UNSCR 1267/1989 is consistent with Vietnam's risk profile, although the lack of funds or assets frozen may be a product of the gaps identified in Vietnam's implementation of TFS and FI/DNFBP understanding of TFS, as well as the non-enforceability of the freezing obligation. Vietnam has designated two entities under UNSCR 1373, however this did not take place until after a court ruling and no assets have been frozen pursuant to these designations. All banks are implementing TFS, albeit to varying degrees. However, many NBFIs, DNFBPs and VASPs are not implementing TFS, nor are many fully aware of their obligations. The NPO sector is well-regulated, but Vietnam is only just beginning to assess and manage TF risk in the sector, its understanding of the risk may be incomplete, and it has not engaged in targeted risk-based supervision or monitoring. While foreign NPOs were aware of their TFS obligations, many domestic NPOs have only a limited understanding and Vietnam's outreach to the sector on TF has been minimal.

259. **Vietnam has a low level of effectiveness for IO.10.**

Immediate Outcome 11 (PF financial sanctions)

260. Vietnam is located in a region that is exposed to potential PF activity and related sanctions evasion. This stems from its increasing global and regional linkages to the international financial system, large maritime sector and exposure to illicit maritime activity in the region, growing needs for raw materials and other imports for economic development, and historical ties to some high-risk countries. Vietnam was a historically significant market for DPRK coal and other exports, before these exports were prohibited by various UNSCRs. Vietnam has very little exposure to Iran.

261. Vietnam and the DPRK have been close diplomatically since the start of the DoiMoi, three decades ago. While there are still full diplomatic relations with the DPRK, Vietnam has committed to implementing UNSCR trade and sectoral sanctions, including TFS.

262. Since 2014, Vietnam has issued a number of directives and letters to government ministries to implement UNSCRs related to proliferation and to reduce exposure to sanctions evasion and other illicit activities, including UNSCR 1718 and its successor resolutions related to DPRK, as well as UNSCR 2231, related to Iran.²⁷ These letters communicate requirements for competent authorities to comply with UNSCRs, assign organisational responsibilities, and encourage coordination amongst relevant organisations, but mostly do not refer to TFS obligations. One exception is MOFA Official Letter No. 1738

²⁷Vietnam provided the following relevant documents: Directive No. 884/CT-BQP (2016) On Implementation of UNSCR 2270; Official Letter No. 6645/VP-DN (2016) On Implementation of UNSCR 2270; Official Letter No. 6887/VP-DN (2017) On Prime Minister's Directions Regarding UNSCR 2356; Official Letter No. 1562/BNG-TCQT-tm (2016) On Implementation of UNSCR 2270; Official Letter No. 1738/BNG-TCQT-tm (2017) On Implementation of the Prime Minister's Directions Regarding UNSCR 2356; Official Letter No. 2483/CPCP-QHQT (2014) On Verification of Activities Related to UNSCRs; Official Letter No. 13318/VP-DN (2018) On Measures to Execute UNSCRs; Official Letter No. 3386/VPCP-QHQT (2018) On Measures to Strictly Execute UNSCRs; Official Letter No. 11666/VP-DN (2017) On Implementation of UNSCR 2375; Official Letter No. 652/VP-DN (2018) On Implementation of UNSCR 2397; Official Letter No. 1562/BNG-TCQT-tm (2016) On Continuing Implementation of UNSCR 2270.

(2017) On Implementation of the Prime Minister's Direction on UNSCR 2356, paragraph 2, which proposes that ministries disseminate the list of designated individuals and entities, and calls on the SBV to freeze any assets of the individuals and entities listed in the Resolution.

263. Vietnam has also closed some DPRK-owned and operated businesses, repatriated some DPRK citizens, suspended most imports and exports from the DPRK, interdicted some vessels carrying goods banned by the UNSC for export from the DPRK, confiscated over 2000 tonnes of DPRK-origin coal, and closely monitors bank accounts held by DPRK citizens.

264. While it is not required by the FATF standards, Vietnam completed a PF risk assessment on 12 November 2019, which will be updated every five years. This risk assessment acknowledges Vietnam's exposure to potential PF activities due to its geographical location and illicit maritime activities in the South East Asian region. Once disseminated, this risk assessment will improve the level of understanding of PF risk in the jurisdiction.

Implementation of targeted financial sanctions related to proliferation financing without delay

265. Vietnam enacted a domestic legal framework for WMD proliferation financing (PF) TFS against the proliferation of WMD in November 2019. As this was during the ME on-site visit, no implementation had taken place of this new regulatory framework. Prior to this, Vietnam relied on a series of Prime Minister Directives that assigned specific ministries and agencies with tasks related to UNSCRs on WMD proliferation and PF. These did not constitute a legal framework to implement PF-related TFS.

266. Further, the SBV issued periodic letters to FIs and some DNFBPs advising them that they must comply with all UNSCRs, including freezing assets of designated persons and entities and not providing them with assets or services. However, these letters were not enforceable and their implementation was not supervised.

267. Decree No. 81/2019, which came into force on 11 November 2019, provides a legal basis for implementation of some elements of PF-related TFS, however the freezing obligations and prohibitions on providing funds are not enforceable. The Decree establishes the MOD as the national focal point agency for combatting the proliferation of WMD and for implementing PF-related TFS to comply with relevant UNSCRs. The Decree requires all natural and legal persons to freeze without delay and without prior notice the property of designated persons and entities and imposes an obligation on government ministries and provincial authorities to prevent organisations and individuals from providing assets or services; however it does not directly prohibit persons and entities themselves from doing so. The obligation to freeze is triggered by UNSC designation and property must be frozen within 24 hours of that designation. There is no requirement for the designation to be transposed into Vietnamese law.

268. However, as noted in the analysis of R.7, the Decree requires the MOD website to include information regarding PF TFS obligations and provide a direct link to the relevant UNSC Sanctions List. FIs, DNFBPs and VASPs are obliged to regularly monitor the UNSC sanctions list on the MOD website to identify new designations and de-listings themselves. No notice of updates is provided. However, the PF TFS page had not been created on the MOD website by the end of the on-site visit, therefore the framework for implementing PF TFS had not yet been fully implemented, and could not be assessed for

effectiveness.²⁸ In addition, there are currently no sanctions available for non-compliance with TFS obligations and therefore these obligations are not enforceable.

269. The MPS blacklist, which is available on the MPS website, provides a link to the consolidated UN Sanctions List, which incorporates UNSCR 1718 and other PF-related designations, but this does not implement the legal requirement in Decree No. 81/2019 for MOD to publish designations related to proliferation and PF. Furthermore, as this link was only added during the on-site, it could not be determined if this impacted effectiveness.

270. The MOD has signed coordinating agreements with MPS, MOF and GDC to share information related to proliferation, however as noted by the PF risk assessment, there is limited collaboration and information sharing on PF. As discussed under IO.1, Vietnam has not set up a mechanism for counter-PF coordination similar to the NCC for AML or NCC for TF.

271. Vietnam's maritime sector has been vulnerable to sanctions evasion activity, and a number of Vietnam-flagged vessels have been found to be abused in relation to evasion of DPRK-related sanctions against trade in coal. The Ministry of Transportation (MOT) is responsible for registration and deregistration of vessels on the shipping registry, as well as regulating ship sales and shipbuilding. Under the Maritime Law 2015, involvement in proliferation or PF is not a condition for deregistration, but Vietnam can do so under the Law on Treaties 2016, which provides that if there is a difference between national law and international conventions that Vietnam is a member, then the international convention prevails. Vietnam did this in practice in the case of the vessel Tan Phat 36, which was deregistered on 26 May 2019 for attempting to import coal from the DPRK.²⁹

272. When Vietnam-based maritime entities have been designated by the UNSC, MOFA transmits information to the MOT directly for action. In one case, the MOT deregistered a ship on 6 May 2019 and MOFA subsequently reported this back to the 1718 Committee. The MOT is aware of relevant UNSCRs on PF, and provides information on new USNCRs and designations to port authorities, coast guard, and border guard. However, this has not led to freezing action or prohibitions being applied.

273. Vietnam has not conducted investigations into financial transactions related to UNSCR sanctions evasion activity consistent with the exposure described above.

Identification of assets and funds held by designated persons/entities and prohibitions

274. To date, no funds or other assets of designated persons and entities (or those acting on their behalf or at their direction) have been identified or frozen in Vietnam and no STRs related to PF have been lodged. Given Vietnam's exposure to potential PF activity, the assessment team questions whether this lack of identification of assets is reasonable. This may be a reflection of the recent introduction of PF TFS obligations for all natural and legal persons and of the uneven understanding of these obligations amongst REs and competent authorities, as discussed below.

275. Vietnam provided eight cases where maritime vessels suspected of sanctions evasion were seized or denied entry to port, to include vessels designated at the UN (see case study below for one example), but TFS obligations for PF were not implemented. MOD, MPS, and other ministries did not demonstrate that they have investigated the networks of natural and legal persons in Vietnam –

²⁸ As earlier noted, since the on-site visit, MOD has published on its website a direct link to the UN Consolidated Sanctions List, as well as a link to Decree No. 81/2019.

²⁹ MOD Official Letter No. 11603/BQP-CSB (2019) on Coal Originating from the Vessel Star 18.

including obtaining and analysing beneficial ownership information – involved in these cases, in order to determine if there are freezing obligations that apply to those persons and entities.

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Case Study 10: Interdiction of a Listed Vessel

In late April 2018, Vietnam discovered the vessel HUA FU transiting its territorial waters. The HUA FU is listed by the UN as property of Chang An Shipping & Technology Limited Company, which was designated by the UNSC 1718 Committee on March 30, 2018. Vietnam's Coast Guard interdicted the vessel, which was not carrying any cargo at the time but showed traces of previously carrying coal. Vietnam subsequently escorted the vessel out of Vietnamese waters.³⁰

Authorities identified the Vietnamese entity that operated the ship, and confirmed that the entity had a contract with the ship owner, Chang An Shipping & Technology. However, Vietnam did not subsequently impose TFS or freezing on any funds or other assets, or impose any sanctions on the Vietnamese entity or associated FIs for providing services to a designated entity.

276. Regarding potential sanctions evasion, Vietnam has identified 32 bank accounts held by DPRK citizens, primarily embassy employees, which are closely monitored by the SBV. Vietnam reported that none are held by designated persons or entities, although Vietnam did not demonstrate that it investigated whether these accounts are held on behalf of or for the benefit of a designated person or entity.

277. On 28 March 2017, as part of a review of past transactions from these accounts, SBV identified a transaction related to a DPRK embassy employee engaged in commercial activity, which is prohibited by UNSCR 2321, but the transaction occurred on 23 February 2017, so the funds could not be frozen. The SBV closed three accounts as an outcome of the investigation.

FIs and DNFBPs' understanding of and compliance with obligations

278. There has been no outreach by competent authorities to FIs and DNFBPs on TFS obligations related to PF. The MOD was only recently designated the national focal point agency for PF by Decree No. 81/2019, and so has not yet coordinated an outreach approach with other competent authorities regarding new PF TFS obligations. Prior to Decree No. 81/2019 coming into effect, SBV periodically informed FIs via letters that they must implement UNSCRs, including those related to PF, but there were no domestic legal obligations to do so. Some NBFIs reported there has been no outreach on PF from the AMLD or SSC. There has been no outreach to DNFBPs or VASPs on their obligations.

279. As a result, understanding of TFS for PF obligations amongst FIs, DNFBPs and VASPs is limited. The national PF risk assessment acknowledges that there is an unequal understanding amongst organisations and individuals of their obligations to prevent PF. Foreign banks and some larger domestic banks demonstrated an understanding of PF TFS obligations. However, these institutions were following group-wide policies, or had requirements imposed on them by their correspondent banks.

280. Prior to Decree No. 81/2019 coming into effect, PF TFS were implemented in some cases, especially by larger domestic and foreign-owned banks, which have procedures in place due to

³⁰MOFA, Report No. 2384/BC-BNG-TCQT-m (August 17 2018)

reputational risk and because of their need to maintain access to international capital markets. These banks almost universally purchase third-party monitoring and screening services for various UN, supranational, and country-specific sanctions lists. Smaller domestic banks also monitor relevant UN lists to conduct basic name match checks for CDD, but in general do not apply any other monitoring measures.

281. No banks reported freezing actions against persons or entities designated for PF. Some banks have policies to refuse customers from both DPRK and Iran, but conflated their decision to avoid clients from high-risk jurisdictions with their TFS obligations. For example, one bank reported that it identified a DPRK-linked customer, immediately froze the account and reported to the AMLD and MPS within 3 days of freezing. The AMLD provided feedback that the transactions were not related to designated entities, and that the transactions could proceed.

282. Other NBFIs and DNFBPs largely are not aware of and do not implement TFS obligations for PF, or conflated PF obligations with other UNSC obligations such as for TF. If they are aware, NBFIs/DNFBPs indicated they complied voluntarily and did not see it as a legal obligation in Vietnam. No VASPs were interviewed during the on-site visit. However, Vietnam did not demonstrate that VASPs understand or comply with TFS obligations.

Competent authorities ensuring and monitoring compliance

283. Vietnam enacted its legal framework during the onsite visit and assigned ministries and agencies with powers and responsibilities, and so there was no time to implement or observe the effectiveness of monitoring and compliance. While Decree No. 81/2019 designates MOD as the ministry responsible for coordinating with other ministries and agencies to supervise implementation of the Decree, no monitoring had occurred.

284. Vietnam does not have sufficient human resources and adequately trained personnel within the competent agencies to conduct monitoring of compliance with TFS obligations related to PF. Vietnam's PF risk assessment acknowledges that there is a lack of specialised officials with adequate training and unequal understanding amongst agencies makes supervision difficult.

285. SBV does not include PF TFS obligations as part of their supervision framework. SBV has interacted with international and large domestic banks on TFS, but minimally with smaller banks. FIs and DNFBPs did not report any supervision or monitoring by competent authorities on obligations related to PF TFS.

Overall conclusion on Immediate Outcome 11

286. Vietnam has recently enacted a new legal framework to implement TFS related to PF, albeit one with significant deficiencies, including no enforceable freezing obligations or prohibitions. Fundamental improvements are required to demonstrate effective implementation of TFS, understanding and compliance among FIs/DNFBPs with their TFS obligations, and monitoring by competent authorities. Vietnam has a number of designated entities, but the amount funds or other assets frozen (zero) is low considering Vietnam's exposure to sanctions evasion activity in the region. Larger banks are implementing TFS, but many smaller banks, NBFIs and DNFBPs are not implementing TFS nor are many aware of their obligations. No monitoring of compliance with TFS obligations has occurred.

287. **Vietnam has a low level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- a) AML/CFT obligations apply to all FIs and DNFBPs, but not yet to virtual asset service providers (VASPs). Intermediary payment service providers were only included in AML/CFT obligations at the time of the on-site visit. Technical deficiencies, including preventive measures related to TF, and a lack of supervision to reinforce obligations undermine the scope of implementation.
- b) Implementation of preventive measures was not well demonstrated and achieved to a negligible extent. The preventive measures applied by the FIs are rules-based rather than principles-based with no consideration of Vietnam's ML/TF risks, noting that the NRA was completed seven months prior to the on-site
- c) The level of understanding of ML/TF risks and AML/CFT obligations varies across the private sector. Major FIs (i.e. banks, insurance and securities firms) especially those with global groups have relatively sound understanding of the ML/TF risks and demonstrate adequate implementation. Understanding of risks and obligations by remittance companies appears to be at a lower level. The understanding of ML/TF risks and AML/CFT obligations by non-bank credit institutions and money changers appears negligible with fundamental gaps identified for these FIs in their implementation of AML/CFT preventive measures.
- d) The understanding by DNFBPs of ML/TF risks is very limited resulting in negligible implementation of AML/CFT preventive measures.
- e) Application of enhanced or specific CDD and record keeping requirements varies among the FIs. Adequate CDD, record keeping and on-going monitoring measures put in place by banks, insurance, securities and remittance companies. However, CDD on beneficial owners is a challenge especially when it involves foreign ownership. For other FIs, the CDD processes are inadequate where the processes are limited to basic CDD based on identification documents or the credit assessment process. There appears to be weaknesses with record keeping obligations and either an absence of or inadequate monitoring systems for these FIs.
- f) Banks, insurance, securities and remittance companies apply to some extent of enhanced measures for foreign PEPs and higher risk countries identified by the FATF, and specific measures on correspondent banking, new technologies, wire transfers and terrorism-related TFS. The lack of a requirement to identify domestic PEPs is of significant concern though this is partly mitigated by the global-wide internal AML/CFT policies for international REs, which appear to include both domestic and foreign PEPs. Fundamental gaps on these areas are observed for other FIs.
- g) Except for large accounting firms and large casinos, the application of enhanced or specific CDD, record keeping and on-going monitoring measures on other DNFBPs sectors including the higher risk real estate, gold and precious metals/stones sector are very limited. The understanding of beneficial ownership requirements across all DNFBPs sectors is also very limited.
- h) Banks, insurance, securities and remittance companies generally have adequate STR reporting mechanisms though the vast majority of the STRs are contributed by banks. For other FIs, fundamental deficiencies are noted where there are no clear STR reporting mechanisms in place.



For those FIs submitting STRs, there are major gaps in the STRs submitted where the submission is not risk-based and it is not clear whether the STRs filing pattern is in line with ML/TF risks faced by entities. This is demonstrated by FIs mainly submitting threshold-based STRs and not based on suspicious behaviour. There is no explicit legal obligation for REs to submit STRs related to TF which is a fundamental gap. While REs understand they are required to do so, very few TF-related STRs are filed, which is in line with a low risk for TF.

Recommended Actions

- a) Address the gaps in technical compliance in relation to preventive measures especially on CDD, PEPs, wire transfers, STRs and new technologies including requirements on virtual assets and VASPs. Ensure that all requirements are also extended to TF.
- b) Ensure the shift to a risk-based approach by supporting FIs' and DNFBPs' understanding of ML/TF risks and AML/CFT obligations, including through outreach and guidance (general and sector specific) for all the areas of preventive measures and targeted risk-based supervision. A key focus is needed on risk assessment (enterprise-wide risk assessment and customer risk profiling), CDD, record-keeping, on-going monitoring, enhanced and specific measures, STRs reporting and internal controls.
- c) Supervisors and AMLD should establish a platform for regular engagement with REs including industry associations and self-regulated bodies, particularly higher risk sectors such as banks, real estate agents, money changers, remittance companies, gold traders and casinos, to keep the industry abreast of the latest ML/TF risks, trends and typologies, and AML/CFT obligations.
- d) Apply enhanced AML/CFT measures such as enhanced monitoring of customers on higher risk areas including those identified under the NRA, and consider to apply simplified measures in lower risk areas.

288. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

Immediate Outcome 4 (Preventive Measures)

289. Based on their relative importance and Vietnam's risks, context and materiality, implementation issues have been weighted most heavily for the banking sector, followed by insurance, securities and real estate sectors. Significant weight is also given on VASPs based on the estimation of individuals involved in the trading of virtual assets and the estimated size of daily transactions. Lesser weight is applied to other FIs and DNFBPs.

290. All relevant FIs and DNFBPs are covered for AML/CFT obligations in Vietnam, noting that the intermediary payment service providers are included in AML/CFT obligations at the time of the on-site visit. The regulatory framework suffers from a number of technical deficiencies related to preventive measures especially in the areas of domestic PEPs, CDD and STRs which contribute to a negligible extent of effectiveness by REs, especially those institutions that are not subject to any global-wide internal AML/CFT policies and correspondent banking relationships. As noted under Chapter 1, majority of REs are locally owned, as such significant weight applies to the impact of these technical deficiencies. Lack of supervision to reinforce obligations undermine the scope of implementation of measures.

CHAPTER 5. PREVENTIVE MEASURES

291. Vietnam's financial sector is dominated by banks, which hold 94.7% of financial sector assets, followed by insurance and securities sectors. Other small financial service providers in Vietnam comprise of remittance companies and money changers. The DNFBPs sector in Vietnam is small and includes casinos, prize winning electronic games companies and other DNFBPs. The major DNFBP sector is the real estate sector, which accounts for nearly 5% of GDP and the casino sector has only eight licenced casinos. The legal sector, notaries and the accounting sector are also very small and Vietnam has a limited number of precious metals and gemstones trading businesses.

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292. There is no legal mechanism for the regulation of virtual assets (VA) and VA service providers (VASPs) in Vietnam. As of May 2018, it was estimated that there was a total of one million individuals in Vietnam who owned and participated in the trading of virtual assets with daily transactions ranging from VND200 billion to VND300 billion (approx.. from USD8.7 million to USD12.9 million). Based on this, significant weight is given to the deficiencies in relation to virtual assets and VASPs.

293. VAs and VASPs are not subject to any AML/CFT requirements and Vietnam has not yet assessed ML/TF risks associated with virtual assets and VASPs. The SBV banned the use of virtual currencies for payment in October 2017, and the SSC banned publicly-listed companies, and securities and fund management companies from issuing, transacting or brokering in crypto-currencies. However, open source searches indicate other VASP activities which fall within the scope of the FATF requirements including crypto-currency investment and mining activities are not covered within the scope of these prohibitions and as such, do not necessarily constitute any breaches. This suggests a comprehensive risk assessment is required with further consideration of inclusion of VASPs as REs. There is no assessment conducted on the level of compliance by VASPs since no such meetings have been arranged during the on-site.

Understanding of ML/TF risks and AML/CFT obligations

294. Despite the first NRA being completed in April 2019, there is variable understanding of ML/TF risks and AML/CFT obligations across the financial sector with negligible understanding in the DNFBP sector. Weaknesses in regulation and supervision contribute to poor implementation of preventive measures by REs. An obligation for REs to conduct enterprise-wide ML/TF risk assessment (Circular No. 20/2019) only came into effect during on-site visit. As such, most REs had not assessed their own ML/TF risks.

295. Generally, REs' understanding of their AML/CFT obligations is based on relevant legislation, regulations and circulars and some outreach by the SBV. Banks, insurance and securities firms generally demonstrate sound understanding of ML/TF risks and obligations, with a better understanding by FIs with exposure to global group-wide policies. However, there are gaps in the depth and scope of that understanding especially in term of various risk elements, particularly specific threats that contributed to the sectoral vulnerabilities (e.g. corruption and drug trafficking). These sectors generally demonstrated sound understanding of their AML/CFT obligations as evidenced by the adequate AML/CFT policies and procedures in place, with those being part of a foreign group being more advanced. Understanding of risks and obligations by remittance companies appears to be at a lower level where the understanding of risk is confined within the sector. Other FI sectors have a poor understanding of ML/TF risks and their AML/CFT obligations.

296. The legal framework does not support a risk-based approach as a central element. This has resulted in a rules-based system with no consideration of risk by any sector, except for foreign-owned banks. This is exacerbated by Vietnam having no clear overarching risk-based national policies for both

public and private sectors to clearly guide mitigating measures by REs, such as a supervision framework to strategise the on-site and off-site activities, which need to be aligned with identified risks (see IO.1).

297. There was limited implementation of enterprise risk assessments in 2019. The SBV and MOF issued non-binding official letters in May and August 2019 respectively requesting FIs to conduct enterprise-wide risk assessments. Foreign-owned banks, insurance and securities firms appear to have conducted enterprise-wide risk assessments on an on-going basis due to their own internal AML/CFT policies, with frequency ranging from one to two years, which is considered acceptable. While the scope of the enterprise-wide risk assessment by these institutions appears to be adequate covering the usual risk factors (i.e. customers, transactions, products/services/delivery channels, and geographical locations), deeper assessment is required to consider the linkages between the NRA and the institutional risk assessments. There is a need to incorporate assessment on specific threats or crimes in the NRA that may further contribute to the REs' vulnerabilities to ML/TF risks. Vietnamese supervisory authorities have not assessed the suitability and comprehensiveness of these risk assessments in terms of Vietnam's risk, context and legislative framework.

298. Domestic-owned REs' understanding of ML/TF risks is less developed. Domestic banks started to conduct enterprise-wide risk assessments in 2018 and 2019 but have not demonstrated that they incorporate the findings of the NRA into their risk assessments and their internal policies. The awareness of risk is not in alignment with areas of risk, for example in regard to the risk of corruption and the real estate sector, as highlighted by the NRA.

299. Despite not conducting a systematic risk assessment, remittance companies appear to broadly understand their ML/TF risks and obligations. The sector acknowledges that their sector is exposed to ML/TF risks given the nature of their business and exposure to foreign customers and transactions.

300. No enterprise-wide risk assessments have been conducted by other FIs and their understanding of ML/TF risks and AML/CFT obligations are fundamentally inadequate. As an example money-changers understanding of risk appears to be focused on customers' appearance and possible counterfeit currencies with little other consideration of other possible ML/TF risks facing the sector. Understanding of the AML/CFT obligations are limited to basic CDD. The SBV has not yet supervised these sectors for AML/CFT.

301. DNFBPs' understanding of ML/TF risks and AML/CFT preventive measures is negligible. DNFBP sectors have not yet undertaken enterprise risk assessments. There has been some limited outreach to some DNFBP sectors on risk and obligations.

302. In the real estate sector, the MOC (Official Letter 1590, July 2019) requested REs to: a) develop internal AML/CFT policies and regulations; b) implement preventive measures related to CDD including high-risk customers; c) Report on suspicious behaviour and large transactions; d) conduct internal risk assessments; and e) undertake enhanced scrutiny on PEPs (only foreign PEPs). However, it was observed during the on-site visit that the real estate sector had limited understanding of the results of the NRA including ML/TF risks associated with this sector. This has also resulted in poor understanding of the necessary preventive measures that lead to negligible implementation of these measures. Real Estate is the most significant DNFBP in Vietnam and displayed minimal understanding of AML/CFT obligations.

303. While lawyers, notaries and accountants appear to have understanding of the NRA, they appear to have a low-level understanding of ML/TF risk recognising that some understanding is required when providing business advisory services. These sectors are the major companies' services

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providers in Vietnam, but they do not appear to be aware of the vulnerabilities of legal persons and foreign trusts that can be subject to abuse in Vietnam. Lawyers and notaries also play an active role in real estate transactions, which is a high-risk activity, but they are only focused on complying with legal requirements of the transactions with no consideration to the ML/TF risks and AML/CFT obligations.

304. While some larger casinos appear to have an understanding of the ML/TF risks, other casinos appear to have a minimal understanding of ML/TF risks and AML/CFT obligations. There was no evidence that VA are being used in Vietnam casinos. The geographical location of several small casinos on the border with China and their acceptance of RMB as a mode of transaction heightens the ML/TF risks of these casinos.

305. Dealers in precious metals and stones are segmented into jewellery companies and gold trading companies, and while the sector appears to be aware of the NRA results, there is minimal understanding of ML/TF risks and obligations in this sector.

Application of risk mitigating measures

306. Given the above finding on understanding risk, the application of mitigating measures is not commensurate with the risks across most of the FIs. In addition, given the technical gaps and limited supervision, it is difficult to fully ascertain whether Vietnamese FIs have adequate risk mitigation measures.

307. Banks, insurance and securities firms appear to have AML/CFT policies and procedures in place and have implemented risk mitigation measures, with those having foreign parents being more advanced. Domestic-owned banks indicate that they ensure that their AML/CFT policies are in line with the international standards, for the purpose of maintaining correspondent banking relationships. These institutions appear to use risk to guide the implementation of their AML/CFT controls especially in the areas of CDD. However, the extent of the comprehensiveness of the implementation of preventive measures was not well demonstrated partly due to the technical gaps and a lack of supervision to verify the effectiveness of the measures applied. In addition, the vast majority of preventive measures are mainly related to ML only as provided under the Law on AML and do not extend to TF. Overall, while the NRA is available, supervisors and the AMLD have not provided sufficient information to facilitate a shift from a rules-based to a risk-based approach. In addition, it was not demonstrated that the level of compliance against ML/TF abuse has improved following the implementation of risk mitigating measures.

308. While remittance companies appear to apply some mitigation measures mainly covering CDD, record-keeping, sanctions screening and STR reporting mechanisms, they are still predominantly rules-based and have not as yet adopted a risk-based approach. With the lack of supervision activities conducted on the sector, there is no validation to ensure whether the level of compliance has been improved throughout the years. Remittance companies do not appear to use information on risk such as type of customers, channels used, size and type of transaction, and geographical areas to drive their response to these risks. Other FIs especially those who are not subsidiaries of banks, insurance and securities firms with no or limited interaction with the supervisors, do not implement risk mitigating measures. For money changers, the mitigating measures are limited to basic CDD.

309. While the large accounting firms and casino are applying limited measures, the DNFBP sector more generally are not applying any mitigating measures commensurate with their risks. Most DNFBP sectors have not yet commenced a rules-based approach and there is no understanding of requirements for a risk-based approach to implement AML/CFT measures. While the NRA is available, supervisors

and the AMLD have not provided sufficient guidance and information on risk to support implementation of a risk-based approach by DNFBPs. Virtual assets and VASPs are not subject to any regulation or supervision.

Application of CDD and record keeping requirements

310. Banks, insurance and securities firms appear to implement CDD and record-keeping requirements to a certain extent and have put in place related policies and procedures. As part of their customer's on-boarding process, these entities collect CDD information and relevant documents, and have rejected a customer if CDD is incomplete. Between 2014 and March 2019, banks have rejected a total of 1,469 customers/transactions while only six STRs were submitted to the AMLD on the grounds of incomplete CDD. These statistics are considered extremely low given the size and context of Vietnam including its financial sector. The CDD records are kept for at least five years and there are also measures for customer's risk profiling, which is then used to determine the level of on-going monitoring and whether management approval is needed to accept the customers.

311. Due to limited supervision, authorities have not clearly determined whether comprehensive CDD and record keeping is undertaken by the majority of FIs. Larger FIs and those with foreign ownership appear to meet CDD and record keeping standards as per global group compliance policies and procedures, though confirmation for Vietnamese operations has not occurred.

312. Frequency of banks actions to update their customer's information appears to be based on the customer's risk rating, with CDD information of high-risk customers updated annually while medium and low-risk customers updated every two years. The frequency of updating information is also subject to any trigger events including when any new information is received by banks or any suspicion surrounds the customer or transaction. Banks have experience of opening accounts for more complex customers, including foreign trusts, however the depth and quality of CDD undertaken is not well demonstrated. In term of transaction monitoring, banks have monitoring systems in place. More advanced mechanisms are implemented by foreign-owned institutions such as two-tier monitoring system by their local and global compliance teams.

313. Insurance and securities firms have put in place CDD measures and record keeping. For insurance companies, first level CDD is conducted by their insurance agents, and insurance companies still verify whether the CDD information collected by the agents is adequate. When CDD information is incomplete, the insurance policy will not be issued until the agent has obtained completed CDD information from the potential policy holders. FIs do not appear to rely on third parties to conduct CDD despite Vietnamese laws allowing them to do so. CDD is predominantly focused on basic identification of customers and it was not clear whether FIs undertake CDD on source or purpose of funds as part of on-going monitoring.

314. For customers who are legal persons, FIs require customers to document the establishment of the legal persons including information about the shareholders, directors and persons authorised to conduct transactions on behalf of the legal persons. CDD on beneficial owners across all entities is a challenge especially when it involves foreign ownership. Securities companies have experience of customers who are parties to a foreign trust and obtain trust deeds during CDD.

315. The larger remittance companies have put in place CDD and record keeping measures. They conduct CDD on every transaction, mainly based on the identification documents. It is not clear how well remittance companies determine source or purpose of funds as part of monitoring. Records are kept for a period of at least five years with some remitters keep records electronically.

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316. The CDD process of other FIs including money changers, local development investment funds, micro-finance institutions, and the People's Credit Funds is inadequate with CDD only limited to basic information or credit information. While it is acknowledged that non-bank credit institutions are mainly to facilitate financial inclusion and are rated as 'low' in the NRA, they are still subject to the minimum AML/CFT requirements. These sectors appear unaware of the five-year record keeping requirement. CDD information obtained by money changers is limited to customer's identification documents and lack of transaction monitoring mechanisms. Non-bank credit institutions conduct more comprehensive CDD than money changers but this is because of the credit and fraud risk management. Their lack of understanding in conducting CDD on beneficial ownership is of concern given that they also have customers who are enterprises.

317. DNFBPs appear to conduct basic customer identification and do not undertake comprehensive enhanced CDD on higher risk customers including no steps are taken to identify source of funds used by customers or beneficial ownership. Only large accounting firms (due to group global-wide policy) and a larger casino had client acceptance procedures with cases of terminated client relationships if CDD process was not completed. STRs submitted by DNFBPs are negligible and for most sectors non-existent, mainly contributed by no supervision and negligible engagements by authorities. This is also consistent with negligible understanding of the ML/TF risks by these sectors. DNFBPs' implementation of AML/CFT-related record keeping is not apparent.

318. Large casinos have a detailed customer acceptance policy and mechanism of business entry controls recognising they do not have junket customers or operations. These include the issuance of a customer card that facilitates monitoring and recording of gaming operations and patrons' transactions by a central monitoring system. These CDD and record keeping policies help mitigate the ML/TF risks as well as compliance with the obligation to report high value transactions (i.e. VND300 million and above). The source of funds is difficult to implement in Vietnam particularly in smaller casinos due to limited resources. Source of funds is better executed at the larger casinos though to a limited extent, as it is not a primary concern for the casino operations due to the challenges of identifying walk-in customers.

319. The real estate sector does not undertake risk-based CDD. Only basic identification is undertaken on potential clients with no assessment of beneficial ownership and source of funds.

Application of enhanced due diligence measures

320. Vietnam has technical deficiencies in the areas of PEPs, correspondent banking relationships, new technologies and wire transfer rules. The lack of a requirement to identify domestic PEPs is of significant concern. This is partly mitigated by some of the foreign owned REs identifying all PEPs in line with their global policies.

321. FIs indicate that they have a low percentage of high-risk customers though no assessment across sectors on the comprehensiveness of customer risk profiling has been undertaken to confirm this. The common high-risk customers identified by FIs are both foreign and domestic PEPs and customers from higher-risk jurisdictions identified by the FATF. Some of the banks and insurance companies also consider customers who are NPOs, diplomatic officers and those from the US OFAC list as high-risk. These do not appear to match up with the NRA findings.

322. Overall, due to lack of guidance and limited supervision, REs do not appear to have a consistent view on who is high-risk, what this means and what needs to be undertaken to address these risks as well as the level and comprehensiveness of enhanced due diligence (EDD) measures undertaken is



difficult to fully ascertain. While foreign-owned FIs have more substantial policies and procedures, it is difficult to confirm whether these have fully meet Vietnamese requirements particularly noting that no significant breaches have ever been identified.

323. DNFBPs in Vietnam have a low level of understanding of EDD measures for AML/CFT and have negligible implementation of such measures. A large casino, international accountancy firms and international real estate firms are an exception as they appear to implement EDD procedures as part of standard operating procedure covering measures relating to PEPs, wire transfers, targeted financial sanctions relating to TF and high-risk countries identified by FATF.

Politically Exposed Persons (PEPs)

324. Banks, insurance companies, securities firms and remittance companies have adequate measures to identify foreign and domestic PEPs and apply enhanced measures on this group of customers using automated commercial databases or internally developed proprietary databases. This includes obtaining senior management approval before establishing relationships with PEPs and determining the source of wealth and source of funds. These entities appear to conduct EDD on both domestic and foreign PEPs and there is no differentiation in the approach and the application of risk mitigating measures between domestic and foreign PEPs. While PEP requirements do not extend to domestic PEPs in Vietnam, some FIs screen domestic PEPs to maintain correspondent banking relationships. However, this was not demonstrated by all REs, given the technical deficiencies with regard to domestic PEPs.

325. Local development investment funds, micro-finance institutions, the People's Credit Funds suggest that they do not have any customers who are PEPs. While this appears to be reasonable given these entities mainly provide financial access to low income populations, concerns remain as to whether PEPs are properly identified by these REs. Money-changers do not demonstrate adequate awareness of the requirements regarding PEPs.

326. DNFBPs generally appear to have a negligible understanding of obligations to identify and take risk mitigating measures related to PEPs.

Correspondent Banking

327. Despite the technical deficiencies, banks appear to generally implement adequate correspondent banking requirements in line with the FATF standards to meet respondent banks' expectations. This includes assessing the compliance level of AML/CFT controls of potential correspondent banks. The majority of domestic-owned banks are respondent banks and are subject to stringent on-going due diligence by correspondent banks in other jurisdictions. The level of scrutiny from a Vietnamese perspective is less clear.

New Technologies

328. There are no specific, enforceable requirements for REs to assess the ML/TF risks of new products, business practices and technologies in Vietnam and the requirement to conduct a risk assessment is only limited to non-face-to-face transactions. Foreign-owned institutions implement more robust procedures in relation to assessing the risk of new technologies, mainly due to the requirement of the global-wide policies and usually as part of their global assessment of associated risks.

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329. VASPs are not covered by AML/CFT obligations and there is no legal framework for virtual assets and VASPs in Vietnam. REs had not considered or developed any specific policies on virtual assets and VASPs. This is a notable concern as Vietnamese authorities indicate that most of the transactions involving virtual assets are conducted through banks. Significant weight is given to deficiencies in relation to virtual assets and VASPs.

Wire Transfer Rules

5 330. Notwithstanding the technical deficiencies, banks and remittance companies understand wire transfer requirements and appear to have functioning policies and procedures in place in relation to conducting wire transfers. These include the requirement when there is incomplete originator or beneficiary information. FIs use commercial databases to screen for TFS relating to TF before executing the wire transfer. There are no other specific or enhanced measures implemented by FIs. There are some concerns that implementing requirements for domestic transactions is not well supported. The lack of AML/CFT supervision further aggravates the concern.

Targeted Financial Sanctions Relating to TF

331. Banks, insurance companies, securities firms and remittance companies apply adequate measures for TFS relating to TF. Given the high volume of customers and transactions, these entities rely on automated systems (including commercial databases) for TFS screening. Those FIs appear to understand obligations to freeze the funds or transactions and submit STRs to the AMLD if there are any positive names matched during the screening process. One transaction involving a North Korean was stopped (which relates to TFS relating to PF), however the AMLD confirmed that the entity was not a sanctioned entity and so the transaction was released.

332. While REs refer to the list published by MPS for TFS screening, effectiveness is affected due to a variable level of understanding regarding REs' obligations (see IO. 10), and there is no guidance and on-going communication to notify REs of new designations or de-listings. It is also the responsibility of REs to monitor these lists on their own. For REs who use an automated system for screening, the list published by the AMLD is integrated into their system.

333. Local development investment funds, micro-finance institutions and the People's Credit Funds indicated that they conduct manual screening on their customers based on the list provided by the MPS, though no indication of any positive matches was provided. Money changers are not aware of the requirements regarding TFS relating to TF.

334. DNFBPs have a negligible understanding of TF risks. With exception of the large accounting firms and larger casinos, the implementation of the TFS and CFT measures are limited. While the overall risk of TF is low, this does not suggest that a negligible understanding is commensurate with this risk and the context in Vietnam.

Higher-Risk Jurisdictions Identified by the FATF

335. Banks, insurance, securities firms and remittance companies are aware of the risks associated with jurisdictions identified by the FATF as high-risk. These FIs apply some countermeasures including no establishment of subsidiaries or branches in the higher-risk jurisdictions and limiting business relationships with individuals from higher-risk jurisdictions. Most of the FIs adopt a policy of not accepting customers from higher risk countries.

336. Local development investment funds, micro-finance institutions and the People's Credit Funds generally have limited exposure to customers / transactions from higher risk countries. These entities, including money-changers exhibited no understanding of this requirement.

337. DNFBPs did not appear to have an understanding of the need to consider the risks associated with jurisdictions identified by the FATF as high-risk.

Reporting obligations and tipping off

338. Banks, insurance, securities and remittance companies generally have adequate STR reporting mechanisms. However, there is a narrow range of REs filing STRs and overall, the numbers filed are relatively low. 81% of the STRs are submitted by banks, followed by remittance companies (16%) and insurance companies (3%). The STRs submitted by other sectors are negligible. Majority of REs across all sectors appear to submit STRs based on a threshold rather than suspicious behaviours which may not necessarily align well with the risk profile outlined in the NRA.

Table 5.1: STRs Reported by REs*

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	-	-	1,542
2016	456	236	237	372	25	-	-	1,326
2017	343	305	294	485	46	-	1	1,474
2018	322	380	523	285	25	-	5	1,540
2019 (to Sept)	325	543	410	41	25		9	1,353
TOTAL	2,649	2,182	1,740	1,297	225	1	15	8,109

*As of September 2019

339. While REs appear to refer to the red-flags provided by the AMLD to guide them in detecting suspicious transactions, REs actions to monitor and identify suspicious transactions is not well implemented. Foreign-owned FIs are also guided by their global-wide policies. Most of the internal generated STRs originated from the transaction monitoring system and only a few are from front-line staff who deal directly with customers and may report based on suspicious behaviour. The number of STRs submitted on attempted transactions is negligible.

340. Many REs appear to submit STRs based on a threshold rather than suspicious behaviours. FIs indicated that the STRs are normally submitted on the grounds of large transactions and/or high frequency transactions, which are not in line with a customer's profile. For the past five years, the AMLD reported they have received six (0.07%) STRs on the grounds of incomplete CDD and 244 (3%) STRs on transactions involving virtual assets. Apart from the request for further information and documents, there is no feedback provided by the AMLD on the quality of STRs submitted by these entities. Based on the AML/CFT thematic inspection in 2019, the SBV reported that the REs have been submitting low quality STRs with limited information in the reports.

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341. As noted above, there is no explicit requirement on REs to submit STR on TF. In practice, there is a limited number of TF related STRs have been reported, which is broadly in line with a low risk for TF (see IO. 9).

342. Other FIs do not have adequate monitoring for suspicion and STR reporting mechanism in place. No STRs reported by these entities including local development investment funds, micro-finance institutions and the People's Credit Funds and they are not aware of the red-flags to detect suspicious transactions and the availability of a list of red-flags issued by the AMLD.

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343. The majority of the DNFBPs have a negligible rate of STR reporting due to the lack of understanding of what a suspicious transaction or suspicious behaviour is and minimum awareness of the ML/TF risks and AML/CFT obligations.

344. Lawyers/ notaries have not reported any STRs because of their limited understanding of AML/CFT requirements. In Vietnam, the legal privilege for clients of lawyers/ notaries and accountants does not impede the implementation of AML/CFT measures including the obligation to file STRs.

345. In relation to tipping-off, banks, insurance companies, securities firms and remittance companies manage the risks of tipping-off by keeping the submission of STRs confidential and only certain officers in the FIs could access the STRs. For other FIs, they do not have any practical measures to prevent tipping-off. DNFBPs do not have an understanding of measures to prevent tipping-off noting that Vietnam has not reported any cases of tipping-off.

Internal controls and legal/regulatory requirements impending implementation

346. The extent of application of internal controls varies across different institutions within the financial sector. Banks, insurance and securities firms appear to have adequate internal policies in place with foreign owned institutions having additional requirements from their global group-wide policies and procedures. Domestic-owned banks also indicate that they have to ensure their internal controls are at a par with foreign owned-institutions for the purpose of maintaining their correspondent banking relationships. However, Vietnamese supervisory authorities have not taken steps to ensure that the financial sector's AML/CFT policies and procedures are in line with the relevant domestic legislation.

347. Other FIs especially non-bank credit institutions and money changers do not have adequate internal controls in place. The majority of DNFBPs lack understanding of their AML/CFT obligations and have no internal controls in place. The international accountancy firms and large casinos have internal AML/CFT controls in place.

348. Prior to on-boarding new employees, banks conduct employee screening, which includes background checks on the credentials and reputation of the potential new employees. This is based on the information from resumes and referral checks. No screening is conducted on criminal backgrounds except for large foreign owned FIs. AML/CFT training and awareness for employees is conducted by these institutions upon new employment and on an on-going basis. The trainings are tailored based on the employee's level of responsibilities in detecting ML/TF activities. There are some experiences of FIs having taken disciplinary actions against their staff for failure to comply with their internal regulations.

349. FIs conduct internal audit inspections annually but it is not clearly demonstrated whether the inspections have been comprehensive and effective, especially when there has been no AML/CFT issues raised during the inspections. AMLD indicates foreign-owned FIs are audited annually by their parents according to their global-wide policies. Based on the review of internal audit reports submitted by REs,



the AMLD provides the scope of the audit mainly covers employees training and AML/CFT internal regulations with issues relating to CDD, PEPs and management information system having been highlighted.

350. Awareness sessions have been offered by the SBV, AMLD, SSC and Insurance Supervisory Authority over the last five years. This has included 70 days of training provided to approximately 7,000 people over this period. However, some sectors have had limited training programmes despite their significant risks including securities and fund management firms (two days in 2014), casinos (none), accounting firms (none), lawyers & notaries (none) and real estate companies (0.5 days per annum). In addition, in 2015, the BSA issued the "Handbook on AML/CFT for Banks in Vietnam" for credit institutions in Vietnam as a reference to assist them in the implementation of AML/CFT measures. MPS appears to have general powers to supervise REs for compliance with CFT requirements including implementation of TFS-TF, but there is no awareness conducted or guidance issued by MPS to the REs on these areas (see IO.3). While legislation requires REs to have internal controls, but no specific guidance has been issued by authorities to assist REs in the implementation process.

351. Larger REs including banks, insurance, securities, large accountancy firms and the larger casino do offer on-going AML/CFT training for staff as opposed to smaller FIs and remaining DNFBPs. Overall, the guidance and training provided is limited when considering the risks, size and context within Vietnam.

352. Legislation which contains secrecy provisions in Vietnam is overridden in circumstances where authorities require information to support the investigation of criminal activities. In practice, FIs and competent authorities' implementation of AML/CFT measures do not appear to be impeded by secrecy provisions. Legal professionals also reported that the legal privilege does not impede the implementation of their AML/CFT obligations.

Overall conclusion on Immediate Outcome 4

353. Authorities have not given sufficient support and guidance to ensure FIs and DNFBPs have a good understanding of their ML/TF risks and AML/CFT obligations. The most weight is given to banks, insurance and securities firms. Banks especially domestic-owned banks, insurance and securities firm are implementing AML/CFT measures on a rules-based approach and have not yet moved to a risk-based approach and need major improvements in a range of areas of implementation. Foreign-owned entities have more advanced AML/CFT controls with moderate improvements needed. The extent of comprehensiveness and consistent implementation of preventive measures across all larger FIs cannot be fully ascertained due to technical gaps and lack of supervision to verify the effectiveness of the measures applied. Significant weight is also given to the deficiencies in relation to VASPs. Remittance companies are implementing AML/CFT measures to a lesser extent. Fundamental improvements are required for non-bank credit institutions and money changers in all AML/CFT obligations. DNFBPs are implementing preventive measures to a negligible extent. Real estate is the most significant DNPBP, and this sector has a limited understanding of ML/FT Risks with negligible implementation of preventive measures to mitigate those risks.

354. **Vietnam has a low level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- a) Vietnam has established a preliminary AML/CFT supervision system for FIs. However, AML/CFT supervision has not been prioritised and is very limited. There has been no AML/CFT offsite supervision and very limited on-site supervision which is rules based.
- b) The scope and frequency of AML/CFT supervision are not risk-based. Supervision of larger FIs is mainly driven by and combined with prudential supervision rather than ML/TF risk. Most on-site AML/CFT supervision is limited in scope, if undertaken at all. AML/CFT supervision has been mostly limited to banking, securities and insurance sectors. Amongst DNFBPs only a few prize-winning electronic games and casinos have been subject to AML/CFT inspections and with limited scope.
- c) MPS has broad responsibility to prevent and combat terrorism and TF, though it has not developed any specific regulatory mechanisms, guidance or undertaken any supervision of REs for compliance with CFT measures. While SBV is the nominated supervisor and regulator of CFT, there is no clear authorization in the law to formulate regulatory requirements and carry out supervision.
- d) Although all supervisory authorities participated in the NRA process, except for BSA in SBV, non-bank FIs and DNFBPs supervisors demonstrate little understanding of ML/TF risk and how to manage and mitigate this risk. Supervisors have not obtained institutional level assessments that have been undertaken since completion of the broader based NRA in early 2019.
- e) Implementation of fit and proper controls is not comprehensive. Criminal background checks of directors and on certain shareholders are undertaken for core principle FIs and casinos, however, the source of funds, fit and proper requirements of beneficial owners and connection to criminal associates is not considered. For remaining FIs and DNFBPs, fit and proper checks rely on basic registration procedures. Supervisors have not refused market entry due to a criminal background or association.
- f) Supervision has only detected limited AML/CFT violations, which have not been followed up to ensure compliance. Vietnam has not demonstrated effective remedial actions. There has been no application of effective, proportionate and dissuasive sanctions for AML/CFT violations. Sanctions have been limited to post-inspection letters that list the deficiencies.
- g) AML/CFT supervisory capacity is weak and is not supported by training. The large number of prudential supervisors occasionally conducting AML/CFT supervision detracts from building specialist AML/CFT skills and programmes and detracts from sustainable AML/CFT capacity across supervisors.
- h) Supervisors have organised training and workshops to promote REs' understanding of ML/TF risks and AML/CFT obligations. However, the reach of the training is limited, the effectiveness of regulatory guidance is low, which is not guided by ML/TF risks and is not targeted or specific to different industries.

Recommended Actions

- a) Develop and implement a risk-based supervision strategy that sets out the priorities and methodology of both off-site and on-site AML/CFT supervision for all regulated FIs, DNFBPs and VASPs, with priority implementation (scope, frequency and intensity) based on risk and context.
- b) Conduct more thorough and comprehensive offsite and on-site AML/CFT supervision (including examinations) among all regulated sectors based on AML/CFT risks and supported by SOPs and guidelines.
- c) Undertake consistent and comprehensive 'fit and proper' assessment of FIs and DNFBPs including understanding the beneficial ownership, suitable risk information.
- d) Conduct comprehensive outreach programs to improve compliance and awareness of ML/TF risks and obligations including preventive measures.
- e) Implement a clear enforcement strategy to strengthen the compliance and effectiveness of REs' AML/CFT controls whilst imposing effective, proportionate and dissuasive sanctions.
- f) Extend responsibilities and powers of AML supervisors to cover CFT requirements noting that comprehensive CFT requirements are still to be introduced (as per IO.4).
- g) Enhance training, systems and capacity of AML/CFT supervisors for risk-based onsite and offsite supervision (including examinations).

355. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28 & R.34 & 35 and elements of R.1 and 40.

Immediate Outcome 3 (Supervision)

Background

356. The SBV is the licensing authority for credit institutions, foreign currency exchanges, money transfer remittance services, and intermediary payment service providers, as well as gold bar shops. The MOF is 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. The MOJ is the licencing authority for lawyers and notaries. The MOC licenses real estate intermediaries.

357. The SBV has primary responsibility for AML/CFT supervision of the banking sector. SBV's supervision of AML/CFT is not consolidated and SBV prudential supervisors also conduct AML/CFT supervisory activities of SBV regulated entities. The SBV's Banking Supervision Agency (BSA) is the supervisor for banking, other credit institutions and intermediary payment service providers. Foreign currency exchanges and money transfer remittance services are supervised by local branches of SBV. MPS have CFT supervision powers under the CTF law.

358. While the MPS has broad responsibility to prevent and combat terrorism, which includes TF, the powers of inspection and examination are general and are not specific to FIs, DNFBPs and/or VASPs

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in terms of AML/CFT requirements. The MPS has not developed any specific regulatory mechanisms, guidance or undertaken any supervision of REs for compliance with CFT measures.

359. The MOF is the nominated supervisor for securities and insurance companies as well as three DNFBPs sectors. These are casinos, prize-winning electronic games and accountants.

360. For other DNFBPs, the MOC is the supervisor for real estate exchange companies and MOJ is the supervisor for notaries and lawyers. The Ministry of Industry and Trade (MIT) is the supervisor for entities dealing in precious metals and precious stones including gold. There is no nominated supervisor for dealers in precious metals and stones (except for gold bar shops) and trust and company service providers, but some lawyers can provide trust or company services.

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Licensing, registration & controls preventing criminals and associates from entering the market

361. Regulators do not pay sufficient attention to ML/TF risks at the point of market entry. There is insufficient focus on the suitability of the major shareholders and corporate members as well as of key employees. During licensing procedures for banking, insurance, securities sectors and casinos, criminal background checks of directors and on certain shareholders have been considered. However, source of funds, beneficial ownership, and criminal associations are not considered as part of these procedures. It is not clear that information is sought from foreign regulators, where relevant, as part of this process. For other FIs and DNFBPs, criminal background checking mainly relies on the registration procedures conducted by MPI. No regulator has identified a case of refusal to grant a licence or hold a role in a regulated institution based on fit and proper failings, including criminal background or suspicious source of funds.

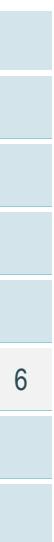
362. When granting licenses, SBV checks the criminal records (obtained from the MOJ), identity documentations (ID card and address) and legal status of the applicants. When shareholders are domestic persons, the SBV may also check their criminal records with MPS. No application for a local bank has occurred since the Law on Credit Institutions 2010 took effect. While the SBV sought input from the MPS about one foreign bank's application, it is unclear if the MPS obtained information from foreign authorities. The licensing of intermediate payment service providers is mainly focused on professional qualifications or practical experience. For money transfer remittance and foreign currency exchange agencies, legal status and income of the applicant are the main factors checked. The SBV and other regulators do not appear to conduct fit and proper checks when key shareholding arrangements or management changes occur, they only occur on occasion at point of licensing.

363. The MOF usually checks the criminal background of directors and shareholders holding over 5% of shares when reviewing insurance companies and securities licence applications. However, measures are not implemented to prevent unsuitable beneficial owners controlling regulated FIs. When checking source of funds, the MOF mainly focuses on financial capacity.

364. For DNFBPs, only casino regulators consider the fit and proper requirements of the applicant. Since 2018, MOF has granted licenses with criminal background checks undertaken during licensing. For prize-winning electronic games and other DNFBPs, no such measures are undertaken to prevent criminals or their associates from owning or controlling such entities.

Supervisors' understanding and identification of ML/TF risks

365. AML/CFT supervisors' understanding of ML/TF risks is mainly based on the NRA, which was finalised in April 2019. Before the NRA, there was no mechanism for supervisors to understand and



identify the ML/TF risks within each sector. While all supervisors participated in the NRA process, they generally appear to only have a high-level and cursory understanding of the ML/TF risks in Vietnam and did not demonstrate a comprehensive understanding of the specific risks of the different sectors and the implications for risk-based supervision. Vietnam intends to revise its NRA every five years, which may support supervisors' on-going identification and understanding of ML/TF risks.

366. Supervisors have not yet developed processes or activities that allow them to identify and maintain an understanding of the ML/TF risks between different sectors and types of institutions, as well as individual institutions. Information including STRs, ML/TF cases and other intelligence such as typologies and strategic analysis has not been considered by supervisors to better understand sectoral or institutional ML/TF risks and support risk-based supervision. REs are now required to conduct their own institutional risk assessments (adopted just prior to the on-site visit) but supervisors have not considered these assessments to better understand and inform supervision of different sectors.

367. While banks have the highest ML/TF risks within FIs, banking supervisors were unable to clearly articulate the nature of ML/TF risks faced by the banking sector. AML/CFT supervisors in BSA and in particular AMLD appear to understand some of the ML/TF risks in the banking sector, but other prudential supervisors in BSA did not. For non-banking financial sectors, it seems that supervisors of foreign currency exchanges, money transfer remittance services, intermediary payment service providers, insurance and securities do not clearly understand the ML/TF threats or exposure these sectors have and the vulnerabilities that FIs from these sectors have. During the on-site visit, in most cases, the regulators for non-banking FIs were not able to clearly indicate what the potential ML/TF risks of the regulated institutions are and what was required to mitigate these risks. The lack of STR reporting further exacerbates the limited understanding of risk that regulators have.

368. DNFBP supervisors lack awareness of the ML/TF risks associated with DNFBPs in Vietnam. There were some ML cases in Vietnam using, for example, real estate that concealed the proceeds of corruption offences, but such cases do not appear to have contributed to an improved understanding of ML/TF sectoral risk amongst supervisors.

Risk-based supervision of compliance with AML/CFT requirements

369. Vietnam has not yet taken a strategic approach to developing AML/CFT supervisory capacity. Supervisors lack dedicated AML/CFT teams and programmes. The number of supervisors follows the sectoral regulatory framework, with no staff dedicated to AML/CFT within sectoral assessment teams. This appears to contribute to challenges with supervisory agencies developing the requisite AML/CFT skills and programmes. Supervisory manuals for AML/CFT inspection are not comprehensive; with no reference to a risk-based approach which guides the supervisors in what and how they supervise REs.

370. Regarding CFT, it is unclear whether regulators (SBV) have sufficient legal authority to formulate regulatory requirements and carry out supervision. This will undermine the effectiveness of CFT supervision as well as the RE's compliance of TF-related preventive measures. In addition, no supervision of REs for compliance with CFT requirements has been conducted by any regulator or by MPS.

371. AML/CFT supervision is not yet prioritised based on risk and supported by suitable institutional arrangements and resourcing. All supervisors have their annual inspection schedules set by the Vietnam's Government Inspectorate. Most relevant inspections by the Government Inspectorate do not include AML/CFT and are not guided by ML and TF risk.

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372. For almost all FIs, prudential supervisors develop annual inspection plans in advance and conduct inspections periodically. Very few REs are inspected annually or based on risk, and those inspections have limited AML/CFT content (Table 6.3). It is difficult to determine if supervisory authorities have adequate resources for AML/CFT supervision.

373. Supervisory priorities do not follow findings of assessments of risk to prioritise supervision of particular sectors. The NRA identified banking, real estate and money transfer remittance as sectors with the highest risks. While BSA carries out regular prudential inspections on banks, the planning and scope of conduct of AML/CFT supervision of the banking sector is not commensurate with its risk profile. For the banking sector, BSA on-site inspections follow a time-bound annual cycle, to which AML/CFT components can be added. BSA develops an annual inspection plan based on their nine qualitative and quantitative criteria, in which, AML/CFT is a minor element within the internal control indicator.

374. In 2019, due to a number of criminal investigations related to ML, BSA changed the inspection plan and added three commercial banks to the inspection list though it appears that the cases were added as the investigations were already underway. These inspections were not finalised by the end of the on-site visit.

375. No supervisory measures have been adopted for foreign currency exchange agents, money transfer remittance companies as well as real estate agents.

376. There is no risk-based approach to AML/CFT supervisory conduct within sectors. Supervisors do not utilise ML/TF risk assessments (sectoral or enterprise level) to support risk-based treatment within particular sectors and/or institutions for either on-site or offsite inspections. Supervisors are likely to consider AML internal audit reports submitted by REs, however, the audits generally consider internal controls rather than risks. While REs are now required to conduct their own institutional risk assessments (implemented just prior to the on-site visit), no supervisory oversight of these assessments have been undertaken as yet and completed enterprise assessments were not available to supervisors.

377. Vietnamese authorities provided the statistics on the numbers of inspections undertaken (Table 6.1), however almost all the financial sector inspections refer to prudential inspections, with some including limited AML/CFT content. No inspections on money-changers, money transfer remittance services, non-bank credit institutions and micro-credit institutions have been undertaken.

Table 6.1. Inspections including AML/CFT elements³¹

Type of institutions	Inspections including AML/CFT elements				
	2015	2016	2017	2018	2019
Credit Institution	92	117	97	78	-
Conducted by BSA	-	-	3	4	7
Conducted by branches of SBV	-	-	153	115	155
Insurance Company	02	02	02	03	1
Securities Company	12	13	14	12	14
Fund Management Company	10	10	08	09	9
Enterprise trading prize-winning electronic games for foreigners	0	0	0	06	13
Casino business	0	0	0	0	4

³¹ It is not clear the extent to which these inspections involved AML/CFT content.

Accounting and Auditing Services Provider Organizations	0	0	0	0	0
Organizations practicing law and notarization	8	18	18	3	0
Real estate business, real estate trading floor	0	0	0	0	0
Total	124	160	141	123	

Note: It is not clear the extent of AML/CFT supervision in each inspection.

Financial Institutions

378. AML/CFT supervision in the financial sector (including insurance and securities), is driven by prudential supervision concerns. According to the supervision manuals for the banking and insurance sectors, a range of AML/CFT factors are considered typically focusing on compliance with high value transaction reporting. However, supervisors do not focus on how FIs profile customer or transaction or enterprise risk within their AML procedures.

379. Before conducting inspections, the BSA considers the internal audit report received from FIs as well as other information received from other competent authorities, including AMLD. The BSA requires banks to provide information and data needed for inspections, including internal AML regulations, CDD procedures, information related to reporting obligations and TFS obligations though it was not demonstrated that these areas were adequately considered in inspections. For example in one inspection report, no recommended actions were provided even though the supervisor found no STRs were submitted, no annual review of CDD was undertaken and the RE did not have a policy for high-risk customers.

380. The SBV's supervision of money transfer remittance and foreign currency exchanges is conducted annually by SBV provincial branches, with minor reference to AML/CFT compliance. Intermediate payment services providers were not designated as REs until the on-site visit (November 2019). Given the remittance sector's relatively high ML risks, the lack of risk-based regulation is of concern.

DNFBPs

381. There is negligible supervision of DNFBPs in respect to AML/CFT and between 2013 and 2018, no inspection reports have been provided related to the few inspections undertaken. No offsite or onsite inspection has been undertaken except for a few inspections that have been carried out on casinos and prize-winning electronic games. For example, in 2019 the MOF conducted 4 casino on-site visits by the joint inspection unit, with the focus AML/CFT compliance, but the results of the inspections are unclear. Provincial branches of the MOC conducted inspections on the real estate sector though details of the nature, scope and outcomes of these inspections was not demonstrated. Large value transactions were the main focus of the limited DNFBPs' inspections undertaken. Identification procedures of beneficial ownership have never been inspected.

Remedial actions and effective, proportionate, and dissuasive sanctions

382. Vietnam has not demonstrated remedial actions or the application of effective, proportionate and dissuasive sanctions for AML/CFT violations (in keeping with the deficiencies of R.35). Few violations in relation to AML/CFT have been found, with very limited sanctions imposed. As such, supervisory measures appear to have had a negligible effect on REs. In most cases, supervisors are likely to issue an official letter to note deficiencies or issues detected during inspections, though this is not considered a sanction and a letter is not always issued related to deficiencies identified. Supervisory

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reports show very limited analysis of deficiencies and supervisors' expectations on steps that need to be taken to address these deficiencies, with no indications of follow-up.

383. No AML/CFT-related sanctions has been imposed on banks and other credit institutions, with very few AML/CFT deficiencies or violations having been formally identified, with none subject to follow up or enforcement. After inspections, the BSA usually issues a notice to all REs to promote the broad findings of the inspections, without mentioning the individual RE or the specific deficiencies.

384. For NBFIs, the MOF imposed financial sanctions on two insurance companies in November 2019. As this was just prior to completion of the on-site, it is unclear how this effected AML/CFT compliance of the NBFI sector overall.

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385. For DNFBPs, one electronic-winning game business was fined by the MOF in May 2019 for violating the requirements to report high value transactions. The penalty imposed was VND80 million (approx. USD 3,453), which is not considered dissuasive and proportionate. No other DNFBPs have been sanctioned for other AML/CFT violations.

Table 6.2. AML/CFT violations detected from inspections and types of penalty

Sector	Types of penalty (year/number)				
	Warning	Fine	Operation Suspended	Revocation of license	Others
Banks and other Credit Institutions	0	0	0	0	2014(1) 2015(2) 2016(1) 2017(2) 2018(1)
Insurance Companies	0	2019(2)	0	0	0
Enterprise trading prize-winning electronic games for foreigners	0	2019(1)	0	0	0

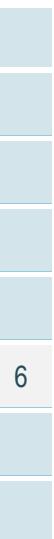
Note: The "others" refer to official letters issued by the supervisor as feedback at the conclusion of the inspections, which in most cases is not considered a sanction.

Impact of supervisory actions on compliance

386. Supervisors did not demonstrate that their actions have a positive effect on AML/CFT compliance by FIs and DNFBPs. After on-site inspections, the BSA has always issued a notice to the RE involved to highlight the administrative deficiencies found via inspections, recognising these were only small deficiencies. To date, the BSA has not found significant violations on CDD, STR or other AML/CFT requirements probably due to the lack of AML/CFT inspections conducted, though in many cases the total lack of STRs was not raised as a finding of concern.

387. The MOF usually issues a notice to the regulated institution after inspections, with the main findings detected by the inspection, to facilitate compliance improvements across the sector. Due to the structured regulation of the insurance (have documented process for inspections) and securities sectors, compliance by REs may be improved for the purpose of prudential risk management, but it is unclear what improvements have been achieved in relation to AML/CFT due to limited scope and negligible follow-up.

388. The MOF's onsite supervision of casinos and electronic-winning games have mainly found deficiencies with record keeping of information such as client passport numbers and nationalities.



Additionally, through on-site interviews with REs, DNFBPs are generally not fully aware of their AML/CFT obligations and even less informed about what ML/TF risks mean in each sector. However, no STRs have been reported by DNFBPs (only some large value reports) and significant gaps found during the on-site visit suggest that REs in these sectors have negligible understanding of risk and AML/CFT measures.

389. For other FIs and DNFBPs, since either no supervision has been undertaken or no deficiencies and violations have been detected as yet, effectiveness of supervisory actions cannot be assessed.

390. The impact of supervisory actions on compliance is not well demonstrated and the lack of outcomes is a reflection of the negligible risk-based supervision undertaken. Overall, a lack of actions by supervisors to identify and sanction cases of non-compliance undermines positive improvements to prevent ML/TF.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

391. The SBV and other supervisors have begun to promote an improved understanding of AML/CFT obligations and risks, but this is at a preliminary stage and is not supported by written guidance. SBV has provided awareness raising sessions and training (see Table 6.3) and official letters to assist REs to understand ML/TF risks and AML/CFT obligations though the outreach is minimal when considering the size and makeup of REs in Vietnam. It appears that awareness and training is not guided by ML/TF risks and did not initiate changes in practice resulting in improved effectiveness of the preventive measures of REs. The limited reporting from the private sector also indicates that the impact is weak to date.

Table 6.3. AML/CFT training for reporting entities

Types of entities	2014		2015		2016		2017		2018	
	days	people	days	peopl e	days	peopl e	days	peopl e	days	peopl e
Credit Institutions	3	150	0	0			36	1588	6	377
Securities co., Fund Management co.	2	190	0	0	0	0	0	0	0	0
Insurance	1	120	-	-	-	-	-	-	1	120
NRA training							18	36		
Casino; prize winning	0	0	0	0	0	0	0	0	0	0
Electronic games										
Accounting and Auditing Services	0	0	0	0	0	0	0	0	0	0
Lawyers, notaries	0	0	0	0	0	0	0	0	0	0
Real estate business, real estate trading floor	½ day	709	½ day	1,203	½ day	742	½ day	771	½ day	1,099

392. After its completion in April 2019, the SBV provided the NRA to all REs to promote their understanding of ML/TF risks. This was achieved by publishing the summary of the NRA on the SBV website and by issuing official letters to require REs to consider the NRA to better understand ML/TF risks, vulnerabilities and threats in their sector and across Vietnam more generally. While these measures, to some extent, have helped REs to consider the overall ML/TF risks, the understanding of risks and the impacts of these risks in most sectors (besides the larger banks) is very limited. It appears

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that most REs did not understand the need to understand their risks and what measures should be taken in response to these risks.

393. The MOF insurance department included the AMLD in AML/CFT training for insurance companies to better understand their AML/CFT obligations. The MOF also issued an official letter to the casino and prize-winning electronic games sector, with the website location of the NRA, requiring regulated institutions to look into the risks posed in NRA, but it is not evident that these sectors understand what the risks are and what measures they should take to mitigate these risks.

394. Supervisors require a more in-depth understanding of ML/TF risks to support strengthening awareness raising for FIs and DNFBPs regarding ML/TF risks and AML/CFT obligations.

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Overall conclusion on Immediate Outcome 3

395. Risk-based supervision is not undertaken in Vietnam and the scope and depth of supervision is inadequate reflecting AML/CFT supervision is not a priority. The SBV and the MOF have, to some extent, implemented mechanisms in place to prevent criminals from entering the market through their respective licensing regimes. For remaining FIs and DNFBPs, the fit and proper checks are very limited. Supervisors have a variable understanding of ML/TF risks in their sectors and the understanding of the impact of these risks on each sector is negligible. AML/CFT supervision on the banking sector is limited and is mainly driven by prudential supervision, while supervision for remaining FIs and DNFBPs more generally is negligible. There have been no dissuasive and proportionate sanctions imposed to date. These deficiencies require fundamental improvements.

396. **Vietnam has a low level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- a) While the information on the creation of commercial legal persons is publicly available in both Vietnamese and English language through the online Business Registration Portal, information of the creation and types of non-commercial legal persons is not publicly available. Basic information regarding commercial legal persons is immediately available to competent authorities and the public. This information is verified and kept up-to-date.
- b) Vietnam has some understanding of the ML/TF risks associated with commercial legal persons, however there were some gaps in the assessment and the results are not yet widely understood. Vietnam has a weaker understanding of the ML risks and vulnerabilities of the not-for profit legal persons. The authorities do not have an understanding of the control of foreign trusts operating in Vietnam.
- c) There are some measures in place to increase transparency of commercial legal persons.
- d) Vietnam relies on using CDD information obtained REs to allow competent authorities to access beneficial ownership (BO) information on legal persons and trusts. However, as noted in IO.4, there are deficiencies in the legal requirements and most REs revealed a limited understanding and knowledge of the concept of BO and how to determine the person who exercises ultimate control over a legal person. BO is frequently misunderstood as legal ownership, determined by the checking the basic information on legal persons on the Business Registration Portal. The lack of understanding is reflective of the limited guidance from supervisors.
- e) There is very limited demonstration that REs are collecting BO and control information related to foreign trusts operating in Vietnam that could be provided to competent authorities when requested.
- f) Sanctions are proportionate but the fine amounts are too low to be dissuasive and applied only to commercial legal persons for not complying with basic information requirements. There was no demonstration that sanctions have been applied to REs for failure to provide BO information collected pursuant to CDD obligations when requests by competent authorities.

Recommended Actions

- a) The information on the creation and types of non-commercial legal persons should be made publicly available as well as information regarding the recognition of foreign legal arrangements.
- b) Vietnam should develop a more comprehensive understanding of the features of different types of legal persons that make them vulnerable to ML/TF abuse to address the deficiencies identified in relation to their recent risk assessment. In doing so, Vietnam should consult with the private sector and seek their input.
- c) Vietnam should extend BO requirements to all legal persons and to foreign legal arrangements when recognised.

- d) Vietnam should conduct training and awareness raising for competent authorities to improve understanding of the concept of BO and the results of the risk assessment on legal persons as well as steps to be taken to obtain available BO information.
- e) Vietnam should implement the risk mitigation action plan defined in the risk assessment report of legal persons to prevent the misuse of all legal persons for ML/TF, in particular improving the effectiveness of inspection and information sharing.
- f) Vietnam should introduce measures to prevent the misuse of foreign trusts with a presence in Vietnam, including requiring trustees to disclose their status to FIs and DNFBPs.

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397. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25, and elements of R.1, 10, 37 and 40.³²

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

411. Legal persons in Vietnam can be separated into two broad categories: commercial legal persons; and non-commercial legal persons. Information on the creation and types of commercial legal persons is publicly available on Vietnam's online Business Registration Portal (www.dangkykinhdoanh.gov.vn), in both Vietnamese and English language. This information includes guidance on the business registration process. The legislation applicable to creating and maintaining commercial legal persons is also publicly available on the Business Registration Portal (<https://dangkykinhdoanh.gov.vn/en/pages/LegalDocument.aspx>), although it is dispersed across a range of laws, decrees, circulars and decisions.

412. Information regarding the creation and types of non-commercial legal persons is set out in the relevant Decrees, namely Decree No. 45/2010 (Associations), Decree No. 12/2012 (International-NGOs), Decree No. 30/2012 (Social Funds and Charity Funds). However, it was not demonstrated that these instruments or the relevant information is publicly available.

414. Legal arrangements cannot be created under Vietnamese law and, therefore, no information on their creation is publicly available. Vietnam has arrangements known as "real estate investment trusts" but the legal nature of these is not similar to the definition of legal arrangements under the FATF standards.

³² The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

415. The ML/TF risks of legal persons in Vietnam have been assessed and are understood by certain competent authorities to some extent. Vietnam recently conducted a ML/TF Risk Assessment on Legal Persons, which considered all types of commercial legal persons that can be established under the Law on Enterprises 2014: (a) multi-member limited liability companies (MLLC); (b) single-member limited liability companies (SLLC); (c) joint-stock companies; (d) partnerships; and (e) private/sole proprietorships. The assessment also covered the ML risks associated with NPOs to a limited extent. The TF risks associated with NPOs have been separately assessed (as outlined under R.8 and IO.10). The risk assessment was formally in November 2019, during the ME on-site visit.

416. The risk assessment was developed by a working group led by the MPI and consisting of representatives from AMLD, MPS, MOHA and COMINGO. A broader group of agencies, including MOJ, MOF, SPP and the SPC were consulted on drafts of the report. However, the private sector was not consulted and did not provide any input to the assessment, which somewhat undermines the comprehensiveness of the assessment.

417. The assessment was conducted on the basis of interviews; data provided by competent authorities, including investigation statistics provided by the MPS and STR data provided by the AMLD; and information regarding exposure to foreign investment, especially from high-risk jurisdictions. Publicly available information on typologies was also considered.

418. The risk assessment concluded that the overall ML risk for commercial legal persons is medium and the TF risk is rated low. The ML threats and vulnerabilities were found to be higher amongst SLLCs, MLLCs and joint stock companies. Based on a limited assessment, the ML risks associated with NPOs were found to be low. Overall, the assessment team concluded that these ratings are reasonable, although there were some deficiencies identified in the assessment, as detailed below.

419. MPS data and feedback on investigations reveal that MLLCs have been more regularly abused for criminal purposes (47.08% of investigations on legal persons for economic crimes) than the joint-stock companies (30.62%) and SLLCs (17.79%). There have been limited cases involving other types of legal persons. These findings are consistent with the number of STRs received by AMLD on legal persons.

Table 7.1: STRs related to Legal Persons

Year	Legal persons related to STR	Joint-stock/share holding company	Single-members LLC	Multi-members LLC	Private enterprise/Sole proprietorship	Partnership
2014	353	86	63	182	22	0
2015	739	173	135	399	32	0
2016	374	108	72	189	5	0
2017	349	95	53	198	3	0
2018	366	81	59	219	7	0

Source: AMLD

420. Key ML vulnerabilities identified by Vietnam include the use of individuals through nominee arrangements to obscure the relationship between the beneficial owner and the legal owner, including in the use of complex ownership and control structures. Nominee arrangements appear to be in the

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form of close associates such as employees, and not necessarily family members. These nominee arrangements appear to be informal arrangements.

421. Another vulnerability identified is the exposure to foreign investment. While the risk assessment found that overall Vietnam is not considered an attractive jurisdiction for company establishment, given regulatory requirements and language barriers, it also acknowledges that there is significant foreign investment. South Korea (25.6%), China (17.76%) and Japan (11.37%) have the highest rates of foreign investment in Vietnam. However, the specific ML risks emanating from these jurisdictions were not considered, only general risks associated with foreign investment.

422. There is also limited investment from 'high-risk jurisdictions' (2%). This includes jurisdictions under FATF ICRG monitoring³³ and jurisdictions with high TF risk.³⁴ The risk assessment notes the challenges in identifying the ultimate beneficial owner based in these jurisdictions.

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423. However, the assessment did not consider the features of particular types of legal persons that make them more or less vulnerable to misuse for ML/TF, or discuss their relative transparency. Rather it focused on regulatory controls, volume of violations and foreign ownership.

424. The TF risk of commercial legal persons was assessed as being low. This was determined on the basis of a lack of TF investigations and prosecutions, a lack of intelligence on abuse of legal persons for TF and the finding of the NRA that the overall risk of TF in Vietnam is low. There does not appear to have been any consideration of the ways in which different types of legal persons could be misused for TF. While the assessment of TF risks associated with legal persons was not comprehensive, the rating appears reasonable when considered together with the NRA.

425. Similarly, the low ML risk rating of NPOs was assigned based only on the inexistence of investigations, prosecutions or intelligence on the abuse of NPOs for ML. There was very limited analysis of the ML threats and vulnerabilities faced by NPOs in Vietnam. Therefore, it is not clear that Vietnam has a comprehensive understanding of the ML risks in the NPO sector.

426. The risk assessment had only recently been approved and disseminated to relevant ministries and agencies at the time of the on-site visit. MPI and other authorities that were directly involved in the risk assessment (AMLD and MPS) demonstrated an understanding of risk that was consistent with the risk assessment. However, given the lack of consultation with the private sector and other gaps in the assessment, as identified above, this understanding cannot be described as comprehensive. It was evident that prior to conducting the recent risk assessment, these authorities had a limited understanding of ML/TF risks related to legal persons.

427. Apart from those authorities that were directly involved in the assessment, awareness and understanding of the results of the assessment and of ML/TF risks associated with legal persons in general across competent authorities was very limited. During the on-site visit, many authorities, including some that were involved in the assessment, demonstrated that they did not understand the differences between beneficial and legal ownership. One of the items included in the risk assessment action plan was to organise capacity building and training for staff. However, this had not yet occurred at the time of the on-site.

³³ At the time of the risk assessment report, this included Sri Lanka, Cambodia, Yemen, North Korea, Panama, Ghana, Bahamas, and Ethiopia.

³⁴ Vietnam included the top five terrorism-identified jurisdictions based on the 2017 Global Terrorism Index: Iraq, Afghanistan, Nigeria, Syria and Pakistan.

Mitigating measures to prevent the misuse of legal persons and arrangements

Commercial legal persons

428. Overall, there are a few measures in place to increase transparency and prevent misuse of commercial legal persons, however, due the timeframe of the finalisation of the risk assessment of legal persons, it is not clear that these measures are informed by ML/TF risk³⁵. The main measures to increase transparency of legal persons are the collection, verification and public availability of basic information contained in the Business Registration Portal, the transparency of shareholder information and the collection of BO information by the REs under the Law on AML 2012 and Decree No. 116/2013.

429. Vietnam introduced a Law on Enterprises in 2014 to enhance transparency of legal persons and established a new online Business Registration Portal to enable more timely access to accurate information by competent authorities and the public. The standardisation of the company formation process and centralisation of basic information in an electronic format is a positive development. Legal requirements mandate that the information be kept up to date and authorities have immediate access to this information. However, as outlined below, this does not include BO information.

430. The legal requirements for shareholder identification also increase transparency of commercial legal persons. Bearer shares and bearer share warrants cannot be issued in Vietnam, as the Law on Enterprises 2014 requires joint-stock companies to maintain a shareholder register, which includes the name and personal/enterprise details of every shareholder. This register must be kept at the company's headquarters or Vietnam Securities Depository. For MLLCs, there are similar requirements for all members of the company to be recorded in a member register kept at the headquarters. However, while shareholders and members must be identified in the registers, there is no obligation to identify the ultimate beneficial owner.

431. Vietnam legislation does not recognise nominee shareholders and nominee directors. Any person formally acting on behalf of a shareholder or director will have to do it through a figure of representation which requires the issuing of powers of attorney by the represented person to their nominee, although it is not clear that a regulated entity is required to be involved. This specific power of attorney would identify both parties involved in the representation procedure [but it is not clear that it could be easily identified by competent authorities when determining BO].

432. There are no obligations on companies in Vietnam to obtain and hold BO information. The Law on AML 2012 imposes a legal obligation on the stock exchange to collect BO information for listed companies and the business registration agency to collect BO information on companies that are not yet listed. However, it was not demonstrated that competent authorities are collecting this information in practice and no guidance has been issued by these authorities on BO or the collection of BO information.

433. REs are required by law to identify the beneficial owners of both legal persons and arrangements and competent authorities can gain access to this information. However, as described below and at IO.4, the quality and comprehensiveness of the BO information collected by REs in practice varies according the size and international footprint and/or correspondent relationships of the entities.

³⁵ The ML/TF risk assessment of legal persons included an action plan of measures to be taken in 2020 to mitigate the risks identified. However, these measures had not yet been implemented at the time of the on-site visit and therefore could not be assessed.

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434. The outcomes of the risk assessment of legal persons had not been shared with the private sector. At the time of the on-site visit the private sector demonstrated limited understanding of the risks of legal persons being abused for ML/TF purposes.

Legal arrangements

435. Express trusts and similar legal arrangements cannot be created under Vietnamese law. However, there is no prohibition on express trusts created under the laws of another jurisdiction and trustees of those trusts from operating in Vietnam (including forming relationships with FIs and DNFBPs). Vietnam has not assessed the ML/TF risks associated with foreign trusts and competent authorities and the private sector demonstrated no understanding of the ways in which foreign trusts could be misused for ML/TF purposes.

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436. Besides the CDD obligations imposed on REs and limited BO information collection obligations imposed on trust and company service providers (described below), there are no mitigating measures in place to prevent the misuse of foreign trusts.

437. While a legal obligation was introduced during the on-site for REs to request BO information from customers involved in legal arrangements, there is no legal obligation for the trustee to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out transactions.

438. There are also no requirements for professional trustees to maintain the information they hold for at least five years after their involvement with the trust ceases (except in circumstances where the professional trustee is also an RE) (see also R.25).

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Basic Information

439. The basic information for commercial legal persons is publicly available and easily accessible through the online Business Registration Portal. The basic information is adequate and accurate due to the process of verification during registration, and the information is kept up-to-date in accordance with the legal requirements.

Beneficial ownership information

440. During the on-site, authorities showed a mixed understanding of the concept of BO. Many authorities insisted that the Business Registration Portal contained BO information because owners, founders and shareholders of commercial legal persons are required to be identified and their identities verified. Where the owner is another limited liability company, the owner/s of that company identified and verified. Where the owner is a joint stock company, the chairperson of the board of directors is identified and verified. While this is relevant in circumstances where the owner/s of the company or legal owner of shares is acting on his/her own behalf, it does not address the circumstances in which the owner/s of the company or legal owners of the shares is acting on behalf of another legal or natural person.

441. As outlined under R.24, the stock exchange and business registration agencies are obliged by law to collect BO information for listed companies and companies not yet listed, respectively. However, there are no mechanisms specified in law or otherwise for companies to provide this information to the competent authorities and it was not demonstrated that these authorities collect BO information in practice.

442. The primary source of BO information on legal persons in Vietnam is the information collected and held by FIs and DNFBPs pursuant to their CDD obligations. However, there are deficiencies in the legal requirements relating to BO (see analysis under R.10 and R.22) and it is not clear that it is mandatory for all legal persons in Vietnam to have a relationship with a FI or DNFBP.

443. In addition, during the onsite REs displayed mixed understanding of their BO obligations. Whilst the larger international banks demonstrated a sound understanding of BO requirements, smaller banks, non-bank FIs and DNFBPs revealed a limited understanding of corporate law and limited knowledge of processes and procedures (e.g. documents and resources) that could be used to determine the BO of legal persons, particularly in relation to multi-jurisdictional and complex legal structures. REs with an international business footprint acknowledged that is difficult to obtain and verify the BO of legal persons where there are foreign entities involved on the structure.

444. The mixed understanding amongst FIs and DNFBPs is a reflection of the lack of sufficient guidance from supervisors on how to properly conduct CDD and a lack of supervision and enforcement of compliance with CDD requirements (I0.3). There is no guidance on what constitutes BO and the kind of resources and documentation that could be used to identify the natural person/s that ultimately controls a legal person. Whilst REs were aware of the legal obligation to identify the BO of legal persons, the majority could not identify which documents and mechanisms they would use to achieve this beyond consultation of the Business Registration Portal for basic information. Competent authorities have not promoted an understanding of the risk of misuse of legal persons amongst REs to support their CDD efforts.

445. Competent authorities, in particular LEAs have the legal authority under the Criminal Procedure Code 2015 to request REs to provide information on the accounts held by legal persons, and those entities are obliged to comply. This is the mechanism used in Vietnam to identify if accounts are held or controlled by natural or legal persons as part of evidence collection process in criminal investigations. Before a criminal investigation commences for financial investigation purposes, Decree No. 117/2018 provides that regulatory authorities may request FIs to provide client information.

446. LEAs advised that they can usually get access to information within 1-2 days and the maximum time taken to respond is usually 5 days. Generally, it takes longer if the entity is located in a different province. However, given the deficiencies in the BO information collected by REs, it is not clear that competent authorities can get access to adequate, accurate and current information in a timely manner.

447. AMLD holds some limited information on BO of legal persons, which is based on analysis of STRs received. AMLD maintains this information in a spreadsheet format and it can be shared with LEAs and other competent authorities upon a written request. However, it was not demonstrated that domestic competent authorities have used their powers to exchange information on BO.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

448. As outlined above no domestic legal arrangements can be established under the Vietnamese legal framework. Vietnam recognises that foreign trusts may operate in Vietnam but have a limited involvement in the financial and securities markets.

449. The Law on AML 2012 obliges individuals and organisations providing trust services to obtain, hold and update information on the trust agreement and beneficiaries of the trust (see also R.25). The AMLD and other competent authorities are able to request individuals and organisations to provide this

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information. However, there is no obligation to obtain information on any other natural person exercising ultimate effective control over the trust. Further, it was not demonstrated that trust service providers are aware of or complying with this obligation.

450. The only other source of basic and BO information regarding foreign trusts in Vietnam is the information held by REs pursuant to their CDD obligations (see R.25 for more detail). Competent authorities could use their powers to access this information. However, whilst a legal obligation was introduced during the on-site visit for REs to request BO information from customers involved in legal arrangements, there is no legal obligation for a trustee to disclose their status. Further, as with legal persons, there are deficiencies in the CDD obligations (see R.10 and R.22), a lack of guidance on how to identify beneficial owners, and a lack of understanding and failure by a majority of DNFBPs, some NBFIs and smaller banks to comply with their CDD obligations (see Chapter 5 for more detail). These factors hinder the ability of competent authorities to access adequate accurate and current basic and BO information on legal arrangements from these REs.

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451. During the on-site, there was very limited demonstration that REs are collecting adequate and accurate information on the BO of foreign trusts. Securities companies, with parent companies incorporated in a common law jurisdiction, demonstrate the collection of basic and BO information on foreign legal arrangements but this was due the policies of the parent company and not based on the Vietnamese requirements.

452. It was not demonstrated that the Vietnamese authorities have ever requested any information from REs or foreign counterparts regarding a foreign trust and, therefore timely access to adequate and accurate information by the Vietnamese authorities was not demonstrated.

Effectiveness, proportionality and dissuasiveness of sanctions

453. The risk assessment on legal persons identified that in the period between 2014-2018, 1,330 companies were punished with fines due to violations of administrative regulations in the field of business registration. The statistics show that joint-stock companies and MLLCs are the two types of enterprises with the highest rate of violations, 48% and 46.6 % respectively.

454. During the same period, a total of 27,175 business registration certificates were revoked due to false declarations in business registration documentation or failure to report.

455. The range of penalties applied suggest that the sanctions applied are proportionate with the other administrative sanctions on the Vietnamese legal framework, but they are not dissuasive.

456. However, the penalties applied only relate to business registration violations by commercial legal persons. In the absence of any demonstrated requests from competent authorities for BO information collected in the course of CDD, it was not demonstrated that sanctions have been applied for not complying with requirements to provide BO information upon request by a competent authority.

Overall conclusion on Immediate Outcome 5

457. Vietnamese authorities demonstrated some understanding of the ML/TF risks associated with commercial legal persons. However, there were gaps in the recent risk assessment of legal persons and the results are not yet widely understood. There are some measures in place to increase transparency of legal persons and basic information on commercial legal persons is publicly available. The primary source of BO information is the information collected by REs pursuant to CDD requirements and compliance is mixed amongst REs. There is very limited demonstration that BO information regarding

foreign legal arrangements is collected. While Vietnamese authorities have imposed penalties on commercial legal persons for non-compliance with business registration requirements, these penalties are not considered dissuasive.

458. **Vietnam has a low level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- a) Vietnam has demonstrated effectiveness in providing formal international cooperation, is responsive to requests and has provided MLA and extradition to a wide range of jurisdictions within reasonable timeframes, including in relation to ML and predicate offences.
- b) Vietnam has sought MLA and extradition, in relation to predicate offences, however there have been limited requests in relation to ML, which reflects a lack of proactive investigation of ML. This is not consistent with the risk of ML in Vietnam.
- c) While Vietnam has actively pursued MLA and other forms of formal requests including extradition, the quality of requests and responses has been mixed. The majority of incoming requests were processed and completed in reasonable timeframes. A large percentage of outgoing requests were not responded to, resulting in Vietnam continuing to pursue these cases in the absence of a response. Few ML related outgoing requests have been completed, with none since 2016, with a number of them rejected.
- d) There have been no extradition requests and limited MLA requests related to TF. This is consistent with the low TF risk profile.
- e) Whilst the AMLD and LEAs are responsive to international cooperation requests, AMLD has limited avenue to exchange information with foreign FIUs in a fast and secure manner. The vast majority of the AMLD's outgoing requests relate to organised gambling, rather than ML or higher risk predicate offences. LEAs cooperate regularly with foreign counterparts in relation to predicate offences, however, there has been limited international cooperation with respect to ML. Investigators and prosecutors lack a focus on supporting financial investigations with of high-risk crimes with the support of formal and informal international cooperation.
- f) Supervisors in Vietnam seek and provide cooperation in relation to prudential supervision but do not proactively seek cooperation in relation to AML/CFT. While the SBV has provided limited AML/CFT cooperation, it was not demonstrated that other supervisors provide cooperation in relation to AML/CFT.
- g) Basic information is publicly available on Vietnam's online Business registration Portal to foreign authorities. AMLD has exchanged beneficial ownership information regarding commercial legal persons with foreign counterparts, though no information has been exchanged concerning legal arrangements.

Recommended Actions

- a) Vietnam should prioritise international cooperation at national and agency levels in keeping with the priorities. This should be supported by increased resources with the central authority and other implementing agencies to manage the workload of incoming and outgoing requests and development of further international MOUs. Training and capacity building on making and processing requests for international cooperation should be provided to all staff.

- b) Vietnam should proactively seek both formal and informal international cooperation in relation to ML in line with its risk profile including MLA to support asset restraint and confiscations as well as ML prosecutions.
- c) The AMLD should enhance mechanisms for effective international cooperation, including prioritising use of foreign information in its analysis work by pursuing Egmont membership and entering into MOUs with the broadest possible range of foreign FIUs to ensure it is able to provide and receive timely cooperation from foreign counterparts in keeping with the risks.
- d) Financial supervisors should proactively cooperate with foreign counterparts on AML/CFT, including exchanging information on fit and proper testing, risk factors and supervisory planning, and conducting joint supervision and sharing of inspection reports, where appropriate. This may require amendment of current MOUs.
- e) Competent authorities, including AMLD, SBV and MPS, should spontaneously provide information and intelligence on potential ML, predicate offences and TF to foreign counterparts.
- f) Vietnam should ensure that when it makes requests for MLA/extradition it adheres to the requirements of the foreign competent authorities and should provide additional information when requested, subject to Vietnam's laws and procedures.
- g) Vietnam should enhance opportunities for informal cooperation and regional connections which will increase chances of successful cooperation through joining organisations such as ARIN-AP³⁶.
- h) Vietnam should continuously provide training to investigators and prosecutors on formal and informal channels of international cooperation in order to increase their use.

459. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

460. Vietnam has a relatively sound legal basis to provide a wide range of MLA and extradition, including in relation to ML, associated predicate offences and TF, which is based on the Criminal Procedure Code 2015, Law on Legal Assistance 2007, multilateral and bilateral treaties, international conventions, as well as the application of the principle of reciprocity. However, there are some gaps in the legal framework with respect to freezing and confiscation, as described under R.38, particularly Vietnam does not have specific provisions concerning freezing, seizing and confiscating assets in response to MLA requests.

461. In the case of MLA, SPP is the central authority. The SPP Department of International Cooperation and Criminal Legal Assistance, which has seven staff, is responsible for making, receiving and handling MLA requests. In the case of extradition, the MPS is the central authority. The MPS Department for Legal Affairs and Administrative, Judicial Reform (Division for International Laws and Treaties), which has 11 staff, handles extradition matters in addition to other tasks of the Department.

³⁶ Subsequent to the on-site, Vietnam became a member of ARIN-AP in December 2020.

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To ensure effective implementation, Vietnam needs to increase staff levels with increased training to enhance technical skills in international cooperation to handle MLA and extradition.

462. In addition to SPP and MPS, MOFA also plays a role in receiving requests transmitted via diplomatic channels and coordinating between the designated central authority and its foreign counterpart in some cases.

463. The processes and timeframes for handling MLA and extradition requests are clearly set out in the Law on Legal Assistance 2007, with 4-5 months for MLA and 8 months for extradition (with exception of urgent cases where it can be dealt with faster) considered reasonable.

464. No issues have been raised regarding domestic coordination and international cooperation. While Vietnam recognises that the number of incoming and outgoing requests have increased over the last three years, they suggest that resourcing may not be adequate for team who manage MLA requests, signing MOUs with international partners and providing increased guidance to a range of domestic partners, though this was not demonstrated.

465. Requesting foreign authorities may face challenges in accessing information on making MLA requests to the central authority in Vietnam, though no specific cases have been documented. Information on the central authority and MLA requirements is accessible online, though limited information is available in English.

Mutual Legal Assistance

466. In general, Vietnam is responsive to requests for MLA and provides adequate and timely assistance. Only one jurisdiction indicated that it can be difficult to obtain follow-up information from Vietnam and this is not always provided in a timely manner. Vietnam has provided assistance to a wide range of jurisdictions, including in relation to ML and predicate offences. Vietnam has reported that it has not rejected any MLA requests in the past 5 years so there have been no reasons for rejection that the assessors can analyse (Table 2.1). Furthermore no particular challenges have been raised related to any types of assistance.

467. Vietnam provides MLA based on the Law on Legal Assistance 2007, its treaty agreements and on the basis of reciprocity in the absence of an MLA treaty. Dual criminality is a requirement for MLA. However, in practice Vietnam adopts a flexible approach to this requirement and considers the underlying conduct of the request rather than the name, wording or category of offence. Vietnam has never rejected a MLA request on the grounds of a lack of dual criminality.

468. With respect to its immediate neighbours, China and Lao PDR, Vietnam has established a direct legal assistance mechanism to expedite the MLA process, which authorises direct contact between the local prosecution authorities of bordering provinces, subject to a prior report to the SPP. This allows for requests to be executed more efficiently. While this is based on proximity and not wholly on risk, the proximity to areas of high drug trafficking risk suggests these mechanisms should assist with risk mitigation.

469. In the six years from 2014-2019, Vietnam received 151 MLA requests. Of these 24 related to ML and 127 related to predicate offences, notably related to appropriating property through swindling, drugs (27 requests), and producing and trading fake goods (23 requests)] (see Table 8.1 below). Vietnam has not received any request related to TF.



470. Since 2014, there has only been one case (yet to be finalised) in which Vietnam confiscated assets in response to a MLA request from Spain and no cases of repatriating confiscated assets to a foreign country. While the ASEAN MLA Treaty and certain bilateral treaties (Indonesia and France) have limited provisions for repatriation of confiscated assets to foreign countries, there is no mechanism in place for this. Vietnam has a limited ability to seize or confiscate assets when a non-conviction based order is not available.

Case Study 11: “Volante” case

On 20 March 2014, SPP received a request for assistance from Australia in relation to a drug trafficking and ML case. The request included taking testimony of suspects and witnesses, collecting documents and records, and allowing the Australian LEA to visit Vietnam to coordinate the implementation of this assistance.

On 31 March 2014, SPP transferred the request to the Investigation Police of MPS. MPS fulfilled all aspects of the request. On 21 August 2014, SPP received the responses from MPS and then sent them to Australia on 26 August 2014 containing, *inter alia*, 42 sheets of documents. Though there was no feedback received from Australia on the outcomes of this case, the two parties were still working together on the case as at May 2020.

471. The process of executing an incoming request usually takes around 4-5 months, which is considered reasonable. Vietnam issued guidance (October, 2019) on prioritisation and execution of MLA requests just prior to the onsite visit. Approach to prioritisation is risk-based which supports timely execution in line with risk profile. According to the guidance, priority is given to cases that relate to ML, TF and high-risk predicate offences including corruption, drug trafficking, human trafficking and wildlife trafficking. Priority is also given to countries that represent a higher geographical risk, including China, Lao PDR, Cambodia, Singapore, Australia, the US, the UK, and Russia. As this guidance was only recently issued, there had not been sufficient time to demonstrate implementation or effectiveness by the end of the on-site visit.

472. However, prior to the issuance of the prioritisation guidance, the SPP had already demonstrated the ability to process requests in an expedited manner if urgent. In June 2019, SPP received an urgent request from Australia which was finalised in September 2019 which highlights an ability to expedite cases on occasion. The case management has been done through both paper and electronic means. As per Table 8.1, a number of requests are still outstanding which suggests that not all requests are managed in 4-5 months.

473. Vietnam does not seek and has received limited feedback from foreign jurisdictions regarding processing time and quality of the information and/or assistance provided.

Table 8.1 Incoming and outgoing MLA requests from 2014-2019

Requests	Incoming requests						Outgoing requests					
	2014	2015	2016	2017	2018	2019	2014	2015	2016	2017	2018	2019
Total	22	18	29	25	23	34	49	63	70	78	96	84
Related to ML	4	0	1	5	5	9	1	7	5	3	6	1
Completed	4	0	1	5	3	7	1	5	3	0	0	0
Processed	0	0	0	0	2	2	0	1	1	0	6	1
Rejected	0	0	0	0	0	0	0	1	1	3	0	0
Related to predicate	18	18	28	20	18	25	48	56	65	75	90	80

Requests	Incoming requests						Outgoing requests					
	2014	2015	2016	2017	2018	2019	2014	2015	2016	2017	2018	2019
<i>offence</i>												
Completed	18	17	27	19	16	20	28	31	39	38	41	17
Processed	0	1	1	1	2	5	20	25	26	37	49	63
Rejected	0	0	0	0	0	0	0	0	0	0	0	0
<i>Related to TF</i>	0	0	0	0	0	0	0	0	0	0	0	3
Completed	0	0	0	0	0	0	0	0	0	0	0	0
Processed	0	0	0	0	0	0	0	0	0	0	0	3
Rejected	0	0	0	0	0	0	0	0	0	0	0	0

Extradition

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474. Despite the reservations it has made to extradition provisions in international conventions, Vietnam is also responsive to requests for extradition. In general, Vietnam does not reject extradition requests. In the period from 2014-2019, Vietnam received 25 extradition requests covering a range of offences. Among the requests, 14 were successfully executed, two were being processed at that time of the onsite visit, one had been rejected because the suspect had left Vietnam, and eight had been classified as rejected because the persons involved had already been extradited to another country. Of the 25 requests, one related to ML and 23 related to predicate offences. There was no request relating to TF.

475. Vietnam has 12 bilateral extradition treaties and can also extradite to non-treaty jurisdictions on the basis of the principle of reciprocity. For example, Vietnam extradited one person to Lithuania in August 2016 without any bilateral or multilateral treaty in place.

476. Generally, Vietnam does not reject extradition requests except the cases stated above. Whilst Vietnam does not extradite its own nationals, in such cases Vietnam is required by law to submit the case to the competent court for domestic prosecution. There was one additional case, where a jurisdiction submitted a request for extradition of seven Vietnamese citizens by diplomatic note. However, this request did not contain adequate information or grounds for extradition and is therefore not considered by Vietnam to be an official extradition request and is not included in Vietnam's statistics. In this case, Vietnam responded by diplomatic note to advise the country that they would be obliged to reject the request because it related to Vietnamese citizens and the country should consider transferring the dossier to Vietnam for criminal prosecution. Alternatively, Vietnam advised, should the country decide to continue to pursue extradition, it would be necessary to supplement the request with adequate information and documentation. An official extradition request was never received.

477. It takes an average of eight months to execute incoming requests. During the relevant time period, one request took 23 months to execute. However, this was due to the fact that the subject was already serving a prison sentence for other crimes in Vietnam.

478. In October 2019, Vietnam issued guidance on the prioritisation and execution of extradition requests. Priority is given to cases that relate to ML, TF and higher risk predicate offences including drugs, human trafficking, corruption, property appropriation and fraud. Priority is also given to countries that represent a higher geographical risk or where there are large Vietnamese expatriate communities, including China, Lao PDR, Cambodia, Russia, Australia, the US, the UK, and Czech Republic. While there has not been sufficient time to demonstrate implementation of these procedures, MPS demonstrated instances of expediting extradition processes in urgent cases. For instance, MPS executed



one urgent extradition request from Russia in two months and 17 days after the request was received (3 July 2019 – 20 September 2019).

Table 8.2 Incoming and outgoing extradition requests from 2014-2019

Requests	Incoming requests						Outgoing requests					
	2014	2015	2016	2017	2018	2019	2014	2015	2016	2017	2018	2019
Total	1	4	17	1	1	1	5	5	4	9	5	1
Related to ML	-	-	-	1	-	-	-	-	-	-	-	-
Completed	-	-	-	-	-	-	-	-	-	-	-	-
Processed	-	-	-	-	-	-	-	-	-	-	-	-
Rejected	-	-	-	1	-	-	-	-	-	-	-	-
Related to predicate offence	1	4	17	-	1	1	5	5	4	9	5	1
Completed	1	3	8	-	1	1	1	1	-	1	-	-
Processed	-	1	1	-	-	-	2	2	4	8	5	1
Rejected	-	-	8	-	-	-	2	2	-	-	-	-
Related to TF	-	-	-	-	-	-	-	-	-	-	-	-

Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

479. Vietnam actively seeks MLA and since 2014 has made more than twice as many requests as it has received. In terms of volume, the primary focus is on predicate offences. During the period from 2014-2019, Vietnam made 440 MLA requests (see Table 8.1). Among those 440, 417 requests (approx. 95%) related to predicate offences, notably related to appropriating property through swindling (108 requests), drugs (102 requests), and smuggling (77 requests). 9 requests related to ML and 14 requests related to verification, freezing or confiscation of assets. At the time of the on-site visit two MLA requests were being processed that related to the return of confiscated property.

480. The limited MLA requests in relation to ML reflects the lack of proactive investigation and prosecution of ML, as discussed under IO.7. Whilst eight requests are a significant number considering there have only been two ML prosecutions in Vietnam (seven requests related to the Giang Kim Dat case and one related to the Phan Sao Nam case), overall the low number of ML-related requests relative to the much higher numbers of predicate crime-related requests is inconsistent with Vietnam's ML risk profile. In addition, four of the seven requests sent in the Giant Kim Dat case were rejected or not fulfilled as they did not satisfy requirements or have adequate information. Of 10 outgoing requests related to ML between 2017 and 2019, , none were successfully completed (Table 2.1).

481. There have recently been three MLA requests made in relation to TF and terrorism to the USA (one) and Canada (two). While this number is small, this is consistent with the low TF risk profile.

482. Feedback on the international cooperation survey reflects that Vietnam is active in its pursuit of MLA but is mixed in terms of the quality of requests. One jurisdiction indicated that requests from Vietnam are generally clear and well set out and translations have been of good quality. However, some countries indicated that there are deficiencies in Vietnam's requests, including gaps in information and issues with translation and that additional information is usually requested from Vietnam to allow execution of the request. In many cases, Vietnamese authorities could not meet the requirements and

the requests have not been completed. Although Vietnam continued to pursue these cases in the absence of a response.

483. Vietnam faces challenges with meeting the technical requirements of MLA related to asset recovery. Vietnam is not a member of the Asset Recovery Interagency Network – Asia Pacific (ARIN-AP)³⁷. Joining ARIN-AP would enhance Vietnam's regional connections and expose Vietnamese practitioners to best practices, which will assist Vietnam to improve the quality of its requests and improve its chances of successful cooperation with regional counterparts.

Case Study 12: Phan Sao Nam (PSN) case

From 2014, Phan Sao Nam and his accomplices established and ran an online gambling ring, which generated VND9.8 trillion (USD418 million) (see Case Study 3 in Chapter 3). An investigation was commenced in 2017, which revealed that Nam made approx. VND1.5 trillion (USD63.5 million) in profit. Laundering the proceeds involved a range of activities, including transferring the amount of USD3.5 million to Singapore.

In November 2018, SPP requested MLA from Singapore under the ASEAN MLA Treaty seeking identification, verification and restraint of assets and repatriation of assets of a Vietnamese citizen convicted of organised gambling and ML offences.

In January 2019, Singapore responded and advised that the account holding the USD3.5 million had been fully withdrawn and closed. However, they identified another bank account held by Nguyen Thi Tam Chuyen, which held a balance of more than USD 5 million; and which was seized by the Singapore authorities. In order to support the recovery of this money, Singapore requested Vietnam provide additional information and evidence that the seized funds in the said bank account were traced to the criminal proceeds. Vietnam provided additional information, documents and evidence, and requested that Singapore seek a Court order to extend the period of seizure of the said bank account in order for the SPP to conduct further investigations in Vietnam. The Central Authority also sent an interdisciplinary mission to Singapore to work Directly with the Attorney-General's Chambers in July 2019.

As of the time of the onsite, Vietnam was continuing working with Singapore's authority regarding this matter.

484. In terms of extradition, Vietnam has made a similar number of requests to the number received. From 2014-2019, Vietnam made 29 requests for extradition, all of which related to predicate offences, notably fraudulent appropriation of assets (eight requests), drug offences (three requests), abuse of trust to appropriate assets (three requests), smuggling (two requests), and 10 other requests. There have been no outgoing extradition requests related to ML or TF. While some of these requests relate to higher risk predicate offences, this is not entirely consistent with the ML risk profile of Vietnam.

485. Of the 29 extradition requests made from 2014-2019, only three have been executed. Four of these requests were rejected – one due to the subject being granted refugee status, one due to the subject having fled the requested country, one due the subject serving an imprisonment sentence for another offence and the last due to the statute of limitations expiring under the requested country's

³⁷ Subsequent to the on-site, Vietnam became a member of ARIN-AP in December 2020.

law. The other 22 requests are still outstanding and Vietnam has provided supplementary information (Table 2.2).

486. Vietnam has identified a need for training of investigators, prosecutors and judges on international cooperation in order to increase the use of MLA and extradition. It is unclear whether this relates to understanding processes, not knowing the process available or not appreciating the benefits of increased use.

Seeking other forms of international cooperation for AML/CFT purposes

487. Vietnam has a framework to allow informal international cooperation, which is based on legal instruments, bilateral and multilateral MOUs and agreements, membership of international organisations and application of the principle of reciprocity, as described under R.40.

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488. There are significant weaknesses with the AMLD's pursuit of international cooperation to be in keeping with Vietnam's risk profile. The AMLD does not regularly seek information or intelligence from foreign FIUs, having made only 49 outgoing requests to 21 countries during the period 2016-2019. The AMLD is not a member of the Egmont Group but does have nine MOUs with foreign counterparts and also exchanges information and intelligence without a MOU pursuant to the principle of reciprocity.

489. The focus of the AMLD's outgoing requests does not match Vietnam's risk profile. Vietnam's most significant high-risk predicate threats include drug trafficking, wildlife trafficking, smuggling and human trafficking all of which are transnational in nature (as noted in Chapter 1). The AMLD's outgoing requests were all related to predicate offences, predominantly organized gambling. No outgoing request has been made to seek information about ML or TF. The lack of requests related to ML and higher risk predicate offences including corruption, drugs and environmental crimes is inconsistent with Vietnam's risk profile. The 49 total outgoing requests over the four years from 2014-2019 were sent to 20 different jurisdictions, with most jurisdictions receiving just a single request.

Table 8.3: AMLD outgoing requests by offence (2016-2019)

Offence	No. of requests			
	2016	2017	2018	2019
Total	1	4	20	24
Money Laundering	0	0	0	0
Terrorist Financing	0	0	0	0
Organized gambling	0	0	16	0
Appropriation of assets through swindling	0	0	0	4
Others (total):	1	4	4	20
Verify bill of exchange	1	1	0	0
Verify the source / legality of the money transferred	0	1	0	0
Verify cheque	0	2	0	0
STRs & content verification.	0	0	3	17
Exchange and provide information	0	0	1	3

490. LEAs send their requests to the AMLD to request foreign counterparts to provide the required information. The basic information such as identity verification or legal status of a firm is processed via AMLD rather than direct access between LEAs, which demonstrates the challenges of other agencies to exchange information.

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491. While the number of outgoing requests has increased significantly in the last two years as compared to previous years, it is still very low, particularly when compared to the high numbers of outgoing formal requests for MLA. The lack of outgoing requests related to ML may be reflective of the low number of ML investigations and prosecutions, as discussed under IO.7.

Financial Supervisors

492. Supervisors are authorised to cooperate internationally by law and according to bilateral and multilateral agreements. While the legal basis is broad enough to allow international cooperation in relation to AML/CFT, there are no specific provisions for AML/CFT information exchange or joint AML/CFT supervision in law or most MOUs, and no supervisors have made AML/CFT-related cooperation requests. The SBV and MOF have signed a good number of MOUs with foreign counterparts, which provide a further basis for international cooperation on supervision of the banking, securities and insurance sectors. The vast majority of the MOUs are framed broadly enough to allow cooperation on AML/CFT.

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493. No supervisors have made AML/CFT-related cooperation requests. SBV and MOF did not demonstrate that they have sought to exchange information or otherwise cooperate internationally with respect to AML/CFT supervision pursuant to these agreements. Some confusion amongst agencies' understanding of their roles and responsibilities for supervision has negatively impacted the international cooperation in relation to AML/CFT supervision.

494. The MOF does not have any international cooperation agreements with respect to supervision of casinos or accountants. Other DNFBP supervisors (MOC – real estate, MPI – company service providers, the MOJ – notaries and lawyers, the MIT – dealers in precious metals and stones) do not have arrangements to cooperate with foreign counterparts in relation to AML/CFT.

495. Regarding NPO supervisors' international cooperation, while there are no international cooperation agreements in place, COMINGO exchanges information on foreign NPOs through relevant embassies and meetings with foreign development cooperation agencies. No information was provided in relation to DOHA cooperation on domestic NPOs. The MPS as a member of COMINGO, can share information with foreign counterparts (as per IO.10) using LEA international cooperation channels.

Law Enforcement Authorities

496. LEAs are authorized to cooperate internationally according to the laws, bilateral and multilateral agreements, international conventions, the principle of reciprocity and by virtue of their membership in international organizations e.g. INTERPOL, ASEANAPOL, WCO etc.

497. The MPS regularly cooperates with foreign counterparts, most often through INTERPOL but also pursuant to bilateral agreements and MOUs, but not in a way that is consistent with Vietnam's risk profile. MPS actively cooperates with foreign counterparts with respect to higher risk predicate crimes, including drug crimes and human trafficking. However, the MPS has only dispatched four outward requests in relation to ML during the period 2016-2019 (and all in 2019), compared to an average of 175 requests per year in relation to predicate offences. This is reflective of the focus of LEAs on predicate offence investigations and the lack of proactive investigation of ML (as discussed under IO.7).

Table 8.4: MPS Outgoing Requests by Offence

Offence	Number of Outgoing Requests			
	2016	2017	2018	2019
Money Laundering	0	0	0	4
Fulfilled	0	0	0	4
Under processing	0	0	0	0
Denied	0	0	0	0
Terrorist Financing	0	0	0	0
Predicate offences	177	194	151	178
<i>Crimes that violate the social order</i>	71	78	71	82
<i>Narcotics-related crimes</i>	27	78	71	82
<i>Economic-related crimes</i>	25	32	7	21
<i>Human trafficking</i>	42	56	43	42
<i>High-tech crimes</i>	12	8	7	9
<i>Environmental crimes</i>	0	0	0	0
Fulfilled	110	118	113	141
Under processing	67	76	38	37
Denied	0	0	0	0
TOTAL	177	194	151	182

498. It should be noted that in the MPS data outlined above, statistics of requests ‘under processing’ are carried over in the data for the following year for further processing. This may reflect the complexity of requests or requests that require ongoing investigations by MPS. On this basis, the figures for 2017 - 2019 include the 67 requests in the ‘under processing’ from 2016.

499. The MPS has not made any TF-related international cooperation requests but has taken steps to ensure priority communications are well supported. The Homeland Security Department within MPS has established 16 “hotlines” with foreign countries to exchange intelligence and information on terrorism or TF in a timely manner. The hotlines allow foreign authorities to contact Vietnamese authorities directly to discuss cases or request information without any need for lodging formal requests. Vietnam demonstrated that information exchanged via these hotlines has led to intelligence enquiries related to possible TF matters. Given Vietnam’s low TF risk profile, the lack of requests is in line with this risk.

500. The GDC (customs) sent 3,591 requests to foreign counterparts during the period 2013-2018, including countries with and without an MOU with Vietnam. However, no requests were made in relation to ML or TF which reflects the lack of focus on ML/TF by Customs and is not in keeping with the risk profile. The GDC has 20 general MOUs which cover a large number of jurisdictions and organisations.

501. The Border Guard of the Ministry of Defence is authorised by law to cooperate with foreign border protection authorities and governments and has sought cooperation in relation to predicate offences (Table 2.6). Border Guard have made 72 outgoing requests for assistance between 2017 and 2019. There have been no outgoing requests related to ML or TF which appears to reflect a lack of focus on ML/TF by Border Guard.

Table 8.5: Border Guard - outgoing requests classified by predicate crime

Predicate crime	No. of request		
	2017	2018	2019
Total	22	19	25
Drug offences	20	19	20
Smuggling	0	0	2
Human trafficking	2	0	3
Other	0	0	0

502. Vietnam did not demonstrate that informal international cooperation is sought by other investigative bodies (Army or SPP) with respect to ML, predicate offence or TF investigations.

Other

- 8 503. The Tax Authority in Vietnam has signed 75 MOUs to exchange tax information with foreign tax authorities. Vietnam has exchanged information on 161 cases with foreign tax authorities, of which 161 were inward requests. No information has been exchanged on cross-border tax-related crimes or related to ML/TF which appears to reflect a lack of focus on ML/TF by the Tax Authority.

Providing other forms international cooperation for AML/CFT purposes

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504. AMLD is responsive to requests from foreign counterparts and provides cooperation even in the absence of a MOU. However, AMLD has made only two spontaneous disclosure to foreign FIUs during the period 2014-2019. During the years 2016-2019, AMLD received 66 international cooperation requests and responded to all of them. In 52 of these cases cooperation was provided on the basis of reciprocity (without MOU) basis. AMLD is not a member of the Egmont Group, which undermines and has a negative impact on the efficiency and security of information exchange, which is conducted via email, fax, post marked 'classified', or diplomatic channels.

505. Table 8.5 outlines the limited number of requests received by AMLD by predicate offence.

Table 8.5: Requests sent to the AMLD (by offences) - 2016-2019

Offence associated with request to AMLD	Inward requests			
	2016	2017	2018	2019
Money laundering	0	5	12	11
TF	0	1	0	0
drugs			1	3
Corruption			3	
Organize gambling				
Bribery				1
Abusing trust in order to appropriate property				
Abuse of positions and powers to appropriate property				
Gambling				
Tax evasion	2	2	1	5
Environmental crimes				
Appropriating property through swindling			1	1
Illegal cross-border transportation of goods and/or currencies				1
Smuggling				1

Human trafficking				
Making, storing, transporting and/or circulating counterfeit money, treasury bills and/or bonds				
Illegal wildlife trading				1
Others	2	5	5	
Total	4	14	24	22

506. While the timeliness of responding to foreign requests has improved, challenges remain. The average time for AMLD to respond to an international request has dropped from 201 days in 2016 to 35 days in 2019. However, Vietnam's own process for handling international requests requires them to be completed within two weeks. In one case feedback from a foreign FIU indicated that responses took an average of 293 days, which is not timely.

507. There has been limited feedback provided on the quality and usefulness of the information received.

Financial Supervisors

508. While the SBV provides international cooperation in relation to prudential supervision, it did not demonstrate cooperation in relation to AML/CFT supervision or market entry controls. SBV has provided limited cooperation but did not demonstrate AML cooperation in the form of exchanging information obtained through inspections with foreign counterparts, including Malaysia, South Korea and Chinese Taipei. The SBV has allowed foreign counterparts to conduct inspections of their banks foreign branches in Vietnam, including France and Malaysia. However, it is not clear whether this was AML/CFT or prudential supervision. The SBV has not rejected any international request made by counterpart supervisory bodies.

509. While the MOF has exchanged information with foreign counterparts on securities, this was not related to AML/CFT. It was not demonstrated that other supervisors in Vietnam providing cooperation in relation to AML/CFT.

Law Enforcement Authorities

510. The MPS is similarly responsive to requests for international cooperation received from foreign counterparts. During August 2018 – September 2019, MPS received 540 requests from over 34 jurisdictions via INTERPOL and responded to 349 of those requests, which included exchanging information and intelligence. From 2016-2019, MPS received and fulfilled four requests related to ML and many more requests related to predicate offences (see Table 8.6 below). MPS had not rejected any international requests and a number of outstanding requests were being processed at the time of the onsite. As such, in terms of predicate offences, Vietnam demonstrated a level of effectiveness.

511. On average MPS takes 30-45 days to respond to requests received through INTERPOL but urgent cases can be expedited and responses provided in one week. Other requests for information international cooperation are completed on average within 2 months. However, the statistics provided indicate that there are INTERPOL requests that were received in 2017 that still have not been responded to, which suggests the responses are not always timely.

Table 8.6 – MPS Incoming Requests by Offence

Offence	Number of Incoming Requests			
	2016	2017	2018	2019
Money Laundering	0	1	1	2
Fulfilled	0	1	1	2
Under processing	0	0	0	0
Denied	0	0	0	0
Terrorist Financing	0	0	0	0
Predicate offences	130	155	170	191
<i>Criminal crimes</i>	47	56	61	68
<i>Narcotics-related crimes</i>	31	45	49	67
<i>Economic-related crimes</i>	27	25	25	22
<i>Human trafficking</i>	14	18	21	17
<i>High-tech crimes</i>	11	9	13	15
<i>Environmental crimes</i>	0	2	1	2
Fulfilled	116	133	155	157
Under processing	14	22	15	10
Denied	0	0	0	0
TOTAL	177	194	151	182
Average time to fulfil requests	<i>Approx. 1 week – 2 months</i>			

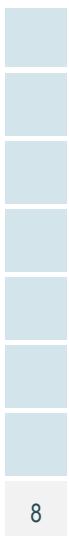
512. From 2014-2018, GDC (customs) responded to 56 requests received from counterparts and responded. None of which related to ML or TF. No other LEAs have received requests or provided cooperation in relation to ML. There have been no requests received by any LEAs in relation to TF.

513. Vietnam has not provided any statistics on joint investigations and asset tracing. It is not clear how requests received by LEAs are prioritised and processed, other than when they are marked urgent by INTERPOL. Additionally, no information was provided regarding feedback received by LEAs from foreign counterparts regarding the quality and usefulness of the information provided leading to successful prosecution, conviction, and asset recovery.

International exchange of basic and beneficial ownership information of legal persons and arrangements

514. As outlined under IO5, Vietnam has an online business registration portal on which basic information regarding commercial legal persons is recorded and publicly available. This information can be accessed directly by foreign competent authorities without the need to request international cooperation. Basic information about non-commercial legal persons is held by the competent authorities with which those entities are required to register and can only be obtained by request. The primary source of beneficial ownership information is the information collected and kept by REs as part of the CDD process, which competent authorities are able to use their powers to access. However, there are mixed levels of understanding and compliance with these obligations by REs. Vietnam is able to exchange basic and beneficial ownership information through formal MLA requests or under existing MOUs and international cooperation arrangements between Vietnamese and foreign competent authorities. The legal person risk assessment did identify risks related to legal persons, including risks associated with significant foreign investment, so some level of international cooperation in this area would be expected.

515. Between 2014-2018, the AMLD received a total number of 32 international requests in relation to legal persons and responded in each case. Of these only 2 responses were in relation to



beneficial ownership information and the rest were information about legal ownership. Additionally, AMLD has also dispatched 22 outbound requests to verify the legal persons. All requests related to legal persons and none to legal arrangements. Vietnam has not provided any case study where international cooperation on beneficial ownership has led to a successful investigation, prosecution, conviction, or asset recovery. In addition to AMLD, other agencies may also exchange information on BO, though this was not demonstrated.

Overall conclusion on Immediate Outcome 2

516. Vietnam has a relatively sound framework for both formal and informal international cooperation. Vietnam has demonstrated that it both seeks and provides formal and informal international cooperation. Vietnam has not rejected any requests, however there have been delays responding to international requests. However, the low number of outgoing requests for formal and informal cooperation related to ML is inconsistent with Vietnam's risk profile and reflects the focus of LEA's on predicate offence investigations and the low number of ML investigations (as described under IO.7). AMLD needs to greatly increase its support for international cooperation. There has been very limited international cooperation by supervisors in relation to AML/CFT. There has also been limited cooperation in relation to exchanging beneficial ownership information.

517. **Vietnam has a moderate level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations of Vietnam in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in [date]. This report is available from www.apgml.org.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. This is a new Recommendation, which was not assessed in the 2009 MER.

4. *Criterion 1.1* - Vietnam completed its first money laundering / terrorist financing (ML/TF) national risk assessment (NRA) in April 2019. Authorities completed risk assessments on non-profit organisations (NPOs), legal persons and proliferation financing (PF) in late 2019. Law enforcement agencies (LEAs) and other authorities do not regularly produce threat assessments and other assessments of ML/TF risk.

5. The NRA is based on the risk assessment tool developed by the World Bank and it provides the overall risk rating for ML/TF, with specific sectoral risk ratings assigned to FIs and DNFBPs. The NRA also includes a threat assessment covering threats arising from proceeds of major predicate offences and criminal proceeds that have originated from abroad. The NRA further identifies challenges across the public and private sectors, and proposes for recommendations to mitigate those challenges. However, there are potential gaps in the scope of the NRA as it excludes the analysis of risks from foreign trusts. The NRA also does not cover all the FATF designated categories of offences and the exclusion of organised crime, sexual exploitation and environmental crimes (particularly illegal fishing) are not supported by a robust justification of either quantitative or qualitative data and analysis. Overall, analysis of quantitative data is the predominant approach utilised in the NRA.

6. The ML threat and sectoral risk assessments on some of the predicate crimes and sectors appear to lack deeper analysis and a wider range of data. This is particularly true for sectors facing greater risks i.e. human trafficking, illegal cross-border transportation of goods or cash, casinos, dealers in precious metals or stones and legal professionals.

7. *Criterion 1.2* - In November 2014, Vietnam issued a National Action Plan pursuant to Decision No. 2112/2014 (Pre-NRA Action Plan) which stipulates the responsibility of the SBV and the Ministry of Public Security (MPS) to spearhead and coordinate the ML risk assessment and TF risk assessment respectively. The ML/TF risk assessment was undertaken with the coordination with other ministries and agencies under the auspices of the National Steering Committee for AML (NSC). The Prime Minister established the NSC in 2009 (Decision No. 470/2009) as an inter-agency organisation chaired by the Deputy Prime Minister to assist the Prime Minister in directing and coordinating national efforts for the purpose of prevention and combating ML in Vietnam. The State Bank of Vietnam (SBV) is the standing (and coordinating) agency for the NSC (Art. 4 of Decision No. 470/2009).

8. *Criterion 1.3* - Vietnam's first NRA was completed and approved by the Prime Minister in April 2019. The Pre-NRA Action Plan provides that ML/TF risk assessments are to be conducted every five years. The SBV and the MPS are responsible to regularly review and consider any new risks. Vietnam does not conduct other specific threat assessments or sectoral

assessments regularly to complement the NRA process and keep assessments up to date. However, the assessment of NPOs, legal persons and PF risk are noted as important updates.

9. *Criterion 1.4*-SBV is responsible for disseminating the results of the NRA to relevant ministries and agencies, including the reporting entities (REs) under the purview of the SBV (Art.12(1) of Circular No. 20/2019). The National Action Plan issued by the Prime Minister in April 2019 (Post-NRA Action Plan) pursuant to Decision No. 474/2019 gives the SBV and the MPS responsibility to disseminate the results of the NRA to relevant ministries and agencies, and for the latter to further disseminate the results to the REs under their purview. Apart from conducting six briefings to the public and private sectors and publishing the NRA results on the website, competent authorities also issued an official letter (Official Letter, 1790) to the relevant stakeholders including REs for the purpose of communicating the NRA results.

10. *Criterion 1.5*- The Post-NRA Action Plan was issued to the Prime Minister pursuant to Decision No. 474/2019 in order to address the risks identified in the NRA. The Post-NRA Action Plan provides aspects of a national policy and overarching strategy which mainly identifies a range of high-level measures to address legal and institutional gaps. The Post-NRA Action Plan uses the findings of the NRA to a limited extent (only two of 52 action items relate to addressing risks as identified under the NRA) to guide policies that apply a risk-based approach for the purpose of allocating resources and prioritising activities to address the identified risk. In addition, the Post-NRA Action Plan was only issued in April 2019, and as such its implementation is not yet well demonstrated.

11. *Criterion 1.6* - Vietnam has not exempted any particular activity, any particular FIs or DNFBPs from applying the FATF Recommendations based on low risk. Article 2 of the Law on AML 2012 provides the applicability of the Law on the financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) without any exemptions.

Criterion 1.7 -

12. *1.7 (a)* - REs are required to apply enhanced measures on high-risk transactions, activities and customers (Art. 13 to 17 of the Law on AML 2012). Article 3 of Circular No. 35/2013 read together with Article 1(1) of Circular No. 31/2014 provides a detailed guidance for the REs to conduct enhanced customer due diligence measures (CDD) on high-risk customers. There is no requirement on all REs to take enhanced measures to manage and mitigate higher risks areas identified by the NRA, noting that Article 2(1 & 2) of Circular No. 31/2014 provides the requirement on credit institutions to strengthen and enhance the verification of customers and transactions on high and medium high-risk areas as identified by the NRA.

13. *1.7 (b)* - Article 1(2) of Circular No. 20/2019 requires REs to conduct institutional risk assessment based on the results of NRA.

14. *Criterion 1.8* - REs may apply simplified CDD measures for customers assessed to be of low risk (Article 12(2) of the Law on AML 2012). The circumstances and minimum CDD information required is set out in the Law on AML 2012 (Art. 9) read together with art. 1(4) of Decree No. 87/2019. However, it is not clear if the identification or assessment of a low risk customer is consistent with the NRA. Apart from simplified CDD measures on lower risk customers, Vietnam has not allowed simplified measures on other lower risk areas.

15. *Criterion 1.9* - The relevant competent authorities (i.e. the SBV, Ministry of Finance (MOF), Ministry of Construction, Ministry of Justice (MOJ), Ministry of Natural Resource and Environment, Ministry of Planning and Investment and Ministry of Industry and Trade) are responsible for supervising the relevant REs for their compliance with R1 (Art. 37-41 of the Law

on AML 2012 and art. 26 of Decree No. 116/2013, read together with Article 1 of Circular 20/2019). However, the gaps noted under c1.11, c26.1 and c28.2 apply.

16. *Criterion 1.10* - REs are required to conduct institutional ML/TF risk assessments (Art. 1(2) of Circular No. 20/2019):

17. *1.10 (a)* - The requirement for the risk assessment to be documented can be inferred from the requirement for the risk assessment to be signed off by the Board of Management or the General Director of the REs .

18. *1.10 (b)* - REs are required to conduct risk assessments based on customers, countries or geographic areas, products, services, transactions or distribution (delivery) channels, and the appropriate level and type of mitigation to be applied.

19. *1.10 (c)* - REs are required to annually update the risk assessment.

20. *1.10 (d)* - REs are required to submit the risk assessment results to the SBV and their respective competent authorities within 30 days from the date of signing, promulgating, amending and supplementing (as the case may be).

Criterion 1.11 -

21. *1.11 (a)* - REs required to develop AML internal regulations (Art. 20 of the Law on AML 2012). The detailed specifications of the AML/CFT internal regulations are set out in Art. 13 of Decree No. 116/2013 read together with Art. 1(5) of Circular No. 31/2014. The AML/CFT policies and management procedures (internal regulations) must be approved by the Board of Management or the Director General and the formulation of the internal regulations must be based on the results of their institutional risk assessment (Art.1(2) of Circular No. 20/2019).

22. *1.11 (b)* - Article 20(1) of the Law on AML 2012 and Article 13(9) of Decree No. 116/2013 provides a specific requirement on monitoring through internal audit but there is no requirement on REs to enhance the controls if necessary.

23. *1.11 (c)* - Internal regulations must include enhanced control measures for high-risk areas (Art.1(2) of Circular No. 20/2019). REs are required to apply enhanced measures on high-risk customers (Art. 12(3) of the Law on AML 2012). Details of the information required when conducting enhanced due diligence measures are set out in art. 3 of Circular No. 35/2013 read together with Article 1(1) of Circular No. 31/2014.

24. *Criterion 1.12* - Internal AML/CFT regulations may allow for simplified control measures for low risk areas (Art. 1(2) of Circular No. 20/2019). Article 12 of the Law on AML 2012 broadly allows for the REs to apply simplified CDD measures for customers assessed to be of low risk (see c1.8). However, gaps identified under criterion 1.9 to 1.11 apply. REs must not apply simplified measures when there is a suspicion of ML/TF (Art. 1(4) of Decree No. 87/2019).

Weighting and Conclusion

25. There are moderate shortcomings. There are some gaps with the identifying and assessing certain ML/TF risks and measures to address identified risks, which are given particular weight. There is no risk-based application to allocating resources and implementing measures to prevent or mitigate ML/TF risks identified by the NRA. There is no requirement on REs to take enhanced measures to manage and mitigate higher risks areas identified by the NRA. While there is a requirement for REs to establish internal regulations, the regulations are meant to manage and mitigate risk identified by REs and not by the country. In addition, there is no

requirement for the REs to enhance their controls if necessary. **Recommendation 1 is rated partially compliant.**

Recommendation 2 - National Cooperation and Coordination

26. The 2009 MER rated Vietnam partially compliant with these requirements. Vietnam lacked a national coordination committee to address policy and operational AML/CFT concerns.

27. *Criterion 2.1* - Since the 2009 MER, the Prime Minister has issued four National Action Plans, including the Post NRA Action Plan (Decision No. 474/2019) which was signed off at same time as the NRA in 2019. The predominant purpose of the Post NRA Action Plan is to address specific short to medium-term systemic vulnerabilities including improving the legal framework and strengthening capacity of Vietnam's financial intelligence unit (the SBV's AML Department (AMLD)). These action plans inform the policies and activities of the relevant ministries. While the Post NRA Action Plan has 18 key actions, risk only has a limited role in directing priorities with, for example, supervision of high-risk sectors subject to annual schedules determined by the Government Inspectorate in the first instance (Art. 15, 1b, Law of Inspection 2010) rather than ML/TF risk. Action plans and policies are not yet fully informed by ML and TF risk.

28. *Criterion 2.2* - On 13 April 2009, Vietnam created a National Coordinating Committee for AML (NCC) (Decision No. 470/2009). The Government has also established an NCC for Counter Terrorism and Terrorist Financing chaired by the Prime Minister. The NCCs are responsible for coordination of AML/CFT policy implementation. The NCCs are interagency bodies assisting the Prime Minister in directing and coordinating AML/CFT activities among line ministries and local authorities and are responsible for the development of national policies and plans relevant to AML/CFT. The NCC AML is chaired by the Deputy Prime Minister and includes the SBV Governor and Head of the MPS as Deputy Chairs. Other members include senior representatives from: Supreme Court; Supreme People's Procuracy; Government Office; MPS; Ministry of Foreign Affairs (MOFA); Ministry of Home Affairs (MHA); MOF; Ministry of Planning and Investment; Ministry of Telecommunications; Government Inspectorate; and Ministry of Defence (MOD).

29. *Criterion 2.3* - At a policy level, the NCC on AML is responsible for coordination of information as outlined in Art. 2 of Decision No. 470/2009. All the relevant agencies participate.

30. At an operational level, ministries and agencies regularly hold inter-ministerial meetings to discuss specific issues, such as meetings between LEAs (SBV, MOF, MPS, Supreme People's Procuracy, and Supreme People's Court) to accelerate the investigation, prosecution, adjudication of ML offenses and predicate crimes. The SBV has responsibility for the coordination of the exchange of information between agencies during the investigation, prosecution and conviction of ML offences (Art. 21 of Decree No. 116/2013), though the link to ML is only achieved to a limited extent. In practice at the operational level, the exchange of information is supported through individual memorandum of understanding (MOU) agreements between ministries and agencies. MOU's between relevant ministries and agencies include coordination principles, information exchange content, information exchange forms and terms, authorities exchanging information, responsibilities of parties and validity of the MOU. Where a MOU is not in place, Art. 21 of Decree No. 116/2013 allows for the exchange of information between SBV and other agencies. This decree authorises agencies under this Article and relevant ministries to sign regulations on coordination and information exchange though it was not demonstrated that these regulations exist where MOUs are not in place.

31. *Criterion 2.4* - Vietnam issued Decree 81/2019 on the prevention of proliferation of weapons of mass destruction (WMD) in November 2019, 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 (Art. 13, Decree 81/2019).

32. *Criterion 2.5* - Vietnam has cooperation and coordination mechanisms in place through the NCC. The NCC brings together relevant authorities to ensure the compatibility of AML/CFT requirements with other legal and governance regimes in Vietnam related to data protections and privacy. While Vietnam has confidentiality obligations, there do not appear to be specific data protection obligations on competent authorities or privacy obligations that impede the AML/CFT requirements.

Weighting and Conclusion

33. Vietnam has taken a number of positive steps to improve coordination and cooperation. Vietnam has issued four action plans, which have been regularly reviewed and updated. These action plans operate as national policies and inform the policies and activities of the relevant ministries, however ML and TF risk only has a limited role and Vietnam would benefit from the action plan or policy to be fully informed by ML and TF risk. Further, when MOUs are not in place, the mechanisms to support operational cooperation and coordination are unclear. **Recommendation 2 is rated largely compliant.**

Recommendation 3 - Money laundering offence

34. The 2009 MER rated Vietnam partially compliant with these requirements. ML was not criminalised in accordance with all of the requirements of the Vienna and Palermo Conventions; the definition of “property” in the Penal Code was unclear; a number of requisite categories of predicate offence had not been criminalised, including TF, piracy, insider dealing and market manipulation, participation in an organised criminal group and racketeering; and legal persons were not subject to liability for ML under the Penal Code. The Penal Code 2015 included a new ML offence, which was largely amended in 2017.

35. *Criterion 3.1* - ML is criminalised in Article 324 of the amended Penal Code 2015, which came into force on 1 January 2018. Judges Council Resolution No. 03/2019 provides legally binding guidance for the application of Article 324.

36. Articles 324 criminalises ML by natural and legal persons, largely on the basis of the Vienna and Palermo Conventions. Article 324 covers participation in financial, banking and other transactions, use and concealment of property obtained through the commission of a crime. Resolution No. 03/2019 further elaborates on what is included under each of these categories. However, given the restriction of Art. 324, clause 1, paragraph (a) to participation in ‘transactions’, it is not clear that all forms of transfer and conversion are covered, as required by the Conventions, including transfer, sending or delivery, transportation, transmission, altering.

37. The Penal Code 2015 includes ancillary offences and related sanctions for all types of crimes, including preparation for crimes (Art. 14), attempts (Art. 15) and complicity (Art. 17) which encompass the elements required under the conventions (participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission). Preparation for the commission of the ML offence is also specifically criminalised in Clause 4 of Art. 324.

38. *Criterion 3.2* - The predicate offences for ML cover any crime as prescribed in the Penal Code 2015, which is the sole source of criminal offences and penalties under Vietnamese law. The designated categories of offences as defined in the General Glossary of the FATF Methodology are mostly covered by the Penal Code 2015. Participation in an organised criminal group and racketeering is not separately criminalised in Vietnam, nor is there an offence based on

conspiracy. However, the commission of a crime by an organised group is an aggravating factor for many criminal offences in Vietnam, which increases the applicable penalty. The ancillary offence of complicity (Art. 17, Penal Code 2015) also covers organised crime.

39. Where certain acts (such as corruption, drug or arms trafficking, most forms of fraud etc.) are committed by corporate legal entities, or any criminal acts are committed by non-commercial legal persons, there is no criminal liability and therefore no predicate offence for the purposes of ML. This gap with predicate offences arises as Vietnamese corporate legal entities are only liable for the offences specified under Article 76 of the Penal Code 2015. This Article includes some but not all of the designated categories of offences and it does not apply to legal persons other than corporate legal entities. Under the Civil Code (Art. 75), corporate legal entities include enterprises and other profit-seeking commercial entities. This can include foreign legal entities as per the Penal Code (Art. 5).

40. *Criterion 3.3* - Vietnam does not use a threshold approach or a combined approach.

41. *Criterion 3.4* - The ML offence applies to 'money or property' obtained through the commission of a crime, regardless of value. The Penal Code 2015 does not contain a definition of these terms. However, Resolution No. 03/2019 defines 'money' as consisting of VND, any foreign currency, cash or money in an account. It defines 'property' by reference to the Civil Code 2015 and specifies that it includes objects, valuable papers, and property rights which exist in a physical or non-physical form; estate or real estate; tangible or invisible; legal documents or instruments proving ownership or interest in property.

42. Article 105 of the Civil Code 2015, includes a definition of property, and Articles 106 to 115 elaborate on that definition and cover all relevant types of property, including virtual assets. However, because the ML offence applies to money or property obtained through the commission of a crime, it is not clear that it covers property that indirectly represents proceeds of crime.

43. *Criterion 3.5* - When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence. The ML offence applies to money or property obtained through the commission of a crime. Resolution No. 03/2019 provides that the determination of a crime is based either on 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) (Art. 2, Clause 3). This indicates that a final conviction for the predicate offence is not necessary. Resolution No. 03/2019 also provides that prosecution of ML may be conducted simultaneously with prosecution of predicate offences.

44. *Criterion 3.6* - According to Article 6, the Penal Code 2015 has extraterritorial application in relation to:

- a) Vietnamese Citizens or Vietnamese legal persons or stateless residents of Vietnam, outside of the territory of the Socialist Republic of Vietnam, that commit acts that are defined as a crime by the Penal Code; and
- b) foreign individuals or legal persons who commit an offence that infringes the lawful rights and interests of Vietnamese Citizens or the interests of Vietnam or under an international agreement to which Vietnam is signatory.

45. Article 3, Clause 1 of Resolution No. 03/2019 stipulates that predicate crimes include:

- a) crimes committed by Vietnamese citizens; Vietnamese commercial entities; and stateless people who are permanently residing in Vietnam; within or outside of Vietnam; and

b) crimes committed outside of Vietnam by foreign citizens and foreign legal persons if the offences are prescribed in the Penal Code 2015, or the laws in the country or territory where the crime was committed.

46. As such, predicate offences for money laundering would extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically.

47. *Criterion 3.7* - Article 324 applies to all persons who commit the predicate offence. Criminal liability applies in both situations on self-laundering and third-party laundering.

48. *Criterion 3.8* - Under Article 324 of the Penal Code 2015, the mental element of the ML offence is knowledge that the money or property was obtained through the commission of a crime. The rules of evidence that can be used to prove the ML offence are regulated under the Criminal Procedure Code 2015.

49. Article 86 of the Criminal Procedure Code provides that evidence includes valuable facts for the settlement on the case. In line with article 86 of the Criminal Procedure Code 2015, Article 2, Clause 4 of Resolution No. 03/2019 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. This suggests that knowledge can be inferred from objective factual circumstances.

50. Vietnamese criminal law does not include any prohibition on the knowledge required for the ML offence being inferred from objective factual circumstances. The case of Vinashin Ocean Shipping Co. Ltd (2014) is evidence of compliance with this criterion. In this case, the fact that a father had opened and operated 22 bank accounts on his son's instruction to receive money and purchase real estate and luxury cars was relied upon to prove that he had knowledge that the money was proceeds of crime and he was convicted of ML. Although it is noted that this case was prosecuted under ML offence in the former Penal Code (Article 250).

51. *Criterion 3.9* - Under Article 324, the penalty for individuals that commit a ML offence range from 1-5 years' imprisonment (Clause 1). Sanctions may be increased for aggravating circumstances (Clauses 2-3). Preparatory acts to the commission of ML offence are punishable by a penalty from 6-36 months of imprisonment (Clause 4). Under Clause 5, the offender might also be liable to a fine from VND 20 million (approx. USD 850) to VND 100 million (approx. USD 4,300), or prohibited from holding certain positions or jobs for a period of 1-5 years, or the confiscation of all/part of his/her property.

52. The imprisonment penalties available for natural persons convicted of ML are proportionate to those available for other serious crimes in Vietnam and are considered dissuasive. Available fines are not proportionate or dissuasive.

53. *Criterion 3.10* - Corporate criminal liability for ML has applied since 1 January 2018 when Chapter XI of the Penal Code 2015 was amended to define the criminal liability of corporate legal entities. The scope of the criminal responsibility of corporate legal entities is outlined in Article 76, which includes Article 324. However, the criminal liability of legal persons outlined in Article 76 of the Penal Code includes some but not all of the designated categories of predicate offences and does not apply to all legal entities besides corporate legal entities.

54. Article 75 of the Penal Code 2015 specifies the conditions for a corporate legal entity to bear criminal responsibility and states that the fact the corporate legal entities have criminal liability does not exclude the criminal liability of associated natural persons.

55. Available sanctions are considered proportionate and dissuasive, with fines ranging from VND 1,000,000,000 (approx. USD 43,160) to 10,000,000,000 (approx. USD 431,600), and possible suspension of operations and mandatory winding-up and prohibition of operating in some sector or raising capital (Article 324).

56. Criminal liability and sanctions for ML only apply to corporate legal entities and not to non-commercial legal persons. However, under Decree No. 12/2012 (Article 15), Decree No. 30/2012 (Articles 37-38) and Decree No. 45/2010 (Article 29), foreign and domestic NPOs may be subject to suspension, revocation of registration, or dissolution for ML activity.

57. *Criterion 3.11 - Ancillary offences* are included in the Penal Code 2015, for all types of crimes, including preparation for crimes (Article 14), attempts (Article 15) and Complicity (Article 17). Complicity includes elements of abetting, facilitating; and counselling the commission. Preparation for the commission of the ML offence is also specifically criminalised in Clause 4 of Article 324.

Weighting and Conclusion

58. There are moderate shortcomings with the criminalization of ML, as the ML offence does not cover all forms of transfer and conversion. There are shortcomings on the criminal liability of the legal persons as article 76 of the Penal Code which includes some but not all of the designated categories of offences, and does not apply to all legal entities besides the corporate legal entities. This implies that where acts such as corruption, drug or arms trafficking, and most forms of fraud are committed by corporate legal entities or any acts committed by non-commercial legal persons, there is no criminal liability and therefore there is no predicate offence for the purposes of ML. In addition, it is not clear that the offences extend to property that indirectly represents the proceeds of crime. **Recommendation 3 is rated partially compliant.**

Recommendation 4 - Confiscation and provisional measures

59. In its 2009 MER, Vietnam rated partially compliant with these requirements. There was a lack of specific provisions to allow the authorities to freeze, seize and take provisional measures. There did not appear to be any specific laws allowing for the identification and tracing of the proceeds of crime, and there were no penal laws allowing for the voiding of contracts designed to frustrate confiscation.

Criterion 4.1

60. Vietnam's legal framework applies criminal confiscation (conviction based) under the Penal Code 2015, the Criminal Procedure Code 2015, and the Law on AML 2012. These laws cover property laundered, proceeds of crime and other benefits, and instrumentalities. Court judgements provide a mechanism for confiscation of property of corresponding value, however, there are doubts about the scope of legislative provisions covering property of corresponding value.

61. *4.1(a) - Article 45* of the Penal Code 2015 provides for the confiscation of property laundered by criminal defendants and third parties. Articles 45, 46, 47 of the Penal Code 2015 cover the available judicial measures against individuals and legal persons that commit a crime. These measures include the confiscation of property directly related to serious crimes; including money laundering offences.

62. Article 45 of the Penal Code 2015 provides that property held by third parties to the criminal activity can be confiscated. Article 47 of the Penal Code provides for the confiscation of property of a third person used on the commission of a crime in cases where the person allows

the offender to use it (for example, if a landlord of a warehouse knows that a tenant uses the warehouse for storing and selling drugs).

63. Confiscation of property may also be applied as a further penalty for committing certain offences. Clause 5 of Article 324 of the Penal Code 2015 (which relates to money laundering offences), covers the confiscation of part or all the property of a person who has committed an ML offence.

64. *4.1(b)* – In addition to Article 45 of the Penal Code 2015, Article 46(1)(a) provides judicial measures for the confiscation of money and objects directly related to the crime. Article 47 of the Criminal Code provides for the confiscation of instruments of crime, illegal profits (such as benefits of crime) and items banned by the State.

65. *4.1(c)* – The confiscation of property that is the proceeds of, or used in, or intended or allocated for use in financing terrorism, terrorist acts or terrorist organisations, is covered by article 299 and article 300 of the Penal Code 2015, in line with the provisions of Articles 45 to 47 of the Penal Code).

66. *4.1(d)* - Vietnam utilise measures through court judgements to confiscate the damage arising from a criminal offence as the mechanism to recover property of corresponding value. However, some concerns remain that the specific provisions which explicitly cover the confiscation of property of corresponding value (Law on Civil Judgment Execution no. 12/VBHN-VPQH dated 11/12/2014) have gaps in their scope and have not been tested by the superior courts.

Criterion 4.2 -

67. All classes of assets may also be restrained, but only bank accounts can be frozen. In the Penal Code 2015 and Criminal Procedure Code 2015, the term “distraint” or “distraintment” is used. The assessment team were advised that this refers to the “restraint” of property.

68. *4.2(a)* – There are measures available to competent authorities that enable them to identify and trace property that could become subject to confiscation. Broadly, Article 5 and 6 of the Criminal Procedure Code provides for the responsibility of competent authorities to investigate and combat crime under that law. Further, Article 35 to 42 of the Criminal Procedure Code provide for the allocation of responsibility for investigating authorities to obtain documents and evidence in investigation under that Act. For example, Article 36(2) authorises Heads and vice Heads of Investigation Authorities to make decisions regarding searches and Article 37 authorises investigators to conduct the searches. Article 38 provides authority and responsibility to investigation officers of competent authorities (see also R.30 and R.31). The Law on AML 2012 (Articles 36 to 44) also details the responsibility of competent authorities in AML investigations. Article 39 to 49 on the Law on Anti-Terrorism 2013 provides similar responsibilities and powers to investigating authorities (see also criterion 4.2(d)).

69. *4.2(b)* - The Criminal Procedure Code 2015 provides for provisional measures, without prior notice, in respect of proceeds of crime, namely; Article 128 (regarding distraintment of property), Article 129 (regarding freezing of bank accounts). As noted above, Articles 437 and Article 438 describe the operation of distraintment of assets and freezing of bank accounts.

70. Article 34 of the Law on AML 2012 provides the power for REs to freeze accounts, apply sealing or seizure of assets of individuals and legal persons upon the request of competent authorities. However, the Law on AML 2012 only covers freezing of accounts. Article 23 of Decree No 116/2012 (as amended by Article 13 of Decree 87/2019) expands these powers to permit the sealing and seizing of other property, upon request by competent authorities. Assets that are also

exhibits can be preserved pursuant to Articles 90 and 105 to 106 of the Criminal Procedure Code, which prevents the dealing, transfer or disposal of those assets.

71. Article 10 of the Law on Anti-Terrorism states that money, property related to the terrorism, terrorist financing should be stopped in circulation, frozen, sealed, temporarily held and handled in accordance with laws and regulations.

72. 4.2(c) - There are no provisions that enable the authorities to take steps to void or prevent actions that prejudice the country's ability to freeze, seize or recover property subject to confiscation.

73. 4.2(d) - The Criminal Procedure Code 2015 stipulates the process for investigative authorities to collect evidence. For example, Article 88 of the Criminal Procedure Code authorises investigative authorities to request other authorities and entities to provide evidence, documents, items, electronic data and facts. Article 92 to 97 provides for depositions to be taken from certain persons (suspects, informants, witnesses) in relation to a criminal offence. Article 107 relates to the acquisition of electronic materials and data. Article 108 relates to the inspection and evaluation of evidence. Articles 192 to 198 of the Criminal Procedure Code 2015 also contain provisions relating to the search, seizure and examination of electronic items in the course of an investigation. Article 223 to 228 of the 2015 Criminal Procedure Code 2015 defines special procedures on criminal investigation that apply to money laundering and terrorism (amongst other offences). Article 168 requires that competent authorities and entities comply with requests from investigative authorities. Article 28 of the Law on AML 2012 also requires REs to provide files, stored documents and related information to the SBV and other authorized state agencies upon request (see also R.31 and R.4.2(a) to (c)).

74. *Criterion 4.3* - Vietnam has provisions with respect to protection of rights of bona-fide third parties. Clause 2, Article 47 and 48 of the Criminal Code 2015 provides for the return of money or items, which are illegally appropriated, to their lawful owners or to provide compensation for damage caused. Article 93 of the Law on Corruption 2018 has similar provisions providing for the protection of the rights of bona fide third parties. Article 133 of the Civil Code 2015 provides protections for bona fide third parties in invalid civil transactions as identified in Article 122 to 123 of the Civil Code 2015.

75. *Criterion 4.4* - Vietnam has mechanisms to manage seized property during criminal proceedings. Official Letter No. 3235 of October 4/2019 establishes mechanisms relating to custody and control, disposal or dealings with property whilst property is seized, frozen or distrained and how confiscated property is dealt with by the authorities.

76. Assets that are also exhibits can be preserved pursuant to Articles 90 and 105 to 106 of the Criminal Procedure Code, which prevents the dealing, transfer or disposal of those assets. Such exhibits may include proceeds of crime, which are distrained. Criminal Code 2015 also provides limited provisions relating to management of property, for example, Article 45 provides that confiscation means "confiscation and transfer of part of or all of property under the ownership of the convict to state budget." Articles 46 to 47 provide limited provisions relating to the "return and repair" of property. Article 128 to 130 provides limited provisions relating to the process termination of restraint and freezing of property.

Weighting and Conclusion

77. Vietnam has legislative measures for confiscation, seizure and freezing of property, including measures protecting the rights of bona fide of third parties. The minor shortcomings include the inability to void or prevent actions that may prejudice future confiscation.

Recommendation 4 is rated largely compliant.

Recommendation 5 - Terrorist financing offence

78. The 2009 MER rated Vietnam non-compliant with these requirements as TF was not criminalised. Vietnam's 2012 progress report upgraded SR.II to a level equivalent to Largely Compliant due to amendments to the Penal Code 1999.

79. *Criterion 5.1* - TF is criminalised in Article 300 of the Penal Code 2015, which was further amended in 2017. However, this Article only criminalises raising and providing money or property to terrorist organisations or terrorist individuals.

80. 'Terrorist organisation' and individual 'terrorist' are not defined, but may be construed in relation to the definitions of terrorism set out at articles 113 and 299 of the Penal Code 2015 alongside the definition of terrorism in the Law on Anti-Terrorism 2013 (Article 3). Based on Article 299, 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 TF 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. When the purpose is to oppose the government, Article 113 shall apply.

81. Although the Article 299 and 113 terrorism offences are framed in terms of bringing 'terror to the public' and of 'infringe upon life', respectively, when read alongside the definition of terrorism in Article 3 of the Law on Anti-Terrorism 2013, it 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.

82. However, while the terrorism offence is framed broadly, it is not clear that it covers all acts that constitute an offence within the treaties listed in the annex to the TF Convention. Further, because financing terrorist acts is not criminalised, there are doubts as to whether the specific aspects of Article 2 of the TF Convention are covered e.g. direct or indirect financing; the requisite knowledge or intention; full or partial financing etc.

83. It is not necessary that funds were actually used to carry out a terrorism offence in order for an act to constitute TF (Article 300).

84. *Criterion 5.2* - According to Article 300 of the Penal Code 2015 it is an offence for a person to raise or provide money or property, in any shape or form, to terrorist organisations or terrorist individuals. There is no need for a link to a specific terrorist act or acts. This Article also specifically criminalises preparation to commit the crime. There is no explicit criminalisation of financing a terrorist act.

85. The TF offence (Article 300) applies even if the money or property was only used in part to finance a terrorist or terrorist organisation or if it was used to indirectly to finance a terrorist or terrorist organisation.

86. *Criterion 5.2^{bis}* - The Penal Code 2015 does not specifically criminalise financing the travel of individuals to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. As the term terrorist is not defined in Vietnamese law, it is not clear whether the general TF offence (Article 300) would extend to these individuals.

87. *Criterion 5.3* - Vietnam's TF offences apply to the provision and collection of "money" and "property". The term "property" is defined by reference to the Civil Code 2015. Under Chapter VII of the Civil Code 2015, the term "property" is comprised of movable and immovable objects, money, valuable papers and property rights. The term "property" is sufficiently broad to capture virtual assets. There is nothing in the law that restricts the application of the TF offence to property from an illegitimate source.

88. *Criterion 5.4* - Article 300 of the Penal Code 2015 and TF as defined in Article 3 of the Law on Anti-Terrorism 2013 do not require that the property was used to attempt a terrorist act(s) or that it be linked to a specific terrorist act(s). There is no explicit criminalisation of financing a terrorist act.

89. *Criterion 5.5* - While it is not explicit in Vietnamese law that intent or knowledge can be inferred from objective factual circumstance, Article 86 of the Criminal Procedure Code 2015 provides that evidence includes 'valuable facts'. In this sense, it appears that facts can be used to prove guilt or innocence of the accused. As discussed under R.3, there are cases where knowledge has been inferred from objective factual circumstances.

90. *Criterion 5.6* - The TF offence is punishable by imprisonment from 5-10 years, in addition, a probation or residence ban for 1-5 years or confiscation of part or whole property, can be applied for natural persons (Article 300, Penal Code 2015). This sanction is considered to be dissuasive and proportionate.

91. There is no explicit criminalisation of financing a terrorist act and as such criminal sanctions do not apply to natural persons convicted of financing a terrorist act.

92. *Criterion 5.7* - In accordance with Article 76 of the Penal Code 2015, corporate legal entities shall bear legal responsibility for the crimes specified in that Article, which includes Article 300. However, it does not include non-commercial legal persons. Also, there is no explicit criminalisation of financing acts of terrorism and as such criminal sanctions do not apply to legal persons convicted of financing a terrorist act.

93. Clause 4, Article 300 of the Penal Code 2015, as amended in 2017, states that a corporate legal entity is subject to monetary penalty from VND7,000,000,000 (approx. USD300,000) to VND15,000,000,000 (approx. USD650,000) or temporary or permanent suspension of operation for 6-36 months. Where the legal entity's activities cause damage or possibly harms life, health of many people, causes environmental emergencies 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. Further, there are additional penalties of a fine from VND1,000,000,000 (approx. USD45,000) to VND 5,000,000,000 (approx. USD215,000) or a ban from operating in certain fields or raising capital for 1-3 years that can also be imposed.

94. While criminal sanctions only apply to corporate legal entities, under Decree No. 12/2012 (Article 15), Decree No. 30/2012 (Articles 37-38) and Decree No. 45/2010 (Article 29), foreign and domestic NPOs may be subject to suspension, revocation of registration, or dissolution for TF activity.

95. While dissuasive penalties are available, overall the penalties available for corporate legal entities are not considered proportionate and dissuasive due to the option for only a 6-month suspension of operation to be imposed.

96. Article 75(2) provides that the liability of corporate legal entities does not exclude the criminal liability of individuals.

Criterion 5.8 -

97. 5.8 (a): The Penal Code criminalises preparation for crimes (Article 14) and attempt to commit a crime (Article 15). Clause 2, Article 300 states that a person who prepares for TF shall bear criminal liability. However, as there is no explicit criminalisation of financing a terrorist act, these ancillary offences of preparation and attempt do not apply.

98. 5.8 (b), (c) and (d): Article 17 of the Penal Code 2015 provides that an accomplice means an organizer, perpetrator, instigator or abettor. The accomplice is criminally liable the same way as a perpetrator, but the level of punishment varies depending on the nature of complicity and the degree of participation. This ancillary offence applies to both Clause 4, Article 299 and Article 300.

99. *Criterion 5.9 -* Vietnam has adopted an all crimes approach to ML predicate offences, meaning all crimes prescribed in the Penal Code 2015, including terrorist financing, are predicate offences for ML. The Judge's Council Resolution No. 03/2019 provides further guidance on the application of the Article 324 ML offence and specifies that terrorist financing is a predicate offence for ML. In the absence of an explicit criminalisation of financing terrorist acts, laundering the proceeds of this conduct would not be a predicate for ML

100. *Criterion 5.10 -* The TF offence (Article 300) 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.

Weighting and Conclusion

101. The legal framework for criminalising TF has minor shortcomings. Vietnam's context and overall low TF risk is considered when weighing the particular gaps identified. These include gaps in the criminalisation of financing terrorist acts; financing the travel of individuals for the purpose of terrorist acts and the providing or receiving of terrorist training is not criminalised. There are deficiencies in the sanctions regime, particularly the sanctions for financing terrorist acts and for legal persons. Taking into account the risk and context, **Recommendation 5 is rated largely compliant.**

Recommendation 6 - Targeted financial sanctions related to terrorism and TF

102. In its 2009 MER, Vietnam was rated non-compliant with these requirements. There was a lack of a specific law to implement targeted financial sanctions (TFS); improper implementation of relevant United Nations Security Council Recommendations (UNSCRs); lack of procedures for listing or de-listing; inability to freeze or unfreeze assets; and lack of guidance. Vietnam subsequently issued Decree No. 122/2013 as a legal basis to implement TFS related to terrorism.

*Identifying and designating**Criterion 6.1 -*

103. 6.1 (a): The MPS is responsible for leading and coordinating with other relevant agencies to develop proposals for designation of persons or entities by the UNSC, and the Prime Minister makes the decision on whether to submit the proposal to the relevant UNSC Committee, according to Clause 1, Article 12 of Decree No. 122/2013. The MFA is in practice then responsible for submitting the proposal to relevant UNSC Committees for consideration.

104. 6.1 (b): The MPS has the primary responsibility for identifying individuals and organisations related to terrorism and TF in accordance with UNSCRs as targets for designation proposals, pursuant to Clause 1, Article 12 of Decree No. 122/2013.

105. The MPS identifies targets for designation through intelligence collection, investigative activities, and information exchanged from other countries. The process for proposing designations both at the UN and domestically is described in MPS Department of Homeland Security Decision No. 2570/2018.

106. 6.1 (c): Decree No. 122/2013 does not specify an evidentiary standard of proof when deciding whether or not to make a proposal for designation, nor did Vietnam provide any other documentation referring to evidentiary standards for this process. Proposals for designations are not conditional on the existence of a criminal proceeding.

107. 6.1 (d)-(e): Vietnam has not proposed any designations at the 1267/1989 and 1988 Committees, but advised that it would follow all relevant UNSC procedures and standard forms to propose designations with as much detail as possible, were Vietnam to do so.

Criterion 6.2 -

108. 6.2 (a): The MPS has prime responsibility for designating the persons or entities that meet the designation criteria; either identified by Vietnam per Item (c) and (d), Clause 1, Article 11, of Decree No. 122/2013, at the request of another country, per Item (b), Clause 1, or on the basis of UNSCRs, per Item (a), Clause 1. According to Article 11, individuals and organisations related to terrorism and TF may be designated. This includes persons who commit, or attempt to commit terrorist acts or who participate in or facilitate the commission of terrorist acts. However, it is not clear that this includes entities owned or controlled directly or indirectly by such persons, or persons and entities acting on behalf of or at the direction of such persons and entities.

109. 6.2 (b): The MPS has the lead responsibility, in coordination with MFA, MOD, SBV, and other relevant agencies to identify individuals and entities for designation, according to Clause 2, Article 11 of Decree No. 122/2013. Individuals are identified through the results of investigation, prosecution and judgment as well as through other professional operations by Vietnam's competent authorities and based on requests from other countries.

110. 6.2 (c): The MPS has primary responsibility for considering the requests of other countries to designate. If there is a reasonable basis to believe that a person or entity is related to terrorism and/or TF, the MPS determines whether to list the person or entity (Clause 1, Article 13, Decree No. 122/2013). This is to be done in a timely manner (Clause 2, Article 4, Decree No. 122/2013), and in practice Vietnam prioritises these requests under a standing policy to demonstrate active and positive cooperation in foreign policy.

111. 6.2 (d): The MPS takes the lead in assessing and evaluating whether the information for designation meets the criteria set out in Clause 1, Article 11 of Decree No. 122/2013. Proposals are not conditional on the existence of criminal proceedings. MPS Decision No. 2570/QD-ANND-P8, which describes the internal process for making designations, uses the terms "sufficient grounds" and "grounds for proving" (Article 2, Clause 1(b) and 1(c)) as the evidentiary standard of proof.

112. 6.2 (e): When requesting other countries take TFS measures in relation to a person or entity, the MPS has the lead for supplying supporting information and evidence to the foreign competent authorities (Clause 2, Article 13, Decree No. 122/2013). This includes information from judicial agencies and SBV. MFA transmits requests via note verbale to embassies, and

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includes information such as the name of the organization, key individuals along with their dates of birth, details regarding terrorist acts or potential acts, and requests the country conduct an investigation. An example of requests that Vietnam provided do not, however, specifically ask for the countries to freeze funds and assets or to designate the entities or individuals.

Criterion 6.3 -

113. *6.3 (a):* The MPS, as the lead agency for TF, has authority under the Law on National Security 2004 (Article 24, Clause 1, Item (b)) to request agencies, organisations and/or individuals to supply information and documents when there are grounds to determine if they are involved in “activities infringing on national security”.

114. *6.3 (b):* The MPS and other competent authorities can operate *ex parte* against persons or entities that are being considered for designation. Per Clause 3, Article 4, Decree No. 122/2013, the names and information of individuals and entities being considered for designation are kept confidential until the proposal is finalised and publicised.

Freezing

115. *Criterion 6.4 -* Article 11 of Decree No. 122/2013 establishes a list of individuals and entities related to terrorism/TF (the “blacklist”) which is the mechanism by which Vietnam implements TFS without delay. TFS obligations are triggered by the addition of the name to the blacklist. This blacklist is available publicly on the MPS website.

116. For UNSCR 1373 designations, the MPS has the lead in coordination with the MFA, MOD, and SBV to designate new individuals or entities, and once these are added to the blacklist, TFS are implemented without delay.

117. For UNSCRs 1267/1989 and 1988 sanctions regimes, as part of the blacklist the MPS website provides a direct link to the consolidated UN Sanctions List hosted on the UN website. As such, there is no delay between UN designations and the blacklist being updated.

Criterion 6.5

118. The MPS is the domestic competent authority responsible for implementing and enforcing TFS related to terrorism.

119. *6.5 (a):* Article 6 of Decree No. 122/2013 provides that money or property related to terrorism/TF (as defined in Clause 5 of Article 3) must be frozen and Article 5 makes failure to freeze such money or property an offence. The obligation described in Article 6 is broad and would capture all natural and legal persons. However, there are no penalties for non-compliance with these obligations and they are therefore non-enforceable. Further, these Articles do not specify that freezing must occur without delay or without prior notice to the designated individual or entity.

120. Article 33 of the Law on AML 2012 stipulates that reporting entities must temporarily suspend transactions related to blacklisted entities, and Article 34 obligates reporting entities to block their accounts and seal or temporarily seize assets when directed by competent state authorities, including MPS. Article 45 of Decree No. 96/2014 imposes penalties for violations of these obligations, however, they are only enforceable against banks and not all natural and legal persons.

121. Relatedly, per Article 8 in Decree No. 122/2013 FIs and DNFBPs are required to “regularly check” for suspicious transactions, and to immediately freeze money and property when there is a suspicion that customers’ transactions are related to terrorism or TF. They must also report this to the MPS and heads of police at the provincial and municipal level to make a determination as to whether the money or property that has been frozen belongs to an individual or organisation related to terrorism or TF and issue a decision on whether to freeze the money or property or lift the freeze if the person is not on the blacklist (Decree No. 122/2013, Article 7, Clause 1 and Clause 2, and Article 8, Clause 1). While Article 8 requires immediate freezing, this obligation is only triggered by identification of a potentially suspicious transaction, as opposed to being triggered by designation of a person or entity. In addition, Article 8 only applies to FIs and DNFBPs, and the reference in Clause 1 to ‘customers’ transactions’ appears to limit the applicability of this Article such that it would not extend to all natural and legal persons. However, there are no penalties available for violations of these obligations, except to the extent that a determination by MPS under Article 8 in Decree No. 122/2013 could constitute a direction from a competent authority under Articles 34 of the Law on AML 2012, and they are therefore themselves non-enforceable.

122. Vietnam’s definition money and property is sufficiently broad to cover all of the categories in the FATF definition of “funds and other assets”, including virtual assets (Clause 3 and 4, Article 3, Decree No. 122/2013, and Chapter 7 “Property” of the Civil Code 2015).

123. *6.5 (b)*: The obligation to freeze in Articles 6 and 8 of Decree No. 122/2013 applies to money or property related to terrorism/TF as defined in Clause 5, Article 3. This definition includes all the categories of funds and other assets specified in this criterion.

124. *6.5 (c)*: Vietnamese nationals and other persons and entities in the jurisdiction are prohibited from directly or indirectly providing funds, property, financial or economic resources, and financial or other services to individuals and organizations that are designated (Clause 3, Article 5 of Decree No. 122/2013), but this prohibition does not include entities owned or controlled, directly or indirectly, by designated persons or entities; or persons and entities acting on behalf of, or at the direction of, designated persons and entities. There are no penalties available for breaching this prohibition and it is therefore non-enforceable.

125. *6.5 (d)*: Decree No. 122/2013 (Clause 2, Article 11) designate the MPS as responsible for communicating designations to FIs and DNFBPs. The communication mechanism is the MPS website, where the MPS blacklist is available. It is the responsibility of the financial sector and DNFBPs to regularly check the website for changes, or to subscribe to other monitoring services to perform this function on their behalf. No notice is given if the list is updated.

126. Vietnam issued Official Letter No. 108/BCA-A61 that requests ministries, agencies, and local People’s Committees to notify relevant persons and entities of the posting of changes to the list, but it is unclear if or how this works in practice, as Vietnam did not demonstrate that government agencies provided such notification. SBV has issued documents to credit institutions and foreign bank branches operating in Vietnam to implement relevant UNSCRs (Official Letter No. 202/NHNN-TTGSNH7 (11 January 2010) and Official Letter 387/NHNN-TTGSNH (5 June 2019)), but did not demonstrate that they have disseminated clear guidance to FIs and other persons or entities, including DNFBPs, on their obligations under freezing mechanism.

127. *6.5 (e)*: Vietnam has several obligations related to this sub-criterion. Vietnam requires FIs and DNFBPs to immediately report to the MPS and SBV (Clause 1, Article 8, Decree No. 122/2013) when they freeze money or property that they suspect is related to terrorism or TF, and to also report these actions in writing to the Heads of Policy Agencies at the provincial level. Clause 1, Article 33 of the Law on Anti-Terrorism 2013 also stipulates that reports must be

made “upon detecting signs or acts of terrorist financing,” which Vietnam indicates includes when refusing to provide funds, assets, resources, and services. However, there are no penalties for non-compliance with these obligations and they are therefore non-enforceable. Article 30 of the Law on AML 2012 requires REs to report to the anti-terrorism authorities and provide a written report to SBV when they identify transactions on behalf of individuals and entities on the MPS blacklist, or when there is evidence of ML for the purpose of TF. Article 33 of the Law on AML 2012 requires REs to report to SBV when they apply measures to delay transactions of parties on the blacklist. However, these reporting obligations are only enforceable against banks.

128. 6.5 (f): Vietnam stipulates that the “money, property, rights and interests” of bona fide third parties acting in good faith will be protected per Clause 5, Article 4 of Decree No. 122/2013. These include provisions in the Penal Code 2015, Criminal Procedure Code 2015, Civil Code 2015, and Law on Civil Judgement Enforcement.

De-listing, unfreezing and providing access to frozen funds or other assets

Criterion 6.6 -

129. 6.6 (a): The MPS takes the lead in recommending to the Prime Minister to propose entities or individuals be removed from the relevant UN Sanctions Regimes lists by the UNSC (Clause 2, Article 12, Decree No. 122/2013). At the time of the on-site, these procedures were added to the MPS website and are publicly available.

130. 6.6 (b): The MPS has the authority to remove persons and entities on the blacklist and to unfreeze their funds or assets following de-listings at the UNSC, requests from other countries, the results of investigations, prosecution, and criminal judgments, and competent agency operations (Clause 1 and 2, Article 11, Decree No. 122/2013). However as previously described in sub-criterion (a) of Criteria 6.2, Vietnam only partly incorporates the designation criteria from UNSCR 1373 into its domestic designations regime, and correspondingly cannot fully meet this sub-criterion for de-listing.

131. 6.6 (c): There is a right to appeal designation decisions in Clause 1, Article 14, Decree No. 122/2013, which is specified on the MPS website. Article 117 of the Law on Administrative Procedures 2015 permits organizations and individuals to initiate lawsuits to overturn decisions to list or delist organizations and individuals for TF.

132. MPS and MOJ have procedures that allow for a review of a decision before a court or other independent authorities when requested, to include for individuals and organizations that are designated domestically. For MPS, the procedures for making a complaint to the MPS are described in Circular No. 68/2013 and Circular No. 11/2015, and for the MOJ, the lawsuit process is prescribed in the Law on Administrative Procedure 2015.

133. 6.6 (d): The MPS website includes details of a contact point to receive and handle complaints about UNSC listings. Vietnam has not sought the delisting of any person or entity at the 1988 Committee, but states it would use the guidelines and procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730.

134. 6.6 (e): The MPS website, on the page describing procedures for appealing designations, includes a link to the United Nations Office of the Ombudsman for the ISIL (Da'esh) and Al-Qaida Sanctions Committee. Vietnam informed the assessment team that if any designated persons and entities on the *Al-Qaida Sanctions List* were present in Vietnam, that it would notify those entities as part of adding them to the blacklist, and that this notification would include the right to appeal to both Vietnamese authorities and the *United Nations Office of the Ombudsperson*. No persons or entities on the Al-Qaida Sanctions List have been or are

present in Vietnam, and so Vietnam has not generated any notifications of this kind for the assessment team to verify.

135. 6.6 (f): The MPS has the authority to unfreeze funds or other assets and to delist persons or entities (Clause 1 and 2, Article 7, Decree No. 122/2013). However, the authority does not describe procedures for persons or entities who are inadvertently affected by a freezing mechanism.

136. 6.6 (g): Decree No. 122/2013 (Clause 2, Article 11) designates the MPS as responsible for communicating delistings to the financial sector and relevant non-financial businesses. The communication method is the MPS website, where the MPS blacklist is published. As part of the delisting process, MPS will remove domestically delisted entities or individuals from the blacklist. For UNSC delistings, there is a direct link to the UNSC Sanctions List. It is the responsibility of the financial sector and DNFBPs to regularly check the website for changes. No notice is given of a delisting. Vietnam did not demonstrate providing guidance to FIs, DNFBPs or other persons or entities on their obligations to respect a de-listing or unfreezing action.

137. *Criterion 6.7* - Vietnam authorizes access to frozen funds and other assets to pay for certain essential expenses, to include legal fees, service charges, food, accommodation, medical expenses, and other necessary basic expenses (Clause 3, Article 7, Decree No. 122/2013).

Weighting and Conclusion

138. Vietnam has a legal framework to implement TFS for terrorism and TF, although moderate shortcomings remain. Although Vietnam implements TFS under the UNSCR 1267/1989, 1988 and 1373 regimes, it does not require freezing without delay and without prior notice by all natural and legal persons, and only some freezing obligations are enforceable and only against banks. Vietnam's domestic designation mechanism and prohibitions do not include entities owned or controlled, directly or indirectly, by designated persons or entities; or persons and entities acting on behalf of, or at the direction of, designated persons and entities. The prohibitions are not enforceable and only some reporting obligations are enforceable and only against banks. Finally, Vietnam does not have effective mechanism to provide notice of new listings and de-listings. **Recommendation 6 is rated partially compliant.**

Recommendation 7 – Targeted Financial sanctions related to proliferation

139. The implementation of TFS related to proliferation of WMD (PF) is a new requirement added to the FATF Recommendations in 2012, and was not assessed during the 2009 MER.

140. *Criterion 7.1* - Vietnam implements TFS related to PF pursuant to Decree No. 81/2019 ("On prevention of proliferation of weapons of mass destruction"), which was finalized and enacted in November 2019, prior to the conclusion of the on-site visit. Clause 1, Article 10 designates the MOD as the focal agency to implement the Decree and Clause 5, Article 11 designates MOD with responsibility for presiding over the implementation of UNSCRs on counter-proliferation of WMD adopted under Chapter VII of the Charter of the UN.

141. Designations by the UNSCR take effect immediately and TFS must be implemented within 24 hours of designation (Item (b), Clause 5, Article 11). The MOD is required to maintain a pronouncement of TFS obligations on their website and provide a direct link to the UNSC portal (Item (b), Clause 5, Article 11), which all agencies, organizations, and individuals in Vietnam are responsible for regularly reviewing to ensure they are complying with the freezing obligation. This link and obligations related to TFS for PF were not available on the MOD

website at the conclusion of the on-site, and therefore Vietnam was not yet fully implementing TFS without delay in accordance with the framework established by the Decree.³⁸

Criterion 7.2 –

142. MOD is the competent authority with responsibility for implementing TFS in coordination with the ministerial and provincial Steering Committees on Prevention of Terrorism. Relevant obligations are set out in Decree No. 81/2019, however the freezing obligations and prohibition are not clearly enforceable.

143. *7.2 (a):* Clause 5, Article 11 requires all natural and legal persons to freeze property of designated individuals and organisations without delay and without prior notice (Item (a)). Freezing must occur within 24 hours of designation by the UNSC, per Item (b). If FIs and DNFBPs, in the course of conducting CDD, identify customers or transactions involving PF, they are obligated to immediately suspend any transactions and freeze assets related to PF and report to the MOD or the ministerial/provincial focal point units (Item (a), Clause 2, Article 22). Within three days, the competent focal point unit will consider and verify the report. If there are grounds to suspect that the property is related to proliferation of WMD or PF, the focal point unit will issue a decision to freeze, seal or seize the property. If there are no grounds, the focal point unit will instruct the entity to lift the freezing action (Clause 3, Article 22).

144. There are, however, no penalties specified for non-compliance with these provisions, and therefore the freezing requirements are not yet enforceable.

145. Vietnam's definition of assets and property, which is defined by reference to the Civil Code, is sufficiently broad to cover all of the categories in the FATF definition of "funds and other assets" (Clause 12 and 13, Article 4, Decree No. 81/2019 and Chapter 7 "Property" of the Civil Code 2015).

146. *7.2 (b):* The obligation to freeze applies to assets related to proliferation and PF as defined in Clause 13, Article 4 of Decree No. 81/2019. This definition extends to all the categories of funds and other assets specified in this criterion

147. *7.2 (c):* There is no enforceable prohibition applied directly to persons or entities. Various government authorities are required to prevent organisations and individuals from providing money and assets to individuals and organisations that are involved in proliferation of WMD unless licensed, authorized, or otherwise notified in accordance with the relevant UNSCRs (Clause 1, Article 22, Decree No. 81/2019). However, it is not clear how competent authorities shall prevent this, given the lack of enforceability.

148. *7.2 (d):* Vietnam's mechanism for communicating designations is publication on the MOD website. Item (b), Clause 5, Article 11 of Decree No. 81/2019 requires MOD to provide a direct link to the UNSC portal. Further, Item (c) of the same Clause requires the MOD to notify all ministries and other competent authorities within 24 hours of UNSC designations, so that they can direct any organisations and individuals under their supervision or monitoring of the new obligations.

149. Regarding guidance, Item (a), Clause 5, Article 11 Decree No. 81/2019 requires the MOD to maintain a clear public pronouncement of the obligations of the Decree on its website. Clause 3, Article 13 obligates the MOD to regularly update and publish information on PF on its website. Further, Article 15 makes the MOD responsible for disseminating guidance and

³⁸Since the on-site visit, MOD has published on its website a direct link to the UN Consolidated Sanctions List, as well as a link to Decree No. 81/2019.

conducting outreach and education on proliferation and PF, including on relevant laws and obligations under UNSCRs. Item (c), Clause 2, Article 27 further provides that MOD and ministerial and provincial focal point units shall guide FIs and other persons and entities on implementation of measures to prevent the proliferation of WMD.

150. However, as previously noted, the portal on the MOD website was not established by the end of the on-site, and in practice Vietnam had not communicated PF-related designations to FIs and DNFBPs, or provided clear guidance on freezing obligations.³⁹

151. 7.2 (e): Vietnam requires FIs and DNFBPs to immediately notify the focal agency when they freeze assets that they suspect are related to proliferation or PF (Item (a), Clause 2, Article 22, Decree No. 81/2019). Item (b) of the same Article requires FIs and DNFBPs to report to MOD or the ministerial or provincial focal point units any property that is frozen, property related to WMD or actions taken in compliance with relevant UNSCRs, including attempted transactions. There are, however, no penalties specified for non-compliance with these provisions, and they are therefore not yet enforceable.

152. 7.2 (f): The property, rights, and interests of legal third parties are protected in accordance with Vietnamese law, per Clause 3, Article 5, Decree No. 81/2019. Further, Vietnam will return the property of third parties where property is illegally appropriated or used for the purpose of PF (Item (a), Clause 3, Article 11).

153. *Criterion 7.3* - Vietnam has some measures for monitoring and ensuring compliance by FIs and DNFBPs with the obligations under R.7, however it is not clear how this mechanism functions in practice. Article 7 of Decree No. 81/2019 obligates the inspectorate of ministries, departments, and provincial People's Committees to coordinate with MOD and focal point units on inspecting, examining, and supervising implementation of Decree No. 81/2019. The MOD is responsible for preparing legal documents that stipulate the administrative sanctions that apply in the field of WMD prevention (Item (c), Clause 1, Article 29) and for proposing criminal, civil or administrative penalties for individuals and organizations that violate the Decree (Item (h), Clause 5, Article 11; Clause 5, Article 12;). However, Decree No. 81/2019 does not contain any civil, administrative or criminal penalties for non-compliance, nor have any other legal instruments been issued that specify penalties for non-compliance.

Criterion 7.4 -

154. 7.4 (a): According to Clause 6, Article 11, MOD is responsible for enabling listed persons and entities to petition a request for de-listing at the Focal Point and for informing designated persons or entities to petition the Focal Point directly. However, it is not clear how this procedure would work. At the time of the on-site visit, this Decree was not publicly available and the procedure was not otherwise publicly known.

155. 7.4 (b): The MOD is also responsible for verifying persons or entities whose property is frozen are a designated person or entity, and for rescinding freezing orders (Clause 4, Article 12). Decisions to release frozen property are publicized (Item (i), Clause 2, Article 27). The MOD is responsible for coordinating with the MPS and SBV to release and return property if persons or entities are incorrectly identified as being designated persons or entities (Item (c), Clause 3, Article 11, Decree No. 81/2019). At the time of the on-site visit, this Decree was not publicly available and the procedure was not otherwise publicly known.

³⁹As earlier noted, since the on-site visit, MOD has published on its website a direct link to the UN Consolidated Sanctions List, as well as a link to Decree No. 81/2019.

156. 7.4 (c): If the procedures from relevant UNSCRs are met, Vietnam permits access to funds for essential living expenses and other legal obligations of designated individuals and entities whose property is frozen (Item (b), Clause 3, Article 11, Decree No. 81/2019). Vietnam also permits designated persons and entities with frozen property to apply to the MOD for permission to use frozen funds (Item (h), Clause 2, Article 27) and the MOD is responsible, in coordination with other relevant ministries and agencies, for allowing access to frozen assets when Vietnam determines there are exceptions as stipulated in relevant UNSCRs (Item (l), Clause 2, Article 27).

157. 7.4 (d): In the case of a delisting, the MOD website portal will provide a direct link to the UNSC portal, and FIs and DNFBPs are responsible for monitoring changes to the list (Item (k), Clause 2, Article 27 and Item (b), Clause 5, Article 11). Clause 5, Article 11 also requires the MOD to maintain a pronouncement of the obligations under Decree No. 81/2019 on their website. As previously noted, this had not been implemented by the end of the on-site visit, as the MOD had not yet published information about PF obligations or a link to the UNSC portal so that FIs and DNFBPs understand their obligations.⁴⁰

Criterion 7.5 -

158. 7.5 (a): Vietnam allows payments of interest and other income from contracts, agreements, or obligations arising before the accounts were frozen; this income will also be frozen (Item (d), Clause 2, Article 27).

159. 7.5 (b): Vietnam allows the blocked accounts of designated persons and entities to be used for payments under previous contractual terms, provided that the contract and payments meet the specifications in this sub-criterion, and will provide notification to the UNSC of the intent to make or authorize the unfreezing of funds or property at least 10 days before authorization.

Weighting and Conclusion

160. Whilst Vietnam has introduced a legal framework to implement TFS related to proliferation, major shortcomings remain regarding the implementation of TFS without delay, the lack of sanctions to ensure enforceability of freezing obligations or prohibitions on providing funds; the lack of a communication mechanism for designations and delistings and the lack of guidance on TFS obligations. The fact that freezing obligations and prohibitions are not enforceable is given the greatest weight. **Recommendation 7 is rated non-compliant.**

Recommendation 8 – Non-profit organisations

161. The 2009 MER rated Vietnam Partially Compliant with these requirements. The key technical deficiencies included an incomplete sector review, lack of proper oversight and supervision, lack of NPO transparency requirements, no systematic outreach programs, and no formal channel for international cooperation. Since that time, Vietnam has issued a number of new Decrees that regulate domestic and foreign NPOs and recently conducted a NPO risk assessment.

⁴⁰As noted earlier, since the on-site visit, MOD has published on its website a direct link to the UN Consolidated Sanctions List, as well as a link to Decree No. 81/2019.

Taking a risk-based approach

Criterion 8.1 -

162. 8.1 (a): MPS is responsible for assessing TF risk within the NPO sector, and completed its first risk assessment on 24 September 2019 (MPS Homeland Department of Homeland Security Report No. BC-A02-P8, "TF Risk Assessment over NPOs in Vietnam and Supervision on Islamic organizations and other organizations with TF risks in Vietnam"). Vietnam has 500 foreign and 70,870 domestic non-profit entities. Of these, all 500 foreign NPOs and 543 of the domestic NPOs (including 500 social and charity funds and 43 religious organizations) have been identified by Vietnam as falling into the FATF definition of NPO, for a total of 1043 NPOs.

163. Vietnam has competent authorities that oversee foreign NPOs – the Ministry of Foreign Affairs (MOFA) and the Committee for Foreign Non-Governmental Organizations Affairs (COMINGO) (Article 24 and Article 25, Decree No.12/2012) – and for domestic NPOs – the Ministry of Home Affairs (MOHA) (Article 16, Decree No. 30/2012).

164. According to the risk assessment, the NPO sector is largely considered to have a low risk of TF abuse. The risk assessment noted that religious NPOs focused on charitable activities to be at a relatively higher risk, especially those with connections or parent organizations in countries with higher TF risk.

165. 8.1 (b): Vietnam's NPO sector risk assessment concludes that the risk of TF abuse is low. The assessment of TF vulnerabilities is basic and does not include any analysis of regional TF risk. The nature of the threats identified include: terrorists using NPOs to disguise their activities; using NPOs to move funds for terrorism, to include to evading property freezing measures; and the theft of funds from NPOs by terrorists. Vietnam identified certain religious NPOs as having a higher risk for TF abuse than other NPOs, although the risk assessment did not demonstrate why this is the case. Vietnam has not identified any cases where terrorist actors abused NPOs.

166. 8.1 (c): Vietnam recently reviewed the NPO sector and its laws and regulations as part of the NPO risk assessment. Vietnam is taking proportionate and effective action to address risk, as the MPS has conducted focused outreach to the subset of NPOs it views as higher risk (religious NPOs). Section 4 of Report No. BC-A02-P8 details existing mechanisms for monitoring and coordinating efforts on TF risk to NPOs. These include assigning MPS personnel to COMINGO and MOHA to monitor for national security risks, requiring reports on NPO activities from competent authorities every 6 months or 1 year, and requiring NPOs to register, have bank accounts, and report to and be supervised by competent authorities.

167. 8.1 (d): As noted, Vietnam recently completed a sector-wide analysis of vulnerabilities to terrorist activities to ensure effective implementation of measures and has said the NPO risk assessment will be supplemented and updated every year, although this is a matter of practice and not policy and it is unclear if these updates will be made public or disseminated to the sector. Periodic reviews and inspections by COMINGO and MOHA do not involve assessing potential vulnerabilities to terrorist activities to ensure effective implementation of CFT measures.

Sustained outreach concerning terrorist financing issues

Criterion 8.2 -

168. 8.2 (a): Article 19 of the Law on AML 2012 requires NPOs established or operating in Vietnam to maintain adequate information on donors, recipients, funds and their use in order

to ensure transparency. Article 12 of Decree No. 116/2013 provides further guidance regarding the administration and information requirements for NPOs to comply with Article 19.

169. *8.2 (b):* COMINGO holds biannual meetings with foreign NPOs, which includes disseminating information on AML/CFT. MOHA organizes training workshops annually for domestic NPOs to disseminate information and guidance, including on AML/CFT. This information and training is focused on communicating any new legal requirements, including any new CFT requirements. Vietnam has organised two educational workshops with NPOs on TF as it relates to TF risk and preventative measures, since the completion of the NPO sector risk assessment. Supervisors have recently begun to disseminate information related to potential TF vulnerabilities of NPOs and the measures NPOs can take to protect themselves against TF abuse. MPS is also expanding outreach to the NPOs it identified as having the higher risk for TF abuse.

170. *8.2 (c):* Vietnam has recently conducted outreach on TF with some NPOs following the release of the NPO sector risk assessment, including the seven NPOs rated as higher risk of TF abuse as compared to the rest of the sector. This outreach included information on TF risk and preventative measures, but as of yet does not include best practices to combat TF abuse. There was insufficient time to demonstrate that this is a sustained and collaborative practice with the NPOs.

171. *8.2 (d):* Domestic NPOs may only operate when they open a bank account and receive a written certification from the bank of the availability of funds (Clause 3, Article 21, Decree No. 30/2012), and domestic NPOs are required to declare in a public forum (print or online) their account number and name and address of the bank where the NPO opened an account within 30 days of being established (Point f, Clause 1, Article 19, Decree No. 30/2012). Vietnam also requires donations to domestic NPOs of VND 50,000,000 or more or equivalent in foreign currency or gold to be made to the fund's bank account (Clause 3, Article 31, Decree No. 30/2012). These measures create an environment where domestic NPOs are more likely to conduct transactions via regulated financial channels, although they are permitted to use cash for local activities.

172. There is also encouragement for foreign NPOs to conduct transactions via regulated financial channels, to include assistance provided by COMINGO in the account opening process. MPS Report No. BC-A02-P8, section 4 states that NPOs are required to have a bank account, although this document is not a legislative instrument. Further, Clause 2 and Clause 3, Article 21, Decree No. 12/2012 allow foreign NPOs to open accounts in either foreign currencies or Vietnamese Dong at lawfully licensed banks in Vietnam, and foreign representatives and employees of foreign NPOs can do the same.

Targeted risk-based supervision or monitoring of NPOs

173. *Criterion 8.3 -* COMINGO is responsible for supervising foreign NPOs and MOHA is responsible for supervising domestic NPOs. MPS also monitors activities of foreign NPOs. The supervisory activities of these agencies apply in a similar fashion across all NPOs and are not based on identified risk of TF abuse. The primary distinction in Vietnam's supervision of NPOs is between domestic and foreign NPOs, with measures on domestic NPOs applying more stringent requirements.

174. Vietnam's measures in relation to NPOs broadly address the vulnerability to TF. These include mandatory registration requirements (purpose and objectives, funding sources, and project plans) in Decree No. 12/2012 and Decree No. 30/2012. There are also requirements for foreign NPOs to report on finances and activities conducted on an annual basis (Article 18, Decree No. 12/2012), and domestic NPOs must report their list of contributors and donors,

donation amounts, and beneficiaries and amounts, on a quarterly and annual basis (Clause 10, Article 30 and Article 35, Decree No. 30/2012). In addition, Article 19 of the Law on AML 2012 requires NPOs established or operating in Vietnam to maintain adequate information on donors, recipients, funds and their use. These measures are applied to all NPOs and are not based on the identified risk of TF abuse.

Criterion 8.4 -

175. 8.4 (a): MOHA and COMINGO conduct monitoring of NPO compliance with the requirements in the relevant decrees described in c.8.3. However, there is no enhanced monitoring conducted by MOHA or COMINGO of higher-risk NPOs as identified in the NPO risk assessment, nor was it demonstrated that competent authorities use information gathered to address TF risk. In addition, MPS is responsible for affairs related to national security, social order, and safety in activities of foreign NPOs in Vietnam (Clause 3, Article 26, Decree No. 12/202). For the domestic NPOs assessed as at higher risk for TF abuse in the recent NPO risk assessment, MPS plans to conduct enhanced monitoring.

176. 8.4 (b): Decree No. 12/2012 prohibits foreign NPOs from organising, carrying out or participating in activities related to money laundering or terrorism, and contains sanctions for violations of the Decree to include operating in contravention of their registration certificates (Clause 2, Article 31). These sanctions include partial or full suspension of operations, and/or having their certificate to operate revoked; however no sanctions are imposed for persons acting on behalf of a NPO.

177. Decree No. 30/2012 similarly prohibits domestic NPOs from ML, TF and committing other illegal acts (Item (c), Clause 1, Article 7) and provides for dissolution of the NPO for commission of such an act (Item (d), Clause 4, Article 38). No sanctions are imposed for persons acting on behalf of a NPO.

178. Given the lack of penalties that can be described as punitive, it is not possible to describe these sanctions as proportionate or dissuasive. Violations by a NPO cannot be sanctioned by anything other than the dissolution of the NPO.

Effective information gathering and investigation

Criterion 8.5 -

179. 8.5 (a): COMINGO serves as the coordination and information sharing mechanism among relevant authorities (including MPS) and localities on foreign NPOs (Clauses 4-7, Article 25, Decree No. 12/2012). Authorities are responsible for reporting their activities done in cooperation with foreign NPOs to the COMINGO every six months (Clause 2, Article 27, Decree No. 12/2012); provincial-level authorities are responsible for reporting the activities of foreign NPOs operating in their localities to COMINGO every 6 months (Clause 3, Article 28, Decree No. 12/2012; and Vietnamese partners of foreign NPOs are responsible for reporting their cooperation to competent authorities (Clause 3, Article 29, Decree No. 12/2012).

180. MOHA similarly has responsibility for coordination and information sharing among relevant authorities (including MPS) on domestic NPOs (Clause 4, Article 42, Decree No. 30/2012). Provincial-level authorities are responsible for reporting annually the activities of domestic NPOs operating in their localities to MOHA and MOF (Item G, Clause 1, and Clause 2, Article 45, Decree No. 30/2012).

181. 8.5 (b): MPS has responsibility for issues related to national security, social order, and safety in the operation of foreign NPOs (Item 3, Article 26, Decree No. 12/2012). The MPS has

specialized investigative units (Department of Foreign Security –and Department of Homeland Security), which investigate NPOs for suspected TF abuse or complicity. If the reports are credible, the MPS passes the information to the Investigation Security Agency of the MPS. Vietnam informed the assessment team this process is specified in Circular No. 59/2011, however, this is a confidential document.

182. *8.5 (c):* National security protection agencies, including the MPS which exerts jurisdiction over national security issues related to NPOs, have the authority to request agencies, organizations, and/or individuals supply information when there are grounds to determine that they are involved in activities infringing upon the national security (Item b, Article 24, National Security Law 2004). MPS also has powers under Article 88 of the Criminal Procedure Code 2015 to request other authorities and entities to provide documents and other information. Article 168 of the Criminal Procedure Code 2015 requires authorities and entities to strictly implement decisions and requests by investigation authorities and units assigned to the investigations.

183. *8.5 (d):* SBV, financial institutions, organizations (which includes NPO supervisors) and individuals are all required to immediately report “signs of terrorism” to the MPS and Ministry of Defence in a timely fashion (Item a, Clause 1, Article 14, and Clause 1, Article 33, Law on Anti-Terrorism 2013).

Effective capacity to respond to international requests for information about an NPO of concern

184. *Criterion 8.6 -* COMINGO is responsible for sharing information on foreign NPOs (Clause 7, Article 25, Decree No. 12/2012), and has shared information with foreign government partners in response to requests and in international conferences and seminars. The MPS, as member of COMINGO, is able to share information through law enforcement channels, as described under R.40. There are no procedures in place to respond to requests for information regarding domestic NPOs by foreign government partners.

Weighting and Conclusion

185. Vietnam has a well-regulated NPO sector and completed a NPO sector risk assessment, however minor shortcomings remain. Outreach to NPOs on TF is a recent development and Vietnam has not taken a targeted risk-based approach to supervision. There is a lack of proportionate and dissuasive sanctions that can be applied to ensure compliance. Finally, Vietnam has no clear mechanisms to respond to requests from foreign governments regarding domestic NPOs. **Recommendation 8 is rated largely compliant.**

Recommendation 9 – Financial institution secrecy laws

186. The 2009 MER rated Vietnam largely compliant with these requirements. Vietnam did not have clear provisions concerning financial institution secrecy in case of TF.

Criterion 9.1 –

187. Financial institution secrecy laws generally do no inhibit the implementation of AML/CFT measures in Vietnam.

188. Access to information by competent authorities: Duties of confidentiality for client information of credit institutions (including Vietnamese banks) and foreign banks' branches are set out in Decree 117/2018/ND-CP dated September 2018. The Decree confirms that secrecy obligations are relevant to AML/CFT (art. 1(4)) and are lifted on the basis requirements of other laws (art. 4(4)). The Law on AML explicitly lifts this duty of confidentiality (Art.28 of Law on AML 2012 and Decree 116/2013). This would allow AMLD and other authorities to collect CDD and other information obtained under the law relevant to ML/TF and predicate

offences. Analysis under R.27, 29 and 31 sets out the statutory powers available to competent authorities to request information from FIs. CFT reporting obligations are set out in the anti-terrorism law, however, there is no explicit provision providing that by fulfilling their obligations to report or share information shall not be considered as a violation of the confidentiality obligation. If reporting entities do not cooperate, the competent authorities can compel the provision of such information through a judiciary arrangement as provided in the Criminal Procedure Code 2015 (Article 88 and 168).

189. Sharing of information between competent authorities: A range of mechanisms exist to exchange information between agencies at an operational level (see analysis of R.2) and there are no financial institution secrecy laws that inhibit this sharing. Information sharing between competent authorities also occurs at an international level (see analysis of R.40).

190. Sharing of information between FIs: While the law on Credit Institutions provides a general requirement for FIs to take measures for AML/CFT (Art.11 Law on Credit Institutions, 2010), it is not clear that this provides a sufficient statutory basis to lift bank confidentiality obligations to enable the sharing of information between FIs where this is required by Recommendations 13, 16 or 17.

Weighting and Conclusion

191. There are minor shortcomings in relation to explicit provisions lifting confidentiality requirements in relation to TF-related reports, and the sharing of information between FIs where this is required by Recommendations 13, 16 or 17, taking into account the risk and context of Vietnam. **Recommendation 9 is rated largely compliant.**

Recommendation 10 – Customer due diligence

192. The 2009 MER rated Vietnam non-compliant with these requirements. Deficiencies included a lack of CDD implementation; a lack of prohibitions on anonymous or fictitious accounts; improper indication thresholds for saving accounts, cash transactions and occasional customers; a lack of explicit verification requirements; the lack of identification requirements for persons acting on behalf of customers; a lack of on-going due diligence requirements; inaccurate understanding of beneficial ownership; a lack of enhanced due diligence on high-risk customers; a lack of requirement to terminate business relationships due to failure in applying certain criteria; and inspections conducted to gauge effectiveness of implementation of Decree 74 sanctions were not regular, dissuasive, proportionate or effective. The CDD recommendations have been strengthened with the revision of FATF standards in 2012.

Detailed CDD requirements

193. *Criterion 10.1* - FIs are prohibited from opening or maintaining anonymous accounts or accounts using false names (Clause 2, Article 7 of the Law on AML 2012). Intermediary payment services providers (IPSPs) are also prohibited from opening, holding anonymous, or impersonation payment accounts (Clause 5, Article 6 of Decree 101/2012).

When CDD is required

194. *Criterion 10.2* - Law on AML 2012 (Clause 1, Art. 8) and Decree No.116/2013 (Art. 3) require FIs to undertake CDD when:

- (a) customers open an account or establish business relationships with an FI;
- (b) customers conduct occasional high value transactions. A designated occasional high value transaction is defined as a transaction of customers who hold no account with an FI, or a customer who has a current account, but which has had no transaction in 6

- months or more and the transaction value is at least 300,000,000 VND (approx. USD 13,000) per day;
- (c) wire transfers lack information (i.e. name, address, account number of the originator);
 - (d) there is a suspicion that the transaction or transaction-related parties are connected to ML activities; or
 - (e) there are suspicions about the accuracy or adequacy of customer identification information previously collected (Clause 1, Article 3 of *Decree No. 116/2013*).

195. There are no explicit requirements for FIs to undertake CDD measures in circumstances where an occasional transaction is carried out in several operations that appear to be linked, or where ML is suspected under other circumstances other than transactions, or when TF is suspected.

196. Circular No. 20/2019, which was issued pursuant to the Law on AML 2012, Decree No. 116/2013 and the Law on Anti-Terrorism 2013, supplements Circular No. 35/2013 by adding a new Article 10(b) on CFT. Clause 2 of this provision purportedly extends the obligations contained in specified Articles of Decree No. 116/2013 (which elaborate on obligations contained in the Law on AML 2012) to apply to TF, including CDD measures.

197. However, the assessment team has doubts as to the legal authority of a Circular issued by a single Ministry (SBV) to extend legal obligations contained in a Law and Decree to apply to a subject matter that is outside of the scope of those instruments. According to the Law on Promulgation of Legislative Documents 2015, Circulars can provide guidelines for articles, clauses and paragraphs in laws and decrees. However, they do not have the authority to amend the obligations in those instruments. Moreover, this does not meet the requirement that the principle that FIs conduct CDD should be set out in law.

Required CDD measures for all customers

198. *Criterion 10.3* – FIs are required to identify all customers, which includes natural and legal persons (Art 8 and 9 of the Law on AML and Article 4 of Decree No. 116/2013). Moreover, FIs must also identify specified, basic information for the different customers types (Article 9 of the Law on AML and Article 4 of Decree 116/2013). FI are obliged to request that customers provide information relating to the participation of legal arrangements in the business relationship, in the opening of an account or conducting transaction of high value (Clause 10 Article 1 of Circular No. 20/2019 amends Article 10(c) of Circular No. 35/2013).

199. FIs must verify identification using source information and data depending on the nature of the customer. FIs may also check the information provided by the customer against information obtained through other “individuals and organizations” which have had, or have, relationships with the customer; through management agencies or other state competent authorities (Article 11 of the Law on AML and Article 4 of Decree 116/2013). IPSPs are required to comply with these AML measures as they are defined as FIs for the purposes of the AML law (Clause 2, Article 1 of Decree No. 87/2019).

200. However, these verification measures are not enforceable or compulsory. Moreover, there is no requirement to use reliable, independent source documents, data or information when FIs are verifying customers’ identity.

201. *Criterion 10.4* - With the exception of securities companies (Article 47 of Circular 210/2012) there are no regulations or enforceable means in place for FIs to verify that any person purporting to act on behalf of a customer is authorised to do so, nor is there any requirements to identify and verify the identity of that person.

202. *Criterion 10.5* – FIs must apply appropriate measures to identify and update information on beneficial owners (Article 9 of the Law on AML). FIs should collect information about ownership and control structures to identify the individual with the controlling interest over the legal entities and authorisation agreements (Clause 2(b) Article 9 of the Law on AML).⁴¹ Moreover, Article 5 of Decree 116/2013 (as amended by Clause 3, Article 1 of Decree No. 87/2019) provides three criteria to identify beneficial owners, being:

- the actual owner or co-owner of an account or any persons who governs the activity of and account or benefits from transactions in the account;
- individuals who directly or indirectly hold 25% or more of the legal capital of an entity, private business owners; or other person who actually dominate and control the entity;
- individuals who have the right to govern and investment trust or authorised arrangement.

203. FIs are required to request information in relation to beneficial ownership of customers who are legal arrangements, which in Vietnam would be foreign trusts, including beneficial ownership information and information about legal or natural persons related to such arrangements (Clause 10, Article 1 of Circular No. 20/2019).

204. However, there is no specific provision for FIs using the relevant information or data obtained from a reliable source when verifying the identity of the beneficial owner.

205. *Criterion 10.6* - Customer identification information must include the purpose of the relationship of the customer and the FI (Article 9 of the Law on AML). However, there are no explicit requirements for FIs to obtain information on the intended nature of the business relationship.

Criterion 10.7 -

206. *Criterion 10.7 (a)*: FIs are required to regularly update customer identification information to ensure there is adequate information about the customer at the time of establishing a business relationship. FIs are also required to ensure that transactions which customers conduct are consistent with information previously collected by FIs i.e. its activities, risks and sources of assets of the customer (Article 10 of the Law on AML). However, it is unclear what is encompassed by regularly updating customer identification information. Such requirements do not appear to equate to scrutinising transactions undertaken throughout the course of relationship or on an on-going basis.

207. *Criterion 10.7(b)* : Article 10 of the Law on AML applies as per the above, however, there is no specific requirement for FIs to update information on “high-risk” customers or undertake reviews of existing records.

Specific CDD measures required for legal persons and legal arrangements

208. *Criterion 10.8* - For a customer who is a legal person or “authorised legal arrangement”, FIs are required to collect information about ownership and control structures to determine the individual who has the dominant interest and control over those customers (Article 9 of the Law on AML).

1. The Law on AML refers variously to authorisation agreements, investment trusts, investment trust agreement, authorisation agreement and authorised arrangement (collectively these will be referred to as Authorized Arrangements). These are not Legal Arrangements as defined under the FATF Methodology. These are in fact FIs involved in fund management and investment activity.

TECHNICAL COMPLIANCE

209. Insurance institutions are required to conduct “customer analysis” to understand the nature of the customer’s business (Article 4 of Circular 50/2017). However, there are no enforceable requirements for other FIs to understand the nature of the customer’s business.

210. For foreign trusts that may operate and form business relationships with FIs in Vietnam, FIs are required to collect, verify and keep records when dealing with customers which are legal arrangements (Article 10(c) of Circular No. 35/2013 (as amended)). However, there is no requirement that FIs understand the nature of the business in Vietnam.

211. *Criterion 10.9* - FIs are required to identify the key information including; business name, headquarter address, telephone and fax number, business areas, information about the business founders and representatives of legal persons (Article 9 of the Law on AML). Article 11 of the Law on AML provides that FIs can use certain measures to verify customers’ identity, including, amongst others, the business’s enterprise registration certificate (see R.24).

212. FIs are required to update information on customers which are legal arrangements (such as foreign trusts) or customers which are related to such legal arrangements. FIs are required to collect, verify and keep records of the name, date, assets, country and beneficial owner of such legal arrangements (Article 10(c) of Circular No. 35/2013, as amended). However, the verification measures for legal persons’ information are not enforceable for FIs.

Criterion 10.10 -

213. *10.10 (a)*: FIs are required to identify the beneficial owner of customers which are legal persons using the following criteria. Firstly, the account holder/s or a person who governs the account’s activities or benefits from transactions. Secondly, individuals who directly or indirectly hold 25% of the capital of the legal person, individuals who actually control the legal person or private business owners. Thirdly, individuals who have the right to govern investments trusts and authorisation agreements, (noting that these are not legal arrangements for the purposes of the FATF methodology (Article 5 of Decree 116/2013 (as amended))). FIs must identify the beneficial owner of legal persons (Art 9(2) of the Law on AML). However, there is no enforceable requirement of taking reasonable measures to verify the identity of beneficial owner.

214. *10.10 (b)*: There are no explicit requirements for FIs to identify the beneficial owner who controls the legal person by other means, when there is a doubt regarding beneficial ownership or where no natural person exerts control through ownership interests.

215. *10.10 (c)*: FIs are required to identify beneficial ownership of legal persons in relation to the “private enterprise owners” and, any other individuals who actually dominate and control the legal person (Article 5 of Decree 116/2013 (as amended)). However, there is no explicit provision detailing when and how these provisions apply, nor does it specifically refer to the natural person who holds the position of senior managing official.

216. *Criterion 10.11* - FIs are required to identify and gather information regarding legal arrangements, including the name, the authorisation document, the country of the legal arrangement, the trustee, the beneficiaries and any organisation or person related to the legal arrangement (Circular 35/2013 (as amended by Circular 20/2019)). There are no express provisions for the settlor and protector of a trust to be identified, although such information may be covered in the authorisation document. There are explicit requirements that FIs identify the natural person exercising ultimate effective control over the trust or that information about the chain of control/ownership be provided.

CDD for Beneficiaries of Life Insurance Policies

217. *Criterion 10.12 -*

218. *10.12 (a):* Relevant FIs are required to include the names and addresses of the insurance enterprise, the insurance buyer, the insured person or the beneficiary in insurance contracts (Art. 13 of the Law on Insurance Business 2000).

219. *10.12 (b):* Where a beneficiary is designated by certain characteristics, by class or by other means, there are no specific requirements to obtain sufficient information on the beneficiary to be able to establish identity at the time of pay-outs.

220. *10.12 (c):* Clause 2 of Article 18 of Regulation No. 4330/2017 details the types of documents required to make a claim for insurance benefits, these include; an insurance contract (detailing the insurance buyers, insured persons and beneficiaries of insurance benefits); copies of identification documents (ID card / passport); documents proving the right to receive insurance benefits (such as documents proving the relationship with the insured person).

221. However, for life and other investment-related insurance policies, where a beneficiary is designated by characteristics or by class or by other means, there is no specific requirement to verify the identity of the beneficiary. In addition, there are no provisions explicitly requiring verification of identity at the time of pay-out.

222. *Criterion 10.13 -* There are general requirements for reporting entities to take into account customer risk factors in deciding whether to apply enhanced CDD (Art. 12-17 of the Law on AML). However, there is no specific requirement for relevant FIs to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. Furthermore, there is no specific requirement to take enhanced measures, which include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of pay-out.

Timing of verification

223. *Criterion 10.14 -* FIs should undertake measures to verify the identity of customers and beneficial owners when they enter into a business relationship, or conduct irregular high-value transactions or specific wire transfers (Art. 11 of the Law on AML). REs are also allowed to apply simplified CDD measures including verifying the identity after establishing the business relationship when ML/TF risk is low (clause 4, Article 1 of Decree 87/2019). However, the condition for later verification is only the low level risks, other conditions including practicability, without interrupting the normal conduct of business and ML/TF risks are effectively managed are not involved.

224. *Criterion 10.15 -* There is no provision requiring FIs to adopt risk management procedures concerning the condition under which a customer may utilise the business relationship prior to verification.

Existing customers

225. *Criterion 10.16 -* FIs are required to apply identification measures when doubting the accuracy or adequacy of customer identification information previously obtained. FIs are also required to regularly update customer identification information (Art. 8&10 of the Law on AML). Clause 3, Article 1 of Circular No. 20/2019 also requires that REs regularly update and record information, including “risks and business relationships.”

226. However, there are no specific provisions applying to existing customers. More specifically, there are no obligations for FIs to apply the CDD requirements to existing customers based on materiality and risk, and at appropriate times.

Risk-based approach

227. *Criterion 10.17* - FIs are required to classify customers based on the risk level of the customer, category, products and services used by customers and the customer's address or headquarters. For customers classified as high-risk, FIs must apply enhanced measures (Art. 12-17 of the Law on AML; Art. 3 of Circular No. 35/2013; Art. 1 of Circular No. 31/2014). However, there are no explicit requirements for FIs to undertake enhanced measures where the TF risk is higher, or when under other circumstances regardless of the risk level of customers.

228. *Criterion 10.18* - For low risk customers, FIs can apply "low level customer identification measures", but must ensure that complete customer information is collected (Art. 12 of the Law on AML). However, there are no specific requirements for the country or REs to conduct adequate analysis of risks for the purpose of R.10. Moreover, there are no explicit provisions stating that the simplified measures are not acceptable when there is a suspicion of ML/TF, or specific higher risk scenarios apply.

Failure to satisfactorily complete CDD

Criterion 10.19 -

229. *10.19 (a)*: There are no obligations for FIs to open accounts, commence business relations or perform the transaction; or to terminate the business relationship when CDD cannot be completed. Only fund management companies have a specific provision under which they are "allowed" or "have the right" to refuse to provide services if information is not provided in full and in a timely manner (Art. 31 of Circular No. 212/2012). This does not meet the obligation.

230. *10.19 (b)*: There are no obligations to file an STR in the circumstances outlined above.

231. *Criterion 10.20* - There are no explicit provisions permitting FIs not to pursue the CDD process where there are; suspicions of ML or TF, and there is a risk that the CDD process will tip off the customer.

Weighting and Conclusion

232. Many of the fundamentals are in place for CDD. The moderate deficiencies relate to the lack of i) requirements for FIs to identify and verify persons who act on behalf of a customer; ii) specific requirements for FIs to perform enhanced due diligence on high-risk situations; iii) obligations for FIs to take risk control measures or report STRs when they are unable to comply with relevant CDD measures; and iv) obligations for FIs not to open account, commence business relations or preform the transactions, or terminate the business relationship when CDD cannot be completed. Other shortcomings related to i) inadequate requirements for FIs to perform on-going due diligence; ii) the lack of identification and verification for designated beneficiaries of life insurance or other investment-related insurance policies; iii) the lack of detailing when and how the criteria for BO identification apply; and iv) the lack of permission for FIs not to conduct CDD when there exist tipping-off risks. **Recommendation 10 is rated partially compliant.**

Recommendation 11 – Record-keeping

233. In its 2009 MER, Vietnam was rated partly compliant with these requirements. The main shortcoming was the lack of requirements for FIs to retain business correspondence or account files.

234. *Criterion 11.1* - REs are required to keep transaction records of the customer for at least five years from the first day of the transaction (Art. 27, Law on AML). However, it is unclear whether this is equivalent to the completion of the transaction, and whether all necessary records and records of international transactions are covered by this requirement.

235. *Criterion 11.2* - REs are required to retain the records of identification, account documents and reports relating to only large value transactions (approx. USD 21,362, see C16.1), suspicious transactions, wire transfers above thresholds set by SBV (Art. 21-23, Law on AML) for at least five years after the closure of the account or transaction or date of reporting (Art. 27, Law on AML). However, there is no specific requirement related to all records obtained from CDD measures, business correspondence and requirement for the retention of records related to any analysis undertaken. Moreover, it's unclear whether this includes record-keeping of occasional transaction, which is under the large value threshold.

236. *Criterion 11.3* - REs shall keep transaction records of customers (Art. 27 of the Law on AML), and securities companies are further required to keep customers' records, vouchers and related documents, providing details and transactions of customers and the operations of the company (Art. 69, Circular No. 210/2012). However, the specific requirement for FIs to keep transaction records and other relevant information sufficient to permit reconstruction of individual transactions to provide, if necessary, evidence for prosecution of criminal activity, is not evident.

237. *Criterion 11.4* - Reporting entities must provide files, stored documents, and related information to the SBV and authorised state agencies on request (Art. 28, Law on AML). However, it's unclear whether these documents and information are 'swiftly' available to authorized state agencies.

Weighting and Conclusion

238. The most significant deficiencies relate to: i) lack of specific requirement of retaining all records obtained from CDD measures, all results of any analysis undertaken and business correspondence, ii) lack of requirement for REs to provide information to authorised agencies 'swiftly', iii) and the specific requirements to keep transaction records and other relevant information sufficient to permit reconstruction of individual transactions is not evident. **Recommendation 11 is rated partially compliant.**

Recommendation 12 – Politically exposed persons

239. The 2009 MER rated Vietnam non-compliant with these requirements due to the lack of legislative obligations or other enforceable means providing obligations in relation to PEPs. The 2012 Recommendations extended obligations to include domestic PEPs and international organisations.

Criterion 12.1 -

240. *12.1 (a)*: REs are required to have appropriate risk management systems to identify customers or beneficial owners of customers who are PEPs (Clause 2, Art. 13, Law on AML).

The SBV will inform the list of foreign customers who are PEPs with REs required to have appropriate risk management systems to identify customers who are PEPs (Art. 13, Law on AML). However, the definition doesn't cover a PEP who may not listed by SBV.

241. *12.1 (b)*: There is no requirement for REs to obtain senior management approval before establishing (or continuing, for existing customers) business relationships with foreign PEPs.

242. *12.1 (c)*: REs are required to undertake measures to identify the source of the customer's assets when a customer is a foreign PEP (Clause 2[b], Art. 13, Law on AML). However, there are no explicit requirements for the same measures to be applied to beneficial owners of customers which are legal persons.

243. *12.1 (d)*: FIs are required to apply enhanced monitoring of the customers and business relationship with the customers identified as PEPs (Clause 2[c], Art. 13, Law on AML). However, there are no explicit requirements for the same measures to be applied to beneficial owners, nor are there explicit requirements for the enhanced monitoring to be ongoing.

244. *Criterion 12.2* - REs are not obliged to implement specific requirements for domestic PEPs and persons who have been entrusted with a prominent function by an international organisation.

245. *Criterion 12.3* - The Law on AML (Art. 13.3) requires REs to undertake CDD for foreign PEPs in respect of their family members (parents, husband, wife, children, brothers or sisters), however, not their close associates. These provisions do not apply to domestic PEPs and persons who have been entrusted with a prominent function by an international organisation.

246. *Criterion 12.4* - No provisions in law or regulations relate to beneficiaries or the beneficial owner of beneficiaries of life insurance policies who may be PEPs.

Weighting and Conclusion

247. The most significant deficiencies relate to the lack of coverage in relation to domestic PEPs which is given significant weight noting the risk and context of Vietnam, and the lack of requirements in relation to close associates of all types of PEPs. Other shortcomings include the lack of senior management approval when establishing business relationship with foreign PEPs, risk mitigation measures for foreign PEPs are not applied to beneficial owners, and a lack of requirements to identify PEPs in relation to life insurance policies is of significance. **Recommendation 12 is rated non-compliant.**

Recommendation 13 – Correspondent banking

248. The 2009 MER rated Vietnam non-compliant with these requirements. There was no requirement for FIs to comply with R.7.

Criterion 13.1 -

249. *13.1 (a)*: FIs are required to collect information about the respondent bank in order to understand the respondent bank's nature of business and reputation. There are requirements for the FIs to ensure that the respondent bank is subject to supervision and control of foreign competent authorities, however there is no direct requirement on the FIs to determine the quality of supervision, including whether the respondent bank has been subject to a ML/TF investigation or regulatory action (Article 14(1) of the Law on AML 2012).

250. *13.1 (b)*: FIs are required to assess the implementation of AML measures of the respondent bank (Article 14(2) of the Law on AML 2012). Article 7(2) of Decree No. 116/2013 provides that FIs must collect information on the respondent bank, among others, rating and evaluation by the supervisory authority of the respondent bank, and some criteria for FIs in assessing the implementation of AML measures of the respondent bank. Article 1(5) of Circular No. 31/2014 provides the extension of measures prescribed under Article 7 of Decree No. 116/2013 for CFT purposes.

251. *13.1 (c)*: Article 14(3) of the Law on AML 2012 read together with Article 12 of the Law on Credit Institutions stipulate that the FIs must obtain approval from the General Director (Director of FI) or individual authorised by the General Director before establishing correspondent banking relationship.

252. *13.1 (d)*: There is no explicit requirement for the FIs to clearly understand the respective AML/CFT responsibilities of each institution.

Criterion 13.2 -

253. *13.2 (a)*: FIs are required to ensure that the respondent bank has fully verified the customer identification, updated client information and conducted on-going customer monitoring (Article 14(4) of the Law on AML 2012).

254. *13.2 (b)*: FIs are required to satisfy themselves that the respondent bank is able to provide customer identification information upon request (Article 14(4) of the Law on AML 2012).

255. *Criterion 13.3 -* FIs are prohibited from establishing and maintaining business relationships with shell banks. However, there are no requirements for FIs to satisfy themselves that the respondent banks do not permit their accounts be used by shell banks (Article 7(3) of the Law on AML 2012).

Weighting and Conclusion

256. There are moderate shortcomings in relation to the absence of the requirement for the FIs to determine the quality of supervision by the foreign competent authorities, including whether the respondent bank has been subject to a ML/TF investigation or regulatory action. There is no explicit requirement for the FIs to clearly understand the respective AML/CFT responsibilities of each institution. In addition, there is no requirement for the FIs to satisfy themselves that the respondent banks do not permit their accounts be used by shell banks. **Recommendation 13 is rated partially compliant.**

Recommendation 14 – Money or value transfer services

257. The 2009 MER rated Vietnam non-compliant with these requirements. There was no regulation of informal MVTS providers and there was a lack of supervision and oversight of formal remittance providers.

258. *Criterion 14.1 -* In Vietnam, the MVTS providers are (i) credit institutions, (ii) intermediary payment service providers and (iii) agents for foreign currency payment and exchange. Only legal persons can be registered to provide MVTS. Based on Article 2(1) of Circular No. 46/2014, Article 1(1) of Decree No. 80/2016, and Articles 4(1), 5(1), and 6(1) of Decree 89/2016, only corporate or business entities may register as an MVTS provider. Article 4(9) of the Law on the State Bank of Vietnam (State Bank Law) provides the SBV as the designated licensing authority for credit institutions and intermediary payment service

providers [see Article 4 (1) of Circular No. 39/2014] while Article 4(1) and (2) of Circular No. 34/2015 empowers the SBV to grant permission for registration of foreign currency payment agents. While there is no specific prohibition from providing MVTS without being licensed or registered within one of the three categories above, Article 7(4) of the Law on AML 2012 provides that it is illegal to provide MVTS, with the word “illegally” being construed as MVTS service providers cannot operate without being licensed or registered.

259. *Criterion 14.2* - The SBV is responsible to take enforcement actions against illegal MVTS but there is no information provided on the specific actions undertaken and whether the sanctions applied are proportionate and dissuasive. Article 7(4) of the Law on AML 2012 prohibits an illegal act of providing services of cash, cheque and other currency instruments receiving or the valuable storage instrument and making payments to the beneficiaries at another location. Decree No. 96/2014 stipulates various penalties for violations of the AML regulations, and management and usage of licenses. Article 46(2) of Decree No. 96/2014 provides a fine ranging from VND100M to VND150M (approx. USD4,300 to 6,500) for providing illegal monetary services related to cash, cheques, other monetary instruments or valuable monetary retention instruments and payment to the beneficiaries at different locations. Article 4(6) of Decree No. 96/2014 provides a fine ranging from VND400M to VND500M (approx. USD17,200 to 21,400) for operating a business without a licence. Despite Article 3(3) of Decree 96/2014 stipulating that the penalties for corporate entities will be twice the amount, the assessment team still considers that the available sanctions are not proportionate and dissuasive since the fines that can be imposed are very low including for legal persons.

260. *Criterion 14.3* - Article 37(5) of the Law on AML 2012 read together with Article 24(5) of Decree No. 116/2013 and Article 1(1) of Decree No. 87/2019 provides the responsibilities of the SBV to conduct inspection and supervision for AML compliance of the REs under the purview of the SBV i.e. monetary/currency, banking operations and foreign exchange and these include (i) credit institution, (ii) intermediary payment service providers and (iii) agents for foreign currency payment and exchange. However, the gaps under c26.1 in relation to inspection and supervision for CFT purposes apply.

261. *Criterion 14.4* - Article 30 of the Credit Institutions Law read together with Article 4 of Circulars No. 21/2013 and No. 53/2018 provides that the establishment of branches and representative offices of credit institutions requires written approval from the SBV. Article 6(2) of Circular No. 39/2014 prohibits the intermediary payment service providers from appointing another entity as an agent to provide licensed services (including MVTS). Article 22 of Circular No. 34/2015 stipulates the responsibility of the agent for foreign currency payment and exchange to provide the SBV with the list of agent organisations (delegating organisations) as provided under Appendix 16 of the Circular. However, it is not clear whether a natural person can also become a delegating organisation.

262. *Criterion 14.5* - Article 20 of the Law on AML 2012 requires the REs to develop internal regulations on AML/CFT. The gap identified under c14.3 applies and it is not clear whether the internal regulations requirements are applicable to branches of credit institutions (please also see c.18.2). While Article 18 of Circular 34/2015 provides general requirements for agents for foreign currency payments and exchange (delegating organisations) to provide guidance to their agents (delegated organisations) and monitor their compliance, however it is not clear whether this will extend to AML/CFT guidance and monitoring. Similarly, there is no explicit requirements on the delegating organisations to include their agents (delegated organisations) in their AML/CFT compliance programmes.

Weighting and Conclusion

263. Vietnam did not demonstrate that authorities take action, to identify natural or legal persons that carry out MVTS without a licence or registration, and to apply proportionate and dissuasive sanctions for breaches. Gaps under R.26 apply to MVTS providers. There are no requirements for credit institutions and foreign currency payment and exchanges to include their agents (branches in the case of credit institutions) in their AML/CFT compliance programmes, and to monitor agents for compliance with these programmes. It is also not clear whether natural person can become an agent for MVTS providers. **Recommendation 14 is rated partially compliant.**

Recommendation 15 – New technologies

264. The 2009 MER rated Vietnam non-compliant with requirements relating to new technologies. There was no requirement on FIs to have policies in place to prevent the misuse of technological developments in ML/TF. Comprehensive obligations on virtual assets (VA) and VA service providers (VASPs) have been introduced since the last assessment.

New technologies

265. *Criterion 15.1* - Vietnam has not assessed the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. On the FIs' level, Article 8 of Decree No. 116/2013 requires FIs to establish ML risk assessment processes when providing services using new technology which limits to non-face-to-face transactions only and not clearly covers new products and new business practices, including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products. Article 1(5) of Circular No. 31/2014 provides the extension of the risk assessment prescribed under Article 8 of Decree No. 116/2013 to TF risks.

Criterion 15.2 -

266. *15.2 (a)*: Article 8 of Decree No. 116/2013 requires FIs to conduct risk assessment on transactions related to new technology. However, it is not clear whether FIs are required to undertake the risk assessment prior to the launch or use of such products, practices and technologies.

267. *15.2 (b)*: Article 15 of the Law on AML 2012 and Article 8 of Decree No. 116/2013 requires the FIs to manage the ML risk upon setting up the transaction with the clients who use new technology. The deficiencies identified under c.15.1 in relation to non-face-to-face transactions are also applicable. Article 1(5) of Circular No. 31/2014 provides the extension of the obligations to manage the TF risk upon setting up the transaction with the clients who use new technologies.

Virtual assets and virtual asset service providers

268. *Criterion 15.3* - VA and VASP activities within the FATF definition exist (including crypto-currency investment and mining activities) in Vietnam.

269. *15.3 (a)*: Vietnam has taken limited steps to assess ML/TF risks emerging from VA and VASP activities. The Government Report No. 1255/2017 provides some risk elements associated with VA, however the focus is on payment risk and broadly covers general crime risks of VAs. There is no specific assessment of ML/TF risks emerging from VA activities and the activities or operations of VASPs.

270. *15.3 (b):* Vietnam has limited prohibitions in place on VA, but not VASPs and as such, the VASP activities within the FATF definition are not prohibited. VA is not recognised as a payment instrument under Decree No. 101/2012 (Article 4(6)). Article 4(7) of the Decree further provides that illegal payment refers to payment instruments which are not specified under Article 4(6). However, the prohibition only limits virtual currencies for the purpose of payment and do not cover “assets” and usage of virtual currencies for purposes other than payment. In 2018 Vietnam issued Directives to competent authorities and to banks to highlight the need to strengthen control of transactions and activities related to cryptocurrencies. This include requesting credit institutions and intermediary payment service providers to not provide services or trade in cryptocurrencies and to submit STRs on transactions related to cryptocurrencies (Directive 02 / 2018).

271. *15.3 (c):* In the absence of a licensing or registration framework, there are no obligations for VASPs to take appropriate steps to identify, assess and mitigate their ML/TF risks.

272. *Criterion 15.4 -* There are no measures or requirements imposed by Vietnam in relation to licensing or registering VASPs in keeping with 15.4 (a) and (b).

273. *Criterion 15.5 -* Vietnam did not demonstrate that it has taken actions to enforce the partial prohibition or to identify natural or legal persons that carry out VASP activities without the requisite license or registration, and apply appropriate sanctions to them.

274. *Criterion 15.6 -* There are no measures or requirements imposed by Vietnam in relation to supervision of VASPs.

275. *Criterion 15.7 -* There are no measures or requirements imposed by Vietnam in relation to this criterion.

276. *Criterion 15.8 -* There are no measures or requirements imposed by Vietnam in relation to (a) and (b).

277. *Criterion 15.9 -* There are no measures or requirements imposed by Vietnam in relation to (a) and (b).

278. *Criterion 15.10 -* The communication mechanism for designations and de-listings/unfreezing is publication of the MPS blacklist on the MPS website for TFS-TF and publication of the UNSC Sanctions List on the MOD website for TFS-PF. These mechanisms apply to all natural and legal persons, which by inference includes VASPs. However, for TFS-PF, the UNSC Sanctions List had not been published on the MOD website by the end of the on-site visit⁴²and for TFS-TF, the obligation to monitor the MPS blacklist applies to FIs, DNFBPs and other ‘related agencies, organisations’ but it is not clear whether the obligation applies to VASPs (Article 11(3) Decree No. 122/2013). The analysis and gaps identified under R.6.5(d), R.6.6(g) R.7.2(d) and R.7.4(d) apply. There are no measures or requirements imposed on VASPs in relation to reporting obligations [as referred in criteria 6.5(e) and 7.2(e)]. Pursuant to Article 7 of Decree No. 81/2019, the relevant ministries and agencies are responsible to coordinate with MOD in supervising individuals and organisations for PF-TFS, which could include VASPs. However, as noted under c.7.3, it is not clear how this operates in practice and there are no sanctions for non-compliance with PF-TFS obligations.

⁴²Since the on-site visit, MOD has published on its website a direct link to the UN Consolidated Sanctions List.

279. *Criterion 15.11* - There are no constraints on Vietnam's ability to cooperate under existing mechanisms—as set out in R.37 to 40—on matters pertaining to VA involved in ML, TF or predicate offences. However there is no legal basis for supervisors to exchange information with their foreign counterparts for VASPs.

Weighting and Conclusion

280. There are shortcomings with assessing and responding to the risks of new technologies. There are major shortcomings in the assessment of risk and targeted control measures on VA and VASPs. Given that Vietnam appears to have a materially unregulated VA and VASP sector given that some of the VASPs activities are allowed in Vietnam, higher weight is given to the lack of measures for VA and VASPs compared to new technologies. **Recommendation 15 is rated as non-compliant.**

Recommendation 16 – Wire transfers

281. The 2009 MER rated Vietnam non-compliant with these requirements. The main deficiency was a lack of enforceable means for wire transfer to ensure FIs complete originator information, originator's account number, and identification for the occasional customers and requirements for information accompanying wire transfers. The FATF standards in this area have since expanded to include requirements related to beneficiary information.

Ordering financial institutions

282. *Criterion 16.1* - There is no explicit requirement for cross-border wire transfer information of FIs.

283. *16.1 (a)*: There is no provision for required and accurate originator information accompanied with cross-border wire transfer of USD/EUR 1000 or more.

284. *16.1 (b)*: There is no provision for required beneficiary information accompanied with cross-border wire transfer of USD/EUR 1000 or more.

285. *Criterion 16.2* - There are no specific requirements for batch file cross-border wire transfers.

286. *Criterion 16.3* - There are no specific requirements for cross-border wire transfers under USD 1,000.

287. *Criterion 16.4* - While there is general CDD requirement for transactions or parties involved in ML activities (Art. 3, Decree 116/2013), but this is not about verification requirement for cross-border wire transfers under USD 1000 when there is a suspicion of ML/TF.

288. *Criterion 16.5* - Payment service providers (includes banks, credit institutions, IPSPs) should send a payment order (includes information of both originator and beneficiary) to the beneficiary's financial institution when using the account as well as occasional cash transfers (Art. 8 and 11, Circular No. 46/2014).

289. *Criterion 16.6* - There is no provision that would allow information that should accompany a domestic wire transfer to be provided by other means from the transfer.

290. *Criterion 16.7* - REs are required to report wire transfers over a designated threshold set by SBV (Art. 23, Law on AML), i.e. VND 500m (approx. USD 21,362) (Art. 7, Circular 35/2013 and Article 1, Circular 31/2014). The transactions reported should also be kept as a record for at least 5 years (Art. 27, Law on AML). Additionally, according to Circular No.43/2011, banks

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should retain payment orders and payment documents for 10 years. However, it's unclear that all originator and beneficiary information collected should be maintained by the ordering institution. Moreover, other payment service providers (include payment institutions, foreign currency exchange and transfer institutions etc.) who can implement wire transfers are not covered.

291. *Criterion 16.8* - While FIs, including ordering FIs, are required to conduct appropriate measures—including refusal or suspension of transactions or the application of post-transaction monitoring measures (Art. 1, Circular 20/2019)—there is no provision that the ordering FI should not be allowed to execute wire transfers if it does not comply with the requirements of c.16.1 to c.16.7.

Intermediary financial institutions

292. *Criterion 16.9* - The intermediary institutions should keep the transaction information for at least five years (Clause 3, Article 7, Circular 35/2013). However, there is no explicit requirement for intermediary institutions to ensure all originators and beneficiary information that accompanies a cross-border wire transfer is retained with it.

293. *Criterion 16.10* - The intermediary institutions should keep the transaction-reporting file at least five years (Article 7, Circular 35/2013/TT-NHNN). However, there is no explicit provision which cover the circumstances where technical limitations prevent the required information accompanying the wire transfer.

294. *Criterion 16.11* - There is no specific regulation for intermediary institutions to take reasonable measures consistent with straight-through processing to identify cross-border wire transfers that lack required originator or beneficiary information.

295. *Criterion 16.12* - Intermediary FIs should have risk-based policies and conduct appropriate measures including refusal or suspension of transactions or the application of post-transaction monitoring measures (Art. 1 of Circular 20/2019). However, there is no explicit requirement related to follow up actions.

Beneficiary financial institutions

296. *Criterion 16.13* - Beneficiary FIs should implement monitoring measures to detect international electronic money transfer transactions lacking information about the originator of the order of money transfer or beneficiaries (Clause 6, Art.7 of Circular No.20/2019).

297. *Criterion 16.14* - For international wire transfers of USD 1000 or more, beneficiary FIs should authenticate and identify the beneficiary as prescribed in Article 11 of the Law on AML and must keep this information as prescribed (Clause 5, Art.7 of Circular No.20/2019).

298. *Criterion 16.15* - According to Clause 2, Art.1 of Circular No.20/2019, for cross-border transfers, based on the results of the risk assessment on ML/TF, beneficiary FIs must have risk-based policies and procedures in place to determine transactions eligible for execution. Appropriate measures need to be undertaken including rejection or suspension of transactions, or post-transaction monitoring measures in the event of transactions lacking information on money transfers and beneficiaries. However, there is no explicit requirement related to follow up actions.

Money or value transfer service operators

299. *Criterion 16.16* - In Vietnam, MVTS providers include credit institutions, IPSPs, foreign currency payments and exchanges (refer to Criterion 14.1). According to Article 2 of Circular 35/2013, FIs, including credit institutions and foreign currency payment and exchange, should

comply with requirements in relation to wire transfers. Intermediary payment services providers must apply AML measures in accordance with the law (Clause 3, Art. 4, Law on AML; Article 1 of Decree 87/2019). However, it's unclear whether agents of foreign currency remittance services are also required to comply with R.16 when they are providing money or value transactions.

300. *Criterion 16.17* - There is no specific requirement for MVTS (including credit institutions and foreign currency payments or exchanges and IPSPs) that controls both the ordering and beneficiary side of the wire transfer, to consider all information to determine whether a STR should be filed, as well as file an STR in any country affected by the suspicious wire transfer or make relevant transaction information available to the FIU.

Implementation of Targeted Financial Sanctions

301. *Criterion 16.18* - When providing electronic transactions, REs must apply measures to suspend circulation, blockade accounts, seal up, temporarily withhold money and assets and comply with the regulations on prohibiting transactions with organizations and individuals in list of designations of the United Nations Security Council's resolutions related to terrorism, terrorism financing and blacklist prepared by the MPS in accordance with law (Clause 4, Art.1 of Circular No.20/2019).

Weighting and Conclusion

302. The main deficiencies relate to the lack of (i) explicit requirements for originator and beneficiary's information accompanied with cross-border wire transfer; (ii) requirements for verification of originator's information when providing cross-border wire transfers; (iii) requirements for batch file cross-border wire transfer; (iv) specific requirements for cross-border wire transfer under USD 1000; (v) requirements to verify information mentioned in Criteria 16.3 when there is a suspicion of ML/TF; (vi) specific requirements for maintain all originator and beneficiary information collected of ordering FIs; (vii) requirements to not allow the wire transfer to be executed when the ordering FI does not comply with Criteria 16.1 to 16.7; and (viii) specific requirements for compliance with R16 when MVTS operate through their agents. Provisions and requirements do not meet Criteria 16.9, 16.10, 16.11 and 16.17. **Recommendation 16 is rated partially compliant.**

Recommendation 17 – Reliance on third parties

303. The 2009 MER rated these requirements not applicable for Vietnam. There was no specific provision that would allow financial institutions to rely upon a third party in the process of implementing CDD. In practice, all identification obligations were conducted face-to-face by the credit institutions involved in the account opening process and it was not demonstrated that any FIs would rely upon any introducer or third party in the CDD process. Since the last MER Vietnam has introduced regulations to allow reliance on third parties.

304. *Criterion 17.1* - Article 17(1) of the Law on AML 2012 allows FIs to rely on intermediaries (third parties) to perform CDD upon conducting business operation through introduction (third parties who introduced business). Article 17(2) of the Law on AML 2012 provides that the reliance does not exclude the responsibility of the FIs to conduct CDD.

305. *17.1 (a)*: FIs must ensure that third parties conducting CDD on customers do so in accordance with the CDD requirements as prescribed under Articles 9 and 10 of the Law on AML 2012 (Article 17(1) of the Law on AML 2012). However, deficiencies as noted under R.10

apply (see c10.3, c10.5, c10.6 and c10.8). There is no requirement for the FIs to obtain immediately the necessary CDD information from the third parties.

306. *17.1 (b):* FIs must ensure that third parties will provide the CDD information of the customers to the FIs upon request without delay (Article 17(1) of the Law on AML 2012; and Article 10(1) of Decree No. 116/2013).

307. *17.1 (c):* FIs must ensure that the third parties are subject to the management (regulation) and supervision of competent authorities (Article 17(1) of the Law on AML 2012; and Articles 10(2) and (3) of Decree No. 116/2013/ND-CP). Articles 10(2) and (3) of Decree 116/2013 also provides that (i) for Vietnamese third parties, the FIs to ensure that they comply with the CDD requirements pursuant to Article 3 of Decree No. 116/2013 and record keeping requirements specified under Article 27 of the Law on AML 2012. However, deficiencies noted under R10 and R11 apply. (ii) for foreign third parties, the FIs must ensure that the third parties are subject to the management and supervision of competent authorities and must undertake CDD measures and keep records in accordance with the law of the country and if the domestic law does not meet or only partially meets the requirements of FATF Recommendations, the FIs should take into account national risk factors in deciding whether to rely on the third parties or not (Article 10(3) of Decree No. 116/2013).

308. *Criterion 17.2 -* FIs must ensure that third parties undertake CDD measures in accordance with the law of the country and if the domestic law does not meet or only partially meets the requirements of FATF Recommendations, the FIs should take into account the national risk elements in deciding whether to rely on the third parties or not (Article 10(3) of Decree No. 116/2013).

Criterion 17.3

309. *17.3 (a):* Article 10(4) of Decree No. 116/2013 provides in cases where the third party is part of a financial group and that the financial group has performed the CDD and record keeping requirements as prescribed under Articles 10(2) and (3) of Decree No. 116/2013, such third party is considered to have fully complied with the requirements. However, there is no requirement on financial groups to implement group-wide programmes against ML/TF (please see c18.2) and deficiencies noted under R10 to R12 apply.

310. *17.3 (b):* Articles 10(2) and (3) of Decree No. 116/2013 limits its application to financial groups that are supervised by a competent authority or another equivalent authority of a third country.

311. *17.3 (c):* Article 16 of the Law on AML 2012 requires FIs to perform “special supervision” (enhanced due diligence measures as provided under Article 3 of Circular No. 35/2013 read together with Article 1(1) of Circular No. 31/2014) on transactions with the organisations and individuals in the countries and territories in the list announced by the FATF, however, the fact that there is no requirement on financial groups to implement group-wide programmes is a gap (please see c18.2).

Weighting and Conclusion

312. There are moderate shortcomings as there is no requirement for the FIs to immediately obtain the necessary CDD information from the third parties. There are also gaps in relation to the reliance on a third party which is part of the same financial group and deficiencies noted under R.10 to R.12 and R.18 apply. **Recommendation 17 is rated partially compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

313. The 2009 MER rated Vietnam non-compliant with these requirements. Requirement were limited to credit institutions, there was no comprehensive internal control and there was a lack of audit procedures. The on-going employee training programmes for credit institutions were limited to only basic AML training and only a limited number of staff had been trained.

314. *Criterion 18.1* - Article 20 of the Law on AML 2012 and Article 13 of Decree No. 116/2013 to be read together with Article 1(5) of Circular No. 31/2014 and Article 1(5) of Circular No. 31/2014 require FIs to develop internal regulations for the prevention of ML/TF covering several aspects of AML/CFT control measures. The internal rule must be appropriate with the organisational structure, operational scale and extent of risk of the FIs.

315. *18.1 (a)*: Circular No. 31/2014 provides the amendments to Circular No. 35/2013, of which Article 1(4) provides for the FIs to set up a specialised area in charge of AML and this includes the requirement on the FIs to appoint a compliance officer at the management level.

316. *18.1 (b)*: There is no specific provision covering screening procedures to ensure high standards when hiring employees.

317. *18.1 (c)*: There are requirements for internal regulations to cover an employee training programme as provided under Article 20(1) of the Law on AML 2012 and Article 13(8) of Decree No. 116/2013. Article 1(4) of Circular No. 31/2014 provides detailed guidance on employee training which includes scope and frequency of training programmes.

318. *18.1 (d)*: Article 20(1) of the Law on AML 2012 and Article 13(9) of Decree No. 116/2013 provide the requirement to put in place internal audit function for monitoring the compliance with the policies and procedures in relation to AML activities. Article 1(4) of Circular No. 31/2014 specifies a detailed guidance for internal audit including its independence.

319. *Criterion 18.2* - There were no specific provisions that require financial groups to implement group-wide programmes against ML/TF, which should be applicable and appropriate to, all branches and majority-owned subsidiaries of the financial group. In addition, there were no specific provisions for the group wide-programmes on the measures set out in c.18.1 and c.18.2(a)-(c).

320. *Criterion 18.3* - There were no specific provisions that require FIs to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements, where the minimum AML/CFT requirements of the host country are less strict than those of the home country, to the extent that host country laws and regulations permit. Similarly, there is no requirement on the financial groups to apply appropriate additional measures to manage the ML/TF risks, and inform their home supervisors in a situation where the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements.

Weighting and Conclusion

321. There are moderate shortcomings. There is no specific provision covering screening procedures to ensure high standards when hiring employees. There is also no obligation for the financial groups to implement group-wide programmes, including information sharing mechanisms. There are also no specific requirements to ensure that foreign branches and majority-owned subsidiaries comply with the AML/CFT measures in Vietnam.

Recommendation 18 is rated partially compliant.

Recommendation 19 – Higher-risk countries

322. The 2009 MER rated Vietnam non-compliant with these requirements. Vietnam lacked systems or guidance to alert sectors of countries or territories that did not adequately apply the FATF standards and no legislative requirement to apply counter measures where the FATF standards were not considered adequate.

323. *Criterion 19.1* - Article 16 of the Law on AML 2012 requires FIs to perform “special supervision” for a number of transactions including transactions with the organisations and individuals from the countries and territories in the list announced by the FATF in the prevention of ML or the warning list. “Special supervision” refers to the requirements of enhanced due diligence as provided under Article 3 of Circular No. 35/2013 read together with Article 1 of Circular No. 31/2014. However, the requirement under Article 16 of the Law on AML 2012 only covers “transactions” and does not include “business relationship”.

324. *Criterion 19.2* - There is no specific provision for Vietnam to apply countermeasures proportionate to the risks as per c.19.2(a) and (b).

325. *Criterion 19.3* - The SBV issued official letters to the FIs in September 2014 and April 2016 advising the FIs to refer to the websites of FATF or the SBV for the countries having weaknesses in their AML/CFT system. However, there are no specific measures in place to ensure FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries on an on-going basis.

Weighting and Conclusion

326. There are moderate shortcomings. The scope of enhanced due diligence measures imposed on the FIs with regard to natural and legal persons from countries which is called for by the FATF does not cover business relationships. There is no specific provision for Vietnam to apply appropriate countermeasures on higher risk countries and it is not clear whether there are specific measures in place to ensure FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries on an on-going basis. **Recommendation 19 is rated partially compliant.**

Recommendation 20 – Reporting of suspicious transaction

327. The 2009 MER rated Vietnam partially compliant with these requirements, as only credit institutions were required to file STRs. Further, the relevant Decree only required reporting of suspicious transactions linked with ML. There were shortcomings in the definitions of “proceeds of crime”, “suspicion” or “reasonable grounds to suspect”; reporting attempted transactions was not required; and there was a lack of STR guidelines.

328. *Criterion 20.1* - REs are required to submit STRs to the SBV where they suspect that funds are derived from criminal activities or are related to ML (Article 22 of the Law on AML 2012 and Article 14 of Decree No. 116/2013). Clause 2, Article 26 of the Law on AML, obliges the REs to report the STR within 48 hours to the SBV. If any signs indicate that the transaction relates to a criminal act, then reporting should be immediate.

329. SBV is responsible for receiving STRs related to TF (Article 45 of the Law on Anti-Terrorism 2013). However, there is no explicit requirement in Vietnamese law obliging REs to report STRs related to TF to AMLD.

330. Article 34 of the Law on Anti-Terrorism 2013, which relates to customer identification and due diligence, imposes an obligation on REs to report to the anti-terrorism forces of the MPS and SBV when there is a suspicion that a customer or their transaction relates to TF or the customer is on a designated list. However, it is not clear that this is an enforceable obligation or whether this report takes the form of a STR. SBV or other authorities have not given additional guidance or instructions to REs to reiterate that Article 34 is the STR reporting obligation for TF-related STRs.

331. REs are required to report to the authorised anti-terrorism force and SBV if they detect that designated persons or entities are attempting transactions or there are reasonable grounds to believe that organizations and/or individuals are conducting ML activities linked to terrorist activities (Article 30 of the Law on AML 2012). These requirements are narrower than what is required under the FATF standards, the threshold of 'reasonable grounds to believe' is higher than suspicion or reasonable grounds to suspect and it is not clear that these reports take the form of STRs.

332. Circular No. 20/2019, which was issued pursuant to the Law on AML 2012, Decree No. 116/2013 and the Law on Anti-Terrorism 2013, amends Circular No. 35/2013 to add a new Article 10b on CTF. This provision purportedly extends the obligations contained in specified Articles of Decree No. 116/2013 (which elaborate on obligations contained in the Law on AML 2012) to apply to TF, including the STR obligation. However, the assessment team has doubts as to the legal authority of a Circular issued by a single Ministry (SBV) to extend legal obligations contained in a Law and Decree to apply to a subject matter that is outside of the scope of those instruments. According to the Law on Promulgation of Legislative Documents 2015, Circulars can provide guidelines for articles, clauses and paragraphs in laws and decrees (Art.24). However, they do not have the authority to amend the obligations in those instruments.

333. *Criterion 20.2* - The obligation to report suspicious transactions does not depend on the amount of money transacted by the customer or whether the transaction was completed (Clause 3, Article 14 of Decree No. 116/2013). However, because there is no explicit legal requirement to report STRs related to TF, the requirement to report attempted transactions mentioned in Article 14 of the Decree does not apply to attempted transactions related to TF.

Weighting and conclusion

334. While reporting entities are required to submit STRs to the SBV where they suspect that funds are derived from criminal activities or are related to ML, there is no explicit, enforceable requirement for reporting entities to report STRs related to TF to AMLD. There are other reporting obligations related to TF, however, these requirements are narrower than what is required. **Recommendation 20 is rated partially compliant.**

Recommendation 21 – Tipping-off and confidentiality

335. The 2009 MER rated Vietnam partially compliant with these obligations. There was inadequate guidance on tipping-off obligations and a lack of protection from potential administrative, criminal, or civil proceedings against any individual or organisation filing an STR in good faith or in the regular performance of duties.

336. *Criterion 21.1* - REs reporting obligations shall not be regarded as a violation of the provisions of bank secrecy or other secrecy laws (Article 28 of the Law on AML). However, the Law on AML does not explicitly protect FIs, their directors, officers and employees from administrative, civil, or criminal liability if they report suspicious transactions or activity

reports to the FIU, even if they don't know precisely what the underlying criminal activity was, and regardless of whether any illegal activity actually occurred.

337. *Criterion 21.2* - REs are required to keep transaction-related information, evidence, and other relevant documents confidential and only to be provided to the competent authorities in accordance with the laws and regulations (Article 29 of the Law on AML). Article 29 does not explicitly prohibit FIs' directors, officers, and employees from disclosing the fact that an STR or related information is filed with the FIU. Moreover, no regulatory details or guidelines are provided to ensure compliance with the requirements of the criterion.

338. Article 1 of the Decree 117 clarifies that credit institutions and branches of foreign banks shall comply with the provisions of the AML law. Articles 28 and 29 should apply to these as per criterion 21.1.

Weighting and conclusion

339. No specific provisions apply to protect FIs, their directors, officers and employees from administrative, civil, or criminal liability if they report suspicious transactions to the FIU in good faith or in the regular performance of duties. The law does not explicitly prohibit directors, officers, and employees from disclosing an STR or related information to the FIU. **Recommendation 21 is rated partially compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

340. The 2009 MER rated Vietnam non-compliant with these requirements. Accountants and company service providers were not captured and the definition of real estate agents was limited to companies. There were no regulations on threshold limits for casinos and no obligation for DNFBPs to meet the limited requirements of AML Decree 74.

341. Since the last MER all the DNFBPs required to be covered under criterion 22.1 are defined under the Law on AML 2012 pursuant to Clause 4 of Article 4. Provisions of the Law on AML 2012 apply equally to both FIs and the relevant DNFBPs. Vietnam goes beyond the FATF standards and covers additional gaming sectors of horse and greyhound betting and international football (Decree No. 6/2017).

342. *Criterion 22.1* - DNFBPs are required to undertake CDD measures pursuant to the Law on AML 2012. The deficiencies identified in the analysis of R.10 apply to DNFBPs and FIs. In addition to the overarching application of the Law on AML 2012 to DNFBPs, the following provisions also apply.

343. *22.1 (a)*: Decree No. 116/2013 at Clause 2, Article 3, provides that casinos and organisations trading in prize winning games must conduct CDD on clients engaging in financial transactions with a total value of VND 60,000,000 (approx.. USD 2,600) or more within a day. This is in line with the threshold requirements of USD/EUR 3,000.

344. Article 19 of Decree No 03/2017 requires casinos to adopt AML/CFT internal control rules in accordance with the Law on AML. Similar provisions exist for businesses engaging in prize winning games for foreigners (Art 16 of Decree No. 86/2013), and businesses of horse and greyhound betting and international football (Article 22 Decree No. 6/2017).

345. *22.1 (b)*: Clause 3, Article 3 of the Decree No. 116/2013 requires that real-estate service management businesses, real-estate brokers and real-estate trading centres apply customer identification measures to the buyer, the seller and to beneficial owners in real-estate

brokerage activities. In this respect, the CDD measures in the Law on AML 2012 (described in R.10) and the Decree No. 116/2013 apply to real estate businesses.

346. 22.1 (c): Clause 4, Article 3 of the Decree No. 116/2013 requires dealers in precious metals and gems to apply CDD measures in cases where clients conduct transactions, in cash, to buy and sell precious metals and gems with value of VND 300,000,000 (approx. USD 13,000) or more within a day. In this respect, CDD measures in the Law on AML 2012 and Decree No. 116/2013 apply to dealers in precious metals and stones.

347. 22.1 (d): Article 3(5) of the Decree No. 116/2013 states that lawyers, notaries, legal professionals and accountants are to conduct CDD measures when acting for clients in the circumstances required by the FATF.

348. 22.1 (e): Clause 4, Article 4 of the Law on AML 2012 also provides that entities providing “services of establishment and management of enterprises” are subject to the Law on AML 2012. However, Vietnam does have other provisions with respect to entities engaged in formation of legal persons.

349. Trust and company service providers (TCSPs) which provide director or secretary services for third parties must apply CDD measures. However, there are no explicit provisions in relation to TCSPs acting as a partner of a partnership or a similar position in relation to other legal persons, or arranging for another person to act as such.

350. TCSPs providing services relating to registered offices, business addresses or accommodation are required to conduct CDD measures. However, there are no explicit provisions in respect of partnerships or other legal persons. TCSPs providing services or providing representatives for shareholders must apply CDD measures on the shareholders and the representative of such shareholders. However, there are no specific requirements for TCSPs to apply CDD measures when acting as (or arranging for a person to act as) nominee shareholder (or nominee director) for another person.

351. Express trusts and other legal arrangements cannot be created under Vietnamese law, however, foreign trusts are known to have formed business relationships with REs in Vietnam (see R.10 and R.25). REs are required to collect information in relation to such legal arrangements, particularly; the beneficiary, trustee, the residence of the trustee and the assets held, and persons/organisations connected to the legal arrangement (Article 10c(2) of Circular No. 35/2013 (as amended)). However, trustees are not obliged to disclose their status to REs when forming a business relationship or carrying out an occasional transactions above the threshold.

352. *Criterion 22.2* - DNFBPs are required to keep all records, documents and copies of documents involved in all forms of transactions for at least five years from the first day of the transaction, rather than following completion of the transaction. The scope of the provisions of the Law on AML 2012 relating to record keeping obligations apply to DNFBPs. Accordingly, the deficiencies identified in the analysis under R.11 above apply to DNFBPs.

353. Apart from the provisions of the Law on AML 2012, there is no specific legislation for record keeping for casinos, real estate agents, dealers in precious metals and stones and lawyers, notaries or other legal professionals. However, the Law on Accounting, provides that accounting documents should be retained for a period that ranges from 5 years to permanently (Clause 5, Article 41).

354. As is the case with FIs, there are no explicit provisions directed to DNFBPs requiring that transaction records should be sufficient to permit reconstruction of individual transactions to provide, if necessary, evidence for prosecution of criminal activity.

355. Article 28 of the Law on AML 2012 requires DNFBPs to provide files, documents, and related information to the SBV and authorised State agencies upon request. Article 17 of Decree No. 116/2013 requires DNFBPs to provide records, archives and other relevant information by the deadline determined by SBV or other competent State agencies. LEAs under Article 88 of the Criminal Procedure Code 2015 have the powers to collect all the CDD information and transactions records from DNFBPs.

356. *Criterion 22.3* - PEP requirements only apply to foreign PEPs, and not to domestic PEPs. There are also deficiencies related to close associates of all types of PEPs and the requirements to identify PEPs in relation to life insurance policies. The relevant provisions of the Law on AML 2012 apply to DNFBPs, accordingly, the analysis and deficiencies described in R.12 are applicable to DNFBPs.

357. *Criterion 22.4* - The provisions of the Law on AML 2012 apply to DNFBPs and accordingly, the shortcomings identified under R.15 also apply. The Law on AML 2012 does not include a risk assessment requirement for new products and business practices, including new delivery mechanisms, or the introduction of new technologies for new and pre-existing products.

358. The Law on Anti-Terrorism 2013 does not provide any further legal provisions on new technologies as defined under criteria 15.1 and 15.2, and consequently, TF is not covered under R.15.

359. *Criterion 22.5* - Under Article 17 of the Law on AML 2012 and Article 10 of Decree 116/2013, DNFBPs may rely on third party intermediaries to perform CDD. Accordingly, the deficiencies and gaps identified in R.17 apply to DNFBPs.

Weighting and Conclusion

360. There are moderate shortcomings in meeting Recommendation 22. In particular, these relate to not applying CDD measures on transactions that are carried out in several operations that appear to be linked, cross-border wire transfers, persons acting on behalf of a customer, and updating information. There are shortcomings related to the record-keeping requirements, on PEPs requirements, and new technologies requirements. There are shortcomings related to obtaining CDD information from third parties, and a lack of applicable provisions at a group level. **Recommendation 22 is rated partially compliant.**

Recommendation 23 – DNFBPs: Other measures

361. The 2009 MER rated Vietnam partially compliant with these requirements. The previous AML Decree had not been supplemented by comprehensive sectoral guidelines to assist reporting entities to identify red flags and suspicious transactions. There were no explicit provisions to report attempted transactions. STR obligations did not cover all REs. No legal provisions were in place to protect individuals and legal persons that report STRs in good faith and in the regular performance of their duties. There was also inadequate guidance on tipping-off provisions and a lack of feedback to reporting entities in relation to STRs and CTRs, and a lack of detailed and comprehensive guidelines related to STRs, CTRs and other AML compliance issues. Terrorism financing was not explicitly criminalised and there was no explicit provision to report STRs or any attempted transaction related to TF.

362. *Criterion 23.1* - The Law on AML 2012, the Law on Anti-Terrorism 2013 and Decree No. 116/2013 as per the analysis of R.20 apply to DNFBPs. Accordingly, the analysis set out in R.20 is relevant and applies to criterion 23.1, including the key deficiency related to the lack of an explicit requirement for reporting entities to report STRs related to TF to AMLD.

363. *23.1 (a)*: Clause 4, Article 14 of Decree No. 116/2013 provides that lawyers, notaries, accountants and independent legal experts must report suspicious transactions in certain circumstances. Such circumstances include most of the circumstances described in criterion 22.1(d), with the exception that activities relating to the operation and management of companies (legal persons) or legal arrangements is not covered.

364. *23.1 (b)*: Article 4(c) of the Law on AML 2012 provides that natural persons and legal entities that deal with precious metals and stones are REs for the purpose of the law. Article 22(1) and (2) provide that all REs are required to report suspicious transactions; this includes dealers of precious metals and stones. Whilst the signs of suspicious transactions described in Article 22 do not specifically describe dealers of precious metals and stones, the basic signs of suspicious transactions under Article 22(2) apply to all REs.

365. Suspicious transaction reporting requirements do not apply any threshold under Article 14 (3) of Decree No. 116/2013. However transactions over the threshold (approx. USD 13,000) are (as per Art. 3(4) of Decree 116/2013) automatically subject to high value transaction reporting requirements under Article 21 of the Law on AML 2012 and Decision 20/2013.

366. *23.1 (c)*: Pursuant to Clause 4(d) of Article 4 of the Law on AML 2012, enterprises involved in investments services, establishment and management of companies, executive services, director services and secretary services, are captured as DNFBPs under the Law on AML 2012. In this respect, the obligation to report STRs would apply to some extent to enterprises providing these services. However, there are no explicit provisions, which specifically cover each of the circumstances described in criterion 22.1(e).

367. *Criterion 23.2* - Article 20 of the Law on AML 2012 and Article 13 of Decree No. 116/2013 state that REs should enact internal control rules for the prevention of ML/TF. The above articles should be read in conjunction with Article 10b to the Circular 25/2013 (as amended by Article 5 of Circular No. 31/2014), which requires REs to develop internal regulations for the prevention of ML/TF, covering several aspects of AML/CFT control measures. As DNFBPs are reporting entities for the purposes of Law on AML 2012, the analysis at R.18 is relevant.

368. *Criterion 23.3* - Article 16 of the Law on AML 2012 provides that reporting entities must conduct "special supervision" on transactions with individuals or legal persons from countries identified and published on the list announced by FATF and the warning list.

369. However, the requirement under Article 16 of the Law on AML 2012 only required enhanced due diligence for "transactions" and not "business relationships", as required under criterion 19.1. Further, there are no provisions to apply countermeasures proportionate to risk (see 19.2). Finally, there are no express measures to ensure REs are informed about the weaknesses in the AML/CFT systems of other countries (see criterion 19.3).

370. *Criterion 23.4* - The Law on AML 2012 sets out provisions in relation to the tipping-off and confidentiality requirements as set out in R.21. The deficiencies identified under R.21 apply equally to DNFBPs.

Weighting and Conclusion

371. There are moderate shortcomings under all criteria. There is no explicit requirement for DNFBPs to report STRs related to TF to AMLD, as per the analysis of R.20. The deficiencies identified under Recommendations 18, 19 and 21 apply equally to DNFBPs. **Recommendation 23 is rated partially compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

372. The 2009 MER rated Vietnam partially compliant with these requirements. There were no requirements to disclose beneficial ownership information during registration and no specific laws allowing authorities to obtain beneficial ownership information.

373. *Criterion 24.1 - Legal persons are referred to as “juridical persons”⁴³ of which there are two types: (1) commercial legal persons; and (2) non-commercial legal persons.*

Commercial legal persons

374. Commercial legal persons are those whose primary purpose is seeking profits (Article 75 of the Civil Code). The Law on Enterprises 2014 describes the various forms and basic features of commercial legal persons as follows:

- a) Limited liability Companies (Clause 4, Article 4) including:
 - (i) Multi-member limited liability companies (see Article 47); and
 - (ii) Single-member limited liability companies (see Article 73).
- b) Joint-stock companies (Article 110).
- c) Partnerships (Article 172).
- d) Private companies/sole partnerships (Article 183).

375. Under the Law of Enterprises, partnerships (Article 21 and 172/2) and private companies (Article 20 and 183) have their own legal personality from the issuance date of the Certificate of Business Registration in line with Article 75-77 and 86/3 of the Civil Code.

376. Information and legislation on the creation of commercial legal persons are publicly available online (www.dangkykinhdoanh.gov.vn).

377. The Law on Enterprises 2014 provides mechanisms for the collection and recording of basic ownership information with most basic ownership publicly available (including on request). Article 27 details the procedures for registration. Each commercial entity obtains a unique enterprise identification number, which forms part of the Certificate of Business Registration (Article 30).

Non-commercial legal persons

378. Non-commercial legal persons are those whose primary purpose does not involve seeking profits and whose profits may not be distributed to its members (Article 76, Civil Code 2015). The types of non-commercial legal persons that can be established in Vietnam are:

- a) Associations, licensed by the Minister of Home Affairs (Decree No. 45/2010);
- b) International NGOs (Decree No. 12/2012); and

⁴³ Under the Civil Code ‘legal persons’ must meet following conditions: a) established as prescribed in the Civil Code and relevant laws; b) have an organizational structure prescribed in Article 83; c) have property independent from other natural and legal persons; d) participate independently in legal relations.

c) Social Funds and Charity Funds (Decree No 30/2012).

379. Information regarding creation and types of non-commercial legal persons is not publicly available besides as set out in the decrees above.

380. *Criterion 24.2* - Vietnam conducted a Risk Assessment on ML/TF associated with all types of commercial legal persons under the Law on Enterprises 2014: (a) multi-member limited liability companies (MLLC); (b) single-member limited liability companies (SLLC); (c) joint-stock companies; (d) partnerships; and (e) private/sole proprietorships.

381. The assessment was developed by an inter-agency working group led by MOPI (with no input from the private sector) and approved formally on 4 November 2019. While the results of the assessment were considered to be reasonable, there were some deficiencies as detailed under IO.5.

382. The assessment covered the ML risks associated with NPOs to a limited extent. The TF risks associated with non-commercial legal persons (NPOs) have been separately assessed (see R.8 and IO.10). The ML/TF risks of associations, international NGOs, social funds and charity funds have not been assessed by Vietnam.

Basic Information

383. *Criterion 24.3* - Pursuant to the Law on Enterprises 2014, Chapter II, registration information on commercial legal persons must include the following:

- a) name of the company;
- b) address of headquarters;
- c) details of legal representative if the commercial legal person is a MLLC/SLLC or joint-stock company;
- d) general partners if the commercial legal person is a partnership;
- e) the owner if the commercial legal person is a private company;
- f) information relating to the members of the commercial legal person;

384. Information in registration certificates is publicly available (Article 33). Circular 20/2015 provides guidance on business registration and further provides that the name, identification number, headquarters, full name of the legal representatives, and legal status of commercial legal persons should be publicised on the Business Registration Portal. Other information is available on request (Article 11(2) of Circular 20/2015 and Article 3 (1) – (4), of Decree No.78/2015). However, information made publicly available does not cover the complete basic regulating powers as the charter of the company is not publicly available (how the company is obliged by the legal representatives).

385. *Criterion 24.4* - The Law on Enterprises 2014 requires commercial legal persons to retain some of the documents described in c24.3 as well as maintaining registers of shareholder information. The Law on Enterprises 2014 has both general provisions, which apply to all commercial legal persons, and specific provisions relating to particular commercial legal persons.

386. *Criterion 24.5* - There are general requirements under the Law of Enterprises that commercial legal persons maintain accurate records and information. Commercial legal persons are required to report changes to the Business Registration Authority under Article 12 (changes of directors or controllers), Article 31(changes to the Certificate of Business Registration) and Article 32 (notification of changes to the business registration information).

387. Article 31(2) of the Law on Enterprises 2014 states that the legal representative of a commercial legal person must register changes to the Certificate of Business Registration within 10 days. After this, the authority has three days to consider the changes and either accept or reject them. Article 33 requires that changes to the Business Registration Certificate must be announced on the Business Registration Portal. Whilst the information on the Business Registration Certificate and any changes to it must be publicly announced, other updated information (for example Article 12 and Article 32) may be made available upon request.

388. Furthermore, information relating to basic regulating powers are required to be retained by businesses under Article 11 of the Law on Enterprises, but there is no requirement to keep this information up to date.

389. In respect of the accuracy of information, Article 209 of the Law on Enterprise 2014 imposes a duty on the Business Registration Authority to take responsibility of the validity of the information. Article 17 prohibits commercial legal persons providing inaccurate information regarding business registration.

390. Article 14 of the Decree No. 78/2015 also places an obligation on the Business Registration Authority to examine the validity of enterprise applications and accept or reject the issuance of certificates. Article 30 of the Decree No. 78/2015 (which relates to the standardization and updating of enterprise data), Article 36 (which relates to the validity of online application) and Article 58 (which relates to reissuance of Certificates of Business Registration) provide further mechanisms for the relevant authorities to validate the accuracy of business registration information.

Beneficial Ownership Information

Criterion 24.6 -

391. *24.6 (a & b):* There are no requirements on companies themselves or company registries to obtain beneficial ownership information. The principal available mechanism is existing information obtained by FIs and DNFBPs pursuant to Law on AML 2012 and related Decrees (see analysis of R.10 and R.22), as well as basic information and available information on publicly listed companies.

392. *24.6 (c):* Article 9 of the Law on AML 2012 requires that FIs and DNFBPs identify and update information on beneficial owners. In particular, for customers which are legal persons, FIs and DNFBPs are required to collect information on "ownership and control structure" of the legal person to determine the individual with the controlling interest. Article 5 of Decree 116/2013 also requires (as amended by Article 1(3) of the Decree 87/2019) that REs apply measures to identify the beneficial ownership by following certain criteria.

393. For public commercial legal persons listed in the stock market, the stock exchange shall maintain and update basic and beneficial ownership information, according to article 18/1 of the Law on AML 2012, and the Business Registration Agency for non-listed enterprises under Article 18/2.

394. However, there are no explicit requirements for REs to identify the beneficial owner who controls the legal person by other means, when there is a doubt regarding beneficial ownership or where no natural person exerts control through ownership interests. It is also unclear whether it is mandatory for all legal persons in Vietnam to have a relationship with a FI or DNFBP. If a legal person does not have a relationship with any RE (e.g. a bank account), it would follow that no beneficial ownership information from that legal person could be collected and made available.

395. It should be noted that CDD obligations on REs apply to all legal entities when establishing a relationship or entering into an occasional transaction. Accordingly, the above analysis applies to both commercial and non-commercial legal persons.

396. *Criterion 24.7* - Article 10 of the Law on AML 2012 requires that REs should regularly update customer identification information to ensure there is adequate information about the customer at the time of establishing a business relationship. This provision applies to the beneficial ownership information, which REs are required to collect under the Law on AML 2012 and Decree 116/2013. However, there are no specific provisions requiring that such beneficial ownership information should be "accurate" and up-to-date.

397. While there are obligations for ongoing CDD, this is limited as the requirement to periodically update CDD may result in an FI waiting a number of years to update CDD in the absence of some risk event. There is no obligation to update CDD whenever there is a significant change of beneficial ownership or control. Furthermore, the deficiencies identified under Recommendation 10 apply to this criterion.

398. *Criterion 24.8* - Vietnam does not have a direct mechanism to demonstrate compliance with criterion 24.8 for any type of legal person. There are no specific requirements or obligations for natural persons or DNFBPs to cooperate with competent authorities on behalf of legal persons. However, the Law on Enterprises provides a general duty for legal representatives of commercial legal persons to cooperate with the authorities in any subjects stated by law.

399. *Criterion 24.9* - Article 27 of the Law on AML 2012 provides that REs should keep records of a customer for 5 years from, "*the closing date of transaction or the date of closure of accounts or the reporting date*." However, this provision does not cover "all persons, authorities and entities" mentioned in Recommendation 24, nor does it cover the parties involved in the dissolution of an enterprise. Apart from the information kept at the National Enterprise Registration Database, the Law on Enterprises 2014 does not regulate record keeping of the information collected on beneficial ownership after dissolution or winding-up of a company/legal person.

Other Requirements

400. *Criterion 24.10* - Article 14 of Decree No 78/2015, details the duties of the Business Registration Authority. Clause 3, Article 14 requires that business registration information be provided to the relevant agencies and entities prescribed by law. In addition, Article 34 of the Law on Enterprises 2014 provides that the Business Registration Authority will share information, with the tax authority, statistical agency, labour authority, and social insurance authority; and periodically to other regulatory bodies. Similar requirements are present at Article 31(1) of Decree No. 78/2015. However, it is not clear whether this consists of all basic business registration information or information which must be made public under Article 33 of the Enterprise Law 2014. Nonetheless, competent authorities and law enforcement authorities are able to make request to the Business Registration Authority for all available basic information.

401. LEAs may also use the powers described in the Criminal Procedures Code 2015 to obtain information as part of criminal investigations. Article 88 provides power for the LEAs to collect evidence from other authorities and entities including documents, items, and electronic data. This includes beneficial ownership information held by REs. However, it is unclear, how rapidly such information can be provided to the LEAs. Failure to comply with requests from law, enforcement authorities are punishable under the Criminal Procedure Code, but the nature and extent of the penalty is unclear.

402. Further to the above, the Law on AML 2012 provides general provisions for the sharing of information, which also captures beneficial ownership information (see R.24.6).

403. *Criterion 24.11* - Article 120(d) of the Law on Enterprises requires that share certificates (physical or digital) contain the “full name, address, nationality, ID/passport number if the shareholder is an individual; name, enterprise identification number or establishment decision number, and headquarter address if the shareholder is an organization”. Therefore, legal persons are not able to issue bearer shares. Under the Law on Enterprises 2014 bearer share warrants cannot be issued. NPOs and associations do not issue shares or warrants of any type.

404. *Criterion 24.12* - Vietnamese legislation does not recognise nominee shares or nominee directors. The Civil Code provides for representation, where any natural or legal person may enter into and perform civil transactions through a representative (Article 134). Under Article 135, representation rights are established according to a power of attorney between the principal and representative. This is an arrangement between the two persons or entities, with no requirement for the power of attorney to be specifically authorised or recorded with competent authorities.

405. *Criterion 24.13* - For commercial legal persons, Article 210 of the Law on Enterprises 2014 provides that any legal person or individual that commits a violation against the Law is liable to penalty, and depending on the nature of the infringements, may face administrative penalties, civil liability, or disciplinary actions. Article No. 211 of the Law on Enterprises 2014 identifies the revocation of Certificate of Business registration as an administrative sanction in certain cases.

406. Decree 50/2016 provides a range of other available penalties with respect to violation of enterprise registration. A few examples include:

- a) A fine of VNF 10,000,000 to 15,000,000 (USD 432 to 648) may be imposed for inaccurate or untruthful information provided in an application for enterprise registration (Article 24);
- b) A fine of VND 1,000,000 to 15,000,000 (approx. USD 43 to 648) will apply for entities that fail to register adjustments to the certificate of business registration, the magnitude of the fine increases with the length of time it had taken for such an adjustment (Article 25);
- c) A fine of VND 1,000,000 to VND 2,000,000 (approx. USD 43 to 86) will be imposed for failure to publish enterprise registration information on National Enterprise Registration Portal (Article 26).

407. There are no specific sanctions in case of non-compliance with the beneficial ownership information obligations. However, as noted above the Law on AML 2012 provides the primary mechanism for collection of beneficial ownership information (i.e. through the requirements that REs collect such information). Article 35 of the Law on AML 2012 broadly provides that organisations which violate the provisions of the Law on AML, will be subject to administrative sanctions and payment of compensation whilst individuals may be subject to administrative and criminal sanctions.

408. The sanction provisions of the Law of AML 2012 may come into effect in circumstances where REs are not complying with their obligations to gather beneficial ownership information under Law on AML 2012 and Decree 116/2013.

409. Specific sanctions are also detailed in Decree No. 88/2019, which stipulates penalties for administrative violations on the Law on AML 2012. For securities markets, Decree No. 145/2016, amending and supplementing a number of articles of the Government's Decree No. 108/2013, also has administrative sanctions for not complying with customer identification in accordance with the Law on AML 2012.

410. Those administrative sanctions are proportionate with similar administrative violations and are dissuasive. However, the administrative penalties do not cover all REs as described in the Law on AML 2012.

411. *Criterion 24.14* - Vietnam is able to provide international cooperation through MLA requests or under existing MOUs or other arrangements with foreign competent authorities, as described under R.37 to R.40.

412. The Law on AML provides some general mechanisms for the sharing of information, for example, Article 48 of the AML provides that the SBV can exchange information with foreign AML agencies. Article 48(2) of the Law on AML 2014 stipulates: "the State Bank of Vietnam exchanges information about prevention and combat of money laundering with foreign money laundering prevention agencies, agencies and organizations other than in accordance with the law". However, Vietnam has just a few MOU on AML to be able to give effect to the legal provisions of the Law on AML. It is also unclear whether there are any explicit mechanisms for Vietnamese competent authorities to obtain beneficial ownership information on behalf of foreign counterparts.

413. There are mechanisms available for foreign counterparts or agencies to request and receive basic and beneficial ownership information relating to non-commercial legal persons.

414. *Criterion 24.15* - Vietnam does not monitor the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

Weighting and Conclusion

415. Vietnam has a reasonably sound regime for the collection and recording of basic information from commercial legal persons. Vietnam has significant deficiencies relating to the collection of beneficial ownership information. **Recommendation 24 is rated partially compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

416. The 2009 MER rated Vietnam non-compliant with these requirements. There were no legal requirements regulating access to beneficial ownership and control information of foreign trusts operating in Vietnam.

Criterion 25.1 -

417. *25.1(a) and (b)*: Express trusts and similar legal arrangements cannot be created under Vietnamese law.

418. *25.1(c)*: Despite the inability to create express trusts and other legal arrangements under Vietnamese law, there is no prohibition on express trusts created under the laws of another jurisdiction and trustees of those trusts from operating in Vietnam (including forming relationships with FIs and DNFBPs). Apart from the limited circumstances of professional

trustees acting in their capacity as REs (see R.10), there are no requirements that trustees maintain the information required under this recommendation.

419. *Criterion 25.2* - There are no requirements for trustees to keep records accurate and up to date. However, in the limited circumstances of professional trustees acting in their capacity as REs, there are obligations to comply with CDD requirements to collect and update information (see R.10).

420. *Criterion 25.3* - There are no obligations on trustees to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out the occasional transactions.

421. *Criterion 25.4* - There are no explicit laws or enforceable means which would prevent trustees from disclosing information regarding legal arrangements to competent authorities or from providing FIs and DNFBPs, upon request, with the information on the beneficial ownership and the assets of the trust to be held or managed under the terms of the business relationship.

422. *Criterion 25.5* - Competent authorities have a range of powers under the Law on AML 2012 and the Criminal Procedure Code to obtain access to information (see also R.30 and R.31). REs are required to collect information in relation to legal arrangements, particularly; the beneficial owner, the residence of the trustee and the assets held (Article 10c(2) of Circular No. 35/2013 (as amended)). Accordingly, such information can be obtained by competent authorities from REs using the relevant powers. However, there are no provisions allowing timely access to information held specifically by trustees in Vietnam.

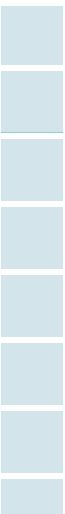
423. *Criterion 25.6* - Vietnam is broadly able to provide informal and formal international cooperation through MLA requests or under existing MOUs or other arrangements with foreign competent authorities, as described under R.37 to R.40. However, Vietnam does not have any mechanisms to ensure availability of the information except from REs (see R.10). Furthermore, Vietnam did not demonstrate that competent authorities use investigative powers to obtain beneficial ownership information on behalf of foreign counterparts.

424. *Criterion 25.7* - In the limited circumstances of professional trustees acting in their capacity as REs, the sanctions provisions in the Law on AML and Decree 116/2013 will apply, particularly in respect of c25.1(c), 25.2. There are otherwise no provisions for legal liability and/or sanctions for trustees who fail to perform the duties relevant to meeting their obligations. There are also no explicit provisions providing for proportionate and dissuasive sanction to be imposed on such trustees. For example, there are no explicit provisions for sanctions for trustees operating in Vietnam that fail to disclose their status as trustee to FIs and DNFBPs, before forming a business relationship.

425. *Criterion 25.8* - The Law on AML 2012, Decree 116/2013 and Criminal Procedure Code 2015 provide that non-compliance with requests for information from competent authorities is “punishable” but does not specify the nature and extent of the penalty. These provisions apply in circumstances where REs in Vietnam fail to disclose information about trusts gathered in the CDD process to requesting competent authorities. However, there are no provisions for sanctions specifically against trustees for failing to disclose such information about the trust to competent authorities as they are not obliged to report their status as identified on criterion 25.3.

Weighting and Conclusion

426. Express trusts and similar legal arrangements are not recognised under Vietnamese law. However, there is no prohibition on express trusts created under the laws of another



jurisdiction and trustees of those trusts from operating in Vietnam (including forming relationships with FIs and DNFBPs). There are no obligations of trustee to disclose their status to FIs and DNFBPs when forming business relationships. There are no sanctions for trustees who fail to disclose their status. **Recommendation 25 is rated partially compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

427. The 2009 MER rated Vietnam partially compliant with these requirements. Deficiencies included a lack of beneficial ownership requirements and competent authorities did not conduct AML/CFT examinations.

428. *Criterion 26.1* - The SBV has been designated with responsibility for implementing state management over AML (Art. 37, Law on AML 2012). SBV and MOF have been designated as the competent authorities for AML supervision of FIs (Art. 37 and 39 – Law on AML 2012), but there are gaps with respect to intermediary payment service providers (“IPSPs”) and online lending institutions (see the following table):

Financial sector and/or activity under AML supervision	Financial sector supervisor	Statutory basis for AML supervision
Currency, banking operations, other non-bank credit institutions, foreign exchange and remittances	SBV	Clause 5, Art. 37, Law on AML 2012
Insurance and securities, fund management companies, futures	MOF	Clause 2, Art. 39, Law on AML 2012
IPSPs and electronic wallet	SBV (prudential only)	None
Online lending institutions	None	None

429. While IPSPs are covered by AML measures under Vietnam’s principal AML law (Decree No. 87/2019, Law on AML 2012), there is no designated AML/CFT supervisor for IPSPs or online lending institutions.

430. Regarding CFT, the Law on Anti-Terrorism 2013 provides MPS with broad responsibility to inspect and examine implementation of laws to prevent and combat terrorism, which includes TF (paragraph (f), Clause 1, Article 40). However, the power of inspection and examination by MPS in relation to TF, is not for CFT supervision on compliance of REs. While SBV is the supervisor and regulator of CFT, there is no clear authorisation in the law to formulate regulatory requirements and carry out CFT supervision.

Market Entry

431. *Criterion 26.2* - In Vietnam, banking operations must be licensed by the SBV (Art. 8, Law on Credit Institutions 2010), and security companies and insurance companies must be licensed by MOF (Art. 62, Securities Law of 2006 and Art. 58, Insurance Business Law of 2000). Financial leasing has also been covered, according to Article 20 of Law on Credit Institutions.

For Core Principles FIs:

432. Banks: Credit institutions may conduct banking operations in Vietnam upon fully meeting legal conditions and obtaining a license from the SBV (Clause 1, Art. 8, Law on Credit Institutions 2010).

433. Securities companies: State Securities Commission has the authority to approve the establishment and grant an operating license to securities companies and fund management companies (Art. 62, Securities Law of 2006, amended in 2010).

TECHNICAL COMPLIANCE

434. Fund management companies: fund management companies should get licenses with the required conditions (Clause 2, Art. 1 and Art. 3 - Circular No. 212/2012). However, there is no reference which authority will grant the license.

435. Futures companies: Trading organisations must be granted a certificate of eligibility to deal in derivative securities by the SSC, including futures (Art 4, Decree No. 42/2015).

436. Insurance companies: Insurance enterprises shall be established and operate under the provision of the Law on Insurance Business 2000 (Art. 58, Law on Insurance Business of 2000). MOF grants establishment and operation license to insurance enterprises under the conditions required by law (Art. 62 and 63 – Law on Insurance Business).

For other FIs:

437. Intermediary Payment Service Providers: IPSPs require a license issued by the SBV (Clause 2, Art. 15 of Decree No. 101/2012). Other non-bank credit institutions, including financial companies, financial leasing companies and other non-bank credit institutions, require a license issued by the SBV (Clause 1, Art. 20 of Law on Credit Institutions 2010).

438. Foreign currency receipt and payment services providers: Organisations wishing to provide foreign currency receipt and payment services, and/or foreign currency payment agents and foreign currency exchange agent activities, must obtain a license from SBV in the relevant provinces or cities they wish to operate (Art. 4, Art. 12, Art. 15, Circular No. 34/2015) and their operations and their operations are limited to locations where the certificate of agent registration was issued (Art. 2, Decision No. 21/2008).

439. However, it unclear whether online lending institutions should be licensed or registered before operating.

Shell banks

440. Vietnam does not approve the establishment, or continued operation of shell banks. According to Law on Credit Institutions 2010, banks and credit institutions should meet the conditions of qualified shareholders, capital, managements, establishment plan and feasible business plan, in order to obtain a license (Art. 20 of Law on Credit Institutions 2010). Furthermore, banks and credit institutions shall register business and operation under law before operating (Art. 24 of Law on Credit Institutions 2010).

441. *Criterion 26.3* - There are limited fit and proper requirements in place to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a FI. These measures only cover specific circumstances and sectors, and apply to those convicted of a criminal offence or otherwise subject to sanctions. The requirements stipulated in the Law of Enterprises 2014 do not necessarily apply to FIs' fit and proper tests. .

442. Persons facing criminal prosecution or serving prison sentences are not permitted to establish and manage enterprises (Art. 18, Law on Enterprises 2014). Criminals may not act as chief accountants or directors of a branch or subsidiary of a credit institution (Clause 2, Art. 33 of Law on Credit Institutions 2010).

443. People with penal liability or who are imprisoned or who have been deprived of the right to professional practice are not permitted to practice as insurance agents (Art. 86, Law on Insurance Business 2000). Persons subjected to criminal prosecution, imprisonment or deprivation of the right to practice, as well as persons sanctioned by State Securities Commission under the Security Laws and stock market within 2 years, are not allowed to be the director (general director) of a security company (Clause 3, Art. 34 of Circular No.

210/2012). Fund managers who are currently serving imprisonment sentences or prohibited by the court from doing business, or sanctioned for violation in securities, banking, and insurance within two years are prohibited to operate fund companies (Art. 11, Circular 212/2012).

444. There are no regulations to prevent criminals from acquiring significant or controlling interest of FIs. The abovementioned measures do not cover criminal associates, nor do they apply to beneficial owners of FIs. Fit and proper requirements to do not appear to extend to IPSPs and online lending institutions.

Risk-based approach to supervision and monitoring

Criterion 26.4 -

445. 26.4 (a): Vietnam does not appear to apply consolidated group supervision for AML/CFT purposes.

446. Basel Core Supervision Principles: The most recent 2014 Financial Sector Assessment Report of Vietnam was undertaken by the WB and IMF in 2014 and that assessment found the level of compliance with the Basel Core Principles (BCPs) to be low (no indications were provided that FSAP deficiencies had been adequately addressed by Vietnam). Based on SBV's responses during on-site and review of limited supervision undertaken, major gaps remain in relation to lack of regulations to mandate risk-based supervision of the banking sector or financial sector more broadly, and lack of consolidation of supervision on financial groups.

447. IOSCO Core Principles: SSC became a member of IOSCO in 2013. While there is no external assessment of Vietnam's compliance with the IOSCO core principles, SSC appear with many of the IOSCO principles in terms of market entry standards and internal controls (Art. 62 & 71 of Law on Securities 2006). In Vietnam's current legal system, there is no concept of hedge fund.

448. IAIS Core Principles: there is no external assessment of Vietnam's compliance with the IAIS core principles. The Law on Insurance Business 2000 does not introduce risk-based supervision for the sector.

449. 26.4 (b): SBV is the AML supervisor for foreign exchanges and money remittance providers (Art. 37 of the Law on AML 2012) and has issued regulations and guidance on the supervisory processes that are applied to these FIs (Circular No. 34/2015, Circular No. 46/2014 and Decree No. 101/2012). While IPSPs are subject to requirements of the Law on AML 2012 (as noted in C26.1), there is no supervision or monitoring of the non-cash payment sector, having regard to the ML/TF risks. Online lending institutions are not covered by AML/CFT regulations and supervision.

450. Criterion 26.5 - REs are required to carry out ML/TF risk assessments and send them to SBV (Circular No. 20/2019). However, the frequency and intensity of supervision undertaken by supervisory authorities in Vietnam is not required to be conducted based on the ML/TF risks, policies, internal controls and procedures associated with the institution or group. Supervisors have not assessed the risk profile of FIs and financial groups. Additionally, the frequency and intensity of supervision is not determined based on the ML/TF risks present in Vietnam or the characteristics of FIs or groups.

451. Criterion 26.6 - The supervisors do not conduct risk assessments on individual FIs or groups. Moreover, there is no review of risks periodically or in response to major events or developments.

Weighting and Conclusion

452. The frequency and intensity of supervision undertaken by supervisory authorities in Vietnam is not based on the ML/TF risks, policies and the risk profile of FIs and financial groups, and supervision does not consider the changing circumstances of FIs' management and operations. Major deficiencies include gaps in coverage for supervision over parts of Vietnam's financial sector, namely IPSPs and online lending institutions; and no system in place for risk-based supervision. Limited fit and proper controls also do not prevent criminal associates from owning or controlling FIs as beneficial owners. **Recommendation 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

453. The 2009 MER rated Vietnam partially compliant with these requirements. The main deficiency was that there was no application of available inspection powers and no implementation of obligations under AML Decree 74. In addition, the effectiveness of the penalty system was limited (former R.17).

454. *Criterion 27.1* - SBV has powers to supervise credit institutions, foreign exchange companies, and immediate payment institutions for their compliance with AML requirements, while MOF has powers to supervise securities and insurance companies for AML (Articles 37 and 39 of the Law on AML 2012). However, no supervisors have powers to supervise or monitor online lending institutions and IPSPs for compliance with AML requirements. Moreover, the power to supervise FIs' compliance with CFT requirements has not been clearly authorised by law. There are also minimal CFT requirements imposed on FIs, other than TFS (see R.9 – R.23).

455. MPS is authorised to supervise implementation of laws to prevent and combat terrorism, including TF (Article 40, Law on Anti-Terrorism 2013) and TFS related to terrorism and TF (Article 16, Decree No. 122/2013). However, this is a general power of inspection, not specific to FIs. There are also minimal CFT requirements imposed on FIs, other than TFS (see R.9-R.23).

456. *Criterion 27.2* - The Law on AML 2012 authorises SBV to inspect and monitor AML activities for REs in the areas of currency, banking operations and foreign exchange (Clause 5, Article 37). Decree No. 116/2013 (Clause 5, Article 24) grants the SBV power to examine, inspect and supervise REs under the state's management for AML activities. The Law on AML 2012 authorises the MOF to conduct inspections and supervision of AML for REs in the areas of insurance business and securities (Clause 2, Article 39). However, there is no AML/CFT inspection authorized for IPSPs and online lending institutions. Moreover, the power of CFT inspection is not clearly authorised by law.

457. The Law on Anti-Terrorism 2013 authorises MPS to inspect and examine the implementation of laws to prevent and combat terrorism, which includes TF (Article 40 and Clause 3 of Article 3). However, these powers of inspection are not specific for CTF compliance of FIs.

458. *Criterion 27.3* - Supervisory authorities in Vietnam have powers to access the premises and receive documents and other information, as required (Article 46, Law of Inspection 2010; Article 57, Law on the State Bank 2010; Article 160, Law on Credit Institutions 2010). State agencies can organise and direct inspection activities in their sectors, within the ambit of their tasks and powers (Article 76, Law on Inspection 2010). This includes AML supervisors such as SBV and MOF (Articles 37-39, Law on AML 2012). When conducting inspections, the inspector can compel the investigative target or others to provide information and documents, reports,

or explain relevant matters (Article 54, Law on Inspections 2010). However, AML/CFT supervisor's power to compel production of information for IPSPs and online lending institutions are not explicitly covered.

459. *Criterion 27.4* - The Law on AML 2012 provides that sanctions shall be imposed on individuals and organisations who contravene its provisions. (Article 35).

460. For currency and banking institutions, SBV can impose financial sanctions against individuals and organisations (Articles 39-46 of Decree No. 96/2014). MOF can impose financial penalties on securities companies, insurance companies and individuals (Article 35a of Decree No. 108/2013 as amended by Decree No. 145/2016 and Article 32a of Decree No. 98/2013 as amended by Decree No. 80/2019).

461. In the case of natural persons, SBV can also impose suspension of, or removal from, the administration or managerial position, or prevention from holding management titles for certain AML breaches (Article 46, Decree No. 96/2014). However, all of these penalties only apply for breaches of the Law on AML 2012 and not to CFT breaches.

462. There is no legal basis authorising any AML/CFT supervisor to sanction foreign currency exchange companies, IPSPs, or online lending institutions for non-compliance with AML requirements.

463. It is unclear whether any supervisor has been authorised to impose sanctions when REs do not comply with CFT requirements.

Weighting and Conclusion

464. The power of supervising or monitoring FIs' AML compliance has been defined in Law. However, supervisors do not have the authority to conduct CFT inspections or apply sanctions for non-compliance with CFT requirements. Further major deficiencies relate to the lack of authority to conduct AML/CFT inspections of IPSPs and online lending institutions. **Recommendation 27 is rated partially compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

465. The 2009 MER rated Vietnam non-compliant with these requirements. There was a lack of implementation of AML/CFT requirements and a lack of an effective regulatory and supervisory framework for monitoring and ensuring DNFBP compliance with AML/CFT obligations.

Casinos

Criterion 28.1 -

466. *28.(a)*. In Vietnam, casinos should obtain a certificate of eligibility as per the laws on investment before operating as a casino (Art. 3 and 4, Decree No. 3/2017). The operation of a casino is conditional upon a license being provided by the nominated competent authority (Art. 2, Part 1, Decree No. 3/2017), which is the MOF.

467. *28.1(b)*. When applying for certification of casino business, entities should provide a list of managers and executive officers of the casino with any criminal records (Clause 7, Art. 25, Decree No. 3/2017). There are no explicit regulations to prevent criminals from holding a significant or controlling interest, management function, or being an operator of a casino. The available measures also do not cover criminal associates nor do they apply to the beneficial owners of the casino businesses.

TECHNICAL COMPLIANCE

468. *28.1(c)*. The MOF is responsible for supervision and inspection of casino businesses for compliance with AML requirements (Art. 4 and 39, Law on AML 2012). Detailed AML/CFT requirements are stipulated in Decree No. 86/2013 and Decree No. 03/2017.

469. Regarding CFT, MPS has broad responsibility for supervising implementation of laws to prevent and combat terrorism, including TF (Article 40, Law on Anti-Terrorism 2013) and TFS related to terrorism and TF (Article 16, Decree No. 122/2013). However, this responsibility is not specific to casinos. There are also minimal CFT requirements imposed on casinos, other than TFS (see R.22-23).

DNFBPs other than casinos

470. *Criterion 28.2* - There are designated authorities for supervising AML compliance of DNFBPs other than casinos (Law on AML 2012, Decree No. 116/2013):

471. MOF is responsible for monitoring AML obligations of REs who provide accounting services (Paragraph (a), Clause 7, Art. 26, Decree No. 116/2013). MOC is responsible for inspecting and supervising real estate businesses (Art. 40, Law on AML 2012). The MOJ is responsible for presiding over AML obligations of REs who provide notary, legal services and legal service-providers (Art. 41, Law on AML 2012). MPI monitors entities that provide company services (Paragraph (d), Clause 7, Art. 26 of Decree No. 116/2013). MOIT is responsible for monitoring AML obligations of dealers in precious metals or precious stones (Paragraph (e), Clause 7, Art. 26 of Decree No. 116/2013). MPI monitors AML obligations of entities engaged in trust businesses, providing services of establishment, management and operation of firms (Paragraph (d), Clause 7, Art. 26 of Decree No. 116/2013). Clause 3, Article 26 of Decree No. 116/2013 provides that these agencies are responsible for conducting examinations on AML activities of REs under their regulation.

472. Regarding CFT, the supervisor of DNFBPs' compliance of CFT is not clearly authorised by law. MPS has broad responsibility for supervising implementation of laws to prevent and combat terrorism, including TF (Article 40, Law on Anti-Terrorism 2013) and TFS related to terrorism and TF (Article 16, Decree No. 122/2013). However, this responsibility is not specific to DNFBPs. There are also minimal CFT requirements imposed on DNFBPs, other than TFS (see R.22-23).

473. *Criterion 28.3* - While DNFBPs are required to conduct institutional ML/TF risk assessments and submit them to SBV (Clause 2, Art. 1, Circular No. 20/2019), there is no system currently in place to monitor other DNFBPs' compliance with AML/CFT requirements, with the exception of, the MOF which has conducted AML inspections on casinos.

Criterion 28.4 -

475. *28.4 (a)*: The designated agencies are responsible for conducting examinations of AML activities of the REs under their regulation (Clause 3, Article 26, Decree No. 116/2013). However, as the supervisory authorities for accounting, company services, dealers in precious metals or precious stones, and trust businesses are not authorised by law, it is unclear whether the supervisors for these DNFBPs have adequate powers to perform their AML functions.

476. *28.4 (b)*: For accounting services, criminals are prohibited from practicing accounting (Art. 52 of Law on Accounting 2015). However, there is no measure to prevent criminals from holding a significant or controlling interest, or holding a management function of accounting firms. The above-mentioned measures do not cover criminal associates, nor do they apply to beneficial owners of accounting firms. For other DNFBPs, there are not adequate measures for competent authorities of self-regulatory bodies to prevent criminals or their associates from

being professionally accredited or controlling management or holding significant interests, or being the beneficial owner of a significant or controlling interest in the DNFBPs.

477. *28.4 (c)*: while sanctions are provided for DNFBPs' non-compliance with the Law on AML 2012, there are no instruments setting out which competent authority is designated to apply sanctions against other DNFBPs to deal with failures to comply with AML requirements. There are no sanctions for non-compliance with CFT requirements.

All DNFBPs

Criterion 28.5 -

478. *28.5 (a)*: There is no legislative requirement that supervision of DNFBPs should be performed on risk-sensitive basis, including determining the frequency and intensity of AML supervision taking into account the risk profile of those DNFBPs.

479. *28.5 (b)*: There is no specific legislation or regulation that supervision of DNFBPs should be performed on a risk-sensitive basis, including taking into account the ML/TF risk profile of those DNFBPs, and the degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs.

Weighting and Conclusion

480. Structure and power for supervising or monitoring the obligations of DNFBPs has been established. However, major deficiencies remain, including limited fit and proper checks, lacking clear powers to apply sanctions on DNFBPs for AML/CFT failures; and lacking systems currently in place to monitor DNFBPs' compliance with AML/CFT requirements. Supervision of DNFBPs is not undertaken on a risk-sensitive basis. **Recommendation 28 is rated partially compliant.**

Recommendation 29 - Financial intelligence units

481. The 2009 MER rated Vietnam partially compliant with these requirements. There were deficiencies with IT systems for analysis; sufficient operational independence; adequate human resources; no published reports; no STR reporting guidelines apart from credit institutions; lack of separate budget for the FIU; and weak physical security.

482. *Criterion 29.1*– 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 (Article 14 of the Decree No. 74/2005). The FIU, the Anti-Money Laundering Department (AMLD), is a subordinate unit under the Banking Supervision Agency (BSA) in the SBV (Prime Minister's Decision No. 83/2009 and Prime Minister's Decision No. 20/2019). However, as noted in R. 20, there is no explicit requirement in Vietnamese law obliging REs to report STRs related to TF to AMLD.

483. The Law on AML designated SBV as responsible for receiving STRs, transaction information, documents, files and other information and AMLD is responsible for receiving this information (Article 31 of the Law on AML 2012 and Article 19 of Decree No. 116/2013). The SBV AMLD is also responsible for analysing and processing reports and suspicious information related to ML, TF and other ML-related crimes and for transferring information or case records to competent authorities as prescribed by law (SBV Governor Decision No. 1367/2019, Decision No. 2393/2019, Decision No. 20/2019 and Decision 1367/2019,).

TECHNICAL COMPLIANCE

484. The AMLD is responsible for disseminating information to the authorised investigating bodies where there are reasonable grounds to suspect that transactions are related to ML or ML acts aimed at TF (Article 32 of the Law on AML and Article 20 of Decree No. 116/2013). Article 45 of the Law on Anti-Terrorism 2013 provides an explicit statutory basis designating the SBV as the national centre for receipt and analysis of STRs and other information relevant to TF. Article 33 of the same law obliges SBV to report immediately to the authorised anti-terrorism force if signs of terrorism are detected and designates the anti-terrorism force as responsible for receiving information related to TF.

Criterion 29.2 -

485. 29.2 (a): REs are required to file STRs (related to ML or predicate offences), large value transactions, electronic transfers, and other information to SBV (Law on AML Articles 21, 22, 23 of the, Article 13(3) and 14 of the Decree No. 116/2013, and Articles 9 and 10 of Decree No. 74/2005). SBV is responsible for receiving STRs related to TF, albeit with the concerns highlighted at R.20 regarding the TF-related STR obligation (Article 45 of the Law on Anti-Terrorism 2013).

486. 29.2 (b): REs are required to file large value transactions, electronic transfers, and other information to SBV (Law on AML Articles 21, 22, 23, Article 13(3) and 14 of the Decree No. 116/2013, and Articles 9 and 10 of Decree No. 74/2005).

Criterion 29.3 -

487. 29.3(a): AMLD is authorised to request additional information from REs and oblige REs to comply with requests (Law on AML Article 28(a) and Clause 2, Article 19 of Decree No. 116/2013). REs are required to provide SBV with transaction and other information, documents and files to support their analysis (Law on AML, Article 31).

488. 29.3(b): AMLD can access a wide range of financial information from REs using the powers specified above. AMLD is responsible for exchanging information with competent authorities in supervision, investigation, prosecution, judgment and enforcement regarding ML (Law on AML, Article 37).

489. MPS is responsible for sharing information with SBV (Law on AML, Article 38). The current mechanism for the exchange of information between AMLD and MPS is based on manual process via sending written requests. SBV also has access to cross border reporting information (Law on AML, Articles 24 and 39), which is provided in a monthly report. AMLD does not have direct access to LEA databases or platforms to exchange information electronically.

490. AMLD can also access information from within the SBV and from other AML/CFT supervisors, including MOF, MOC and MOJ, that are required to coordinate with relevant agencies to implement AML measures for the REs under their supervision (Law on AML, Articles 39-41) and from other government agencies that are required to coordinate with SBV to conduct state management of AML (Article 42).

491. These provisions are silent on sharing information in relation to TF.

492. *Criterion 29.4 (a & b)* – Decision No. 185/2016 issued by the Director General of the AMLD outlines the steps to process STRs and the sources of information that analysts should refer to in reviewing transactions, which partially meets the requirement. This Decision was amended and supplemented by Decision No. 99/2019 of the Director of AMLD, which outlines the responsibilities of analysts for conducting operational and strategic analysis. There have been four instances of strategic analysis conducted by AMLD.

493. *Criterion 29.5* – AMLD is responsible for disseminating information to investigation authorities when there are reasonable grounds to suspect that the transactions relate to ML or ML acts aimed at TF (Law on AML, Article 32 and Articles 20 and 21 of Decree No. 116/2013). The provision is broad enough to allow AMLD to disseminate information spontaneously and upon request.

494. AMLD is responsible for reporting to the Anti-Terrorism Force of the MPS whenever they receive a report or other information and there are reasonable grounds to suspect that transactions are related to terrorism or TF (Article 45 of the Law on Anti-Terrorism 2013).

495. AMLD is responsible for transferring information or case records related to ML, TF or other crimes related to ML to competent authorities as prescribed by law (Article 2(4) of Decision No. 1367/2019).

496. Vietnam did not demonstrate the use of dedicated, secure, and protected channels for the dissemination of intelligence e.g. electronic and encrypted mechanism for the dissemination of information to LEAs. Information exchange takes place in the form of physically sharing documents and verbally sharing information in meetings. Article 29 of the Law on AML describes a general obligation to ensure confidentiality of data. AMLD has a process for handling confidential documents, which includes a system of marking envelopes according to their level of confidentiality before they are sent.

Criterion 29.6 -

497. *29.6 (a)*: Vietnam has a legal framework (Ordinance on Protection of State Secrets, Decree No. 33/2002, Circular No. 33/2015, and Decision No. 45/2007 of the Governor of the SBV) regarding the protection of state secrets that applies to all agencies, organisations and individuals., The SBV is responsible for implementing the information confidentiality regime in accordance with legal regulations (Law on AML, Article 45). AMLD has issued a process for handling confidential documents. In addition, all employees of the AMLD are required to sign a confidentiality acknowledgment letter when they commence or leave the job. The IT system of the AMLD is decentralized to ensure confidentiality of the data. Security layers have been defined to access the threshold and suspicious transaction reports.

498. *29.6 (b)*: Other than the commitment letter on confidentiality which should be signed by AMLD staff, Vietnam has not provided any procedural document or legal requirements to define the security clearance process for AMLD staff members. However, AMLD provides training to its staff twice a year, which covers confidentiality protocols. The staff hired for AMLD follows the same process as staff hired for the rest of SBV.

499. *29.6 (c)*: The AMLD office is located on a separate floor within the SBV headquarters with security guards to control entry and exit to the premises. Technology is decentralized and control layers are in place to control who has access to IT systems. The AMLD data centre is housed within a separate room at SBV headquarters and accessed only by AMLD IT staff. The Director of AMLD is responsible for assigning access rights of the staff to the technology platform; however, AMLD does not have any written ‘Security Policy’ to cover different security aspects of the unit.

Criterion 29.7 -

500. 29.7 (a): AMLD is a unit within the BSA of the SBV with its functions, as stated in Decision No. 1367/2019 of the Governor of the State Bank, being to assist the Chief Inspector of the BSA and the SBV Governor of the State Bank in the state management of AML; and to perform the tasks of AML/CFT according to the Law on AML and the Law on Anti-Terrorism 2013.

501. According to Article 2 of Decision No. 1367/2019, as amended by Decision No. 2393/2019, the responsibilities of AMLD include analysing information and reports, requesting information and disseminating information to competent authorities. According to Article 4, the Director of AMLD is responsible for organising and directing the implementation of the tasks prescribed in Article 2. However, the Director is responsible to the Chief of Banking Inspection and Supervision and the SBV Governor for all activities of the Department. This does not fully satisfy the requirement that AMLD should have the authority and capacity to carry out its functions freely and autonomously.

502. 29.7 (b): AMLD is empowered to exchange information with domestic competent authorities (Article 2 of Decision No. 1367/2019, as amended by Decision No. 2393/2019).

503. 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 authorisation of the SBV Governor (Article 2(5) of Decision No. 1367/2019, as amended by Decision No. 2393/2019). However, according to Article 4, the Director of AMLD is responsible to the Chief of Banking Inspection and Supervision and SBV Governor for these activities.

504. 29.7 (c): As the functions of the AMLD include helping the Chief Inspector of the BSA and the SBV Governor in the state management of ML and the Director of AMLD is responsible to those authorities for all AMLD activities, it is not clear that the AMLD's core functions are distinct from those of the SBV.

505. 29.7 (d): AMLD is led by a Director and has four divisions with 35 personnel. Vietnam did not demonstrate that AMLD has a separate budget from SBV and conducts recruitment independently and free from any interference. This limits AMLD's access to financial resources and ability to obtain and deploy resources needed to carry out its functions, on an individual or routine basis.

506. The SBV finance department handles the budget lines for all departments within the SBV. AMLD cannot directly deploy its budget to operate with independence of the SBV.

507. *Criterion 29.8 -* Vietnam applied for membership of Egmont at the 2009 Egmont meeting. In 2014, an on-site visit found that Vietnam had not yet met the requirements due to functional limitations. Currently, AMLD holds an observer status with Egmont. Vietnam is taking steps to complete the procedure for Egmont membership. However, AMLD has not completed the requirements to obtain the membership.

Weighting and Conclusion

508. There are moderate shortcomings in Vietnam's compliance with R.29. These include cascading deficiencies from R.20 regarding the lack of an explicit legal obligation to lodge TF-related STRs, gaps in information protection, and concerns regarding the operational independence of the FIU, which is given particular weight. **Recommendation 29 is rated partially compliant.**

Recommendation 30 - Responsibilities of law enforcement and investigative authorities

509. The 2009 MER rated Vietnam partially compliant with these requirements. There was no specific provision to allow competent authorities to postpone or waive action in respect to TF; no dedicated team on TF; a lack of statistics and a lack of demonstration of how the laws worked in practice. Recommendation 30 contains new requirements.

510. *Criterion 30.1* - The responsibilities of criminal investigation bodies in Vietnam are outlined in the Criminal Procedure Code 2015 and the Law on Organization of Criminal Investigation Bodies 2015. The Criminal Procedure Code 2015, the MPS is responsible for investigating all crimes, including ML, predicate offences and TF, except where those offences fall into the jurisdiction of the investigation authorities of the People's Army or the SPP (Article 163). The Law on Organisation of Criminal Investigation Bodies 2015 designates the investigating police officers of the MPS as responsible for investigating ML (Articles 19-21) and the investigating security officers of the MPS as responsible for investigating TF (Articles 16-17).

511. The Law on AML 2012 designates MPS as responsible for presiding over and coordinating with other agencies, organisations and individuals concerned in the detection, investigation and handling of ML crime (Article 38). The Law on Anti-Terrorism 2013 designates MPS as the lead agency responsible for investigating TF in coordination with other relevant agencies (Article 40). The MPS has a specialist investigative team, consisting of officers from the Anti-Terrorism Department and the Investigating Security Agency, which is dedicated to investigating TF.

512. The investigation authorities of the People's Army are responsible for investigating all crimes falling into the jurisdiction of a military court (Article 163, Criminal Procedure Code 2015), which includes any crime committed by military personnel, against military personnel, involving military secrets, on military property or under martial law (Article 272, Criminal Procedure Code 2015). This could include ML, ML predicate offences and TF.

513. The investigation authorities of the SPP are responsible for investigating certain offences related to violations of judicial activities, corruption and breach of positions in the sector of justice where the offenders are officials and employees of investigation authorities, courts, procuracies, law enforcement authorities and against individuals empowered to engage in judicial activities (Article 163, Criminal Procedure Code 2015). The SPP are not authorised to investigate ML or TF.

514. A range of other agencies are responsible for conducting some investigative activities within their specific areas of responsibility (Article 164 of the Criminal Procedure Code 2015 and Article 9 of the Law on Organization of Criminal Investigation Bodies 2015). These agencies include border-guard agencies, GDC, forest protection offices, marine police agencies, fisheries surveillance, the People's Public Security Offices and other People's Army offices. However, in the event they detect ML or TF they are required to notify the MPS or the People's Army, depending on the jurisdiction, and transfer the case file to them within seven (7) days for evaluation.

515. *Criterion 30.2* - The MPS and the People's Army are both authorised to investigate ML offences during a parallel financial investigation when investigating a predicate offence. The commencement of all investigations by the MPS requires oversight and approval from the SPP. The MPS is required to notify the SPP and provide justification to commence the investigation.

TECHNICAL COMPLIANCE

In the event the SPP rejects the MPS request, the MPS will discontinue the investigation or provide additional materials to the SPP for consideration.

516. The SPP investigation authorities are only authorised to investigate certain corruption-related predicate offences. If ML is detected, SPP is required to refer these offences to the MPS or People's Army for investigation.

517. Other Criminal Investigation Bodies are only authorised to undertake certain investigative activities related to predicate offences that fall within their specific areas of responsibility. As with the SPP, if ML is detected, these agencies may conduct preliminary investigations and then transfer the case to the MPS or the People's Army within seven (7) days.

518. Only the investigating security offices of the MPS and the People's Army are authorised to investigate TF offences and they can do so during parallel financial investigations when investigating a terrorism offence.

519. *Criterion 30.3* - There is no single agency designated to expeditiously identify, trace and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Rather all investigators assigned to file charges and investigate criminal cases have the duty to expeditiously search, freeze, seize and distraint property by virtue of Article 37 of the Criminal Procedure Code 2015.

520. *Criterion 30.4* - Article 9 of the Law on Organization of Criminal Investigation Bodies 2015 lists a range of agencies, some that are not LEAs *per se*, that are tasked to conduct certain investigative activities within their specific areas of responsibility. Agencies include border-guard agencies, GDC, forest protection offices, marine police agencies, fisheries surveillance, the People's Public Security Offices and Other People's Army offices. These agencies are responsible for preliminary investigations and have some search and seizure powers related to material evidence (Article 39, Criminal Procedure Code 2015; Chapter V, Law on Organisation of Criminal Investigation Bodies 2015). However, for all serious crimes, including ML and TF, they must transfer the case files to the competent investigation authority within seven (7) days.

521. *Criterion 30.5* - Corruption-related crimes in Vietnam are investigated by MPS, the People's Army and the SPP (Articles 84 and 86, Law on Anti-Corruption 2018) and not by specialist anti-corruption enforcement authorities. All of these agencies have powers to identify, trace and initiate freezing and seizing of assets, as outlined under c.30.3. The SPP's responsibility is limited to investigating certain corruption related offences involving officials of investigation agencies and the judiciary. In the event ML or TF offences are identified through SPP investigations, they must refer the cases to the MPS or the People's Army for investigation.

Weighting and Conclusion

522. **Recommendation 30 is rated compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

523. The 2009 MER rated Vietnam largely compliant with these requirements. There was a lack of statistics to demonstrate the use of available powers and only limited powers in respect of TF.

524. *Criterion 31.1* - Powers exist under the Law on AML 2012 and the Criminal Procedure Code 2015 for investigating authorities to obtain documents and information for use in investigations, prosecutions and related actions.

525. *31.1 (a)*: The Law on AML 2012 (Article 28) requires REs to provide files, stored documents and related information to SBV and authorized state agencies upon request. The Criminal Procedure Code 2015 (Article 88) authorises investigation authorities to request other authorities and entities to provide evidence, documents, items, electronic data and facts. Authorities and entities are required to strictly comply with the requests of investigation authorities (Article 168, Criminal Procedure Code). However, there are no powers to compel natural persons to produce records and they can only be obtained by searches of persons and premises.

526. *31.1 (b)*: The Criminal Procedure Code 2015 (Article 36(2)) authorises Heads and vice Heads of Investigation Authorities to make decisions regarding searches and Article 37 authorises investigators to conduct searches of persons and premises.

527. *31.1 (c)*: The Criminal Procedure Code 2015 (Article 37(1)(d)) authorises investigators to take witness statements. Article 38(1)(a) authorises investigation officers to ‘record statements and interrogation in writing and make other written records’.

528. *31.1 (d)*: The Criminal Procedure Code 2015 (Article 36(2)) authorises the Heads and vice Heads of Investigation Authorities’ to make decisions on seizure and handling of evidences. Article 37(1)(e) authorises investigators to enforce decisions on seizure and handling of evidences. Articles 192 to 198 of the Criminal Procedure Code 2015 contain the general powers for search, seizure and examination of electronic items in the course of an investigation.

Criterion 31.2

529. *31.2(a) and (d)*: Vietnam has confidential regulations to arrange people to infiltrate drug-related criminal organizations, arrange forces to monitor the activities of drug-related crimes and coordinate with countries in implementing requests for the transfer of controlled goods to fight drug-related crimes. However, there are no specific provisions authorising the use of these techniques in ML, TF or other predicate crime investigations. The drug-related regulations would only apply in ML investigations where a drug offence was the predicate offence.

530. *31.2 (b) and (c)*: The Criminal Procedure Code 2015 (Article 223) entitles ‘authorised procedural persons’ (who are individuals given authority to institute proceedings – Article 4) to enforce ‘special methods of investigations and proceedings’, which include:

- secret recording by sound or sound-and-visual means;
- secret phone tapping, and
- secret collection of electronic data.

531. However, according to Article 224 the use of ‘special methods of investigation and proceedings’ is limited to investigations into:

- breach of national security;
- drug related crimes;
- corruption;
- terrorism;
- money laundering; and
- other organised crimes categorised as extremely severe felonies.

TECHNICAL COMPLIANCE

Criterion 31.3 -

532. 31.3 (a): The Criminal Procedure Code 2015 (Article 88) empowers investigation authorities to request entities to provide information, including account information, and those entities are obliged by Article 168 to comply. This is the mechanism used to identify if accounts are held or controlled by natural or legal persons as part of the evidence collection process.

533. The Law on AML 2012 (Article 28) requires REs to provide records and information, including account information, to the SBV and competent state agencies upon request.

534. Under Decree No. 117/2018, which has the primary purpose of protecting the client information of credit institutions and foreign bank branches, investigating authorities can make requests for client information held by banks.

535. 31.3 (b): Article 177 of the Law on Criminal Procedure prevents the disclosure of an investigation allowing for the identification of assets without prior notice to the owner.

536. *Criterion 31.4 -* Article 88 of the Criminal Procedure Code 2015 authorises investigation authorities to request evidence and documents from other authorities and Article 168 compels those authorities to comply with such requests. These provisions apply in relation to information held by the FIU.

537. Article 32 of the Law on AML 2012 designates the SBV (AMLD) with responsibility for the transfer of information from the FIU to the relevant investigative agency when there is suspicion of money laundering crimes. Article 2 of Decision No. 1367/2019 of the SBV, as amended by Decision No. 2393/2019 of the SBV also states that AMLD is responsible for transferring information or case records related to ML, predicate crimes and TF to competent authorities.

538. Article 37 of the Law on AML 2012 requires SBV to immediately inform the MPS or People's Army information regarding ML linked to terrorism or TF. The same Article also requires SBV to exchange and provide information to competent authorities for the investigation, prosecution and judgement of ML. Article 33 of the Law on Anti-Terrorism 2013 requires SBV to report immediately to MPS or People's Army if they detect signs of terrorism.

Weighting and Conclusion

539. Vietnamese investigation authorities have broad powers to investigate ML, TF and predicate offending. Special methods of investigation, such as intercepting telecommunications and accessing computer systems are available for ML, TF and certain predicate offence investigations. Undercover operations and controlled delivery investigative techniques are only authorised in drug related investigations. **Recommendation 31 is rated largely compliant.**

Recommendation 32 – Cash Couriers

540. The 2009 MER rated Vietnam partially compliant with these requirements. The declaration system did not cover bearer negotiable instruments (BNIs); powers to restrain currency and BNIs were not clearly articulated in law, sanctions were not effective, proportionate and dissuasive, GDC did not have methods for analysing cross-border information for suspected ML/TF, and there was a lack of specialised staff and comprehensive statistics. Since that time, Vietnam has issued a new Law on Customs 2014 and number of new AML-related legal instruments that contain provisions related to cross-border reporting.

541. *Criterion 32.1* - Vietnam has a declaration system in place for cross-border transportation of currency and BNIs.

542. Article 24 of the Law on AML 2012 requires the following items to be declared by any person entering into or departing from Vietnam if they are above the threshold permitted by SBV:

- cash (foreign currency or VND)
- precious metals
- precious stones, and
- negotiable instruments

543. This obligation is reinforced by Article 55 of the Law on Customs 2014.

544. For currency or BNIs being transported by air or sea cargo, Decree No. 08/2015 requires those importing or exporting foreign currency, VND or BNIs to complete customs formalities, including submitting a customs declaration through an electronic portal (Articles 5-7).

545. The transportation of currency and BNIs by post is prohibited in Vietnam. Article 12 of the Law on Post 2010 prohibits sending, receiving or transmitting articles and merchandise which are banned from transmission by post under Vietnamese Law or a treaty to which Vietnam is a party. Vietnam is a signatory to the Universal Postal Convention, which prohibits sending currency and BNIs in uninsured letter post or uninsured parcels (Article 19, Clause 6).

546. Additionally, the Protocol to this Convention provides that Vietnam shall not accept registered letter post items containing currency or BNIs (Article VII, Clause 2). Decision No. 572/2013 of the President of the Vietnam Post Corporation, issued Regulations on providing and using postal services. Article 18 of those Regulations lists Vietnamese and foreign currency, as well as valuable papers issued by the bank as banned goods that cannot be transported by Vietnam post. There is also a prohibition on sending foreign exchange in postal articles in Ordinance No. 28/2005 as amended by Ordinance No. 06/2013.

547. *Criterion 32.2* - Vietnam has a written border declaration system for all travellers carrying currency and BNIs above the threshold set by SBV.

548. Article 2 of Circular No. 15/2011 from the SBV requires the following amounts of currency to be declared to GDC or border agencies by individuals upon entry and exit from Vietnam:

- Vietnamese Dong exceeding VND15,000,000 (approx. USD650)
- Foreign currency exceeding USD5,000 or foreign currencies of the same value.

549. Article 9, Clause 2 of Circular No. 35/2013 sets the declaration threshold for BNIs at VND300,000,000 (approx. USD13,000).

550. All the thresholds are below the FATF standards maximum threshold for cross-border transportation of currency and BNIs.

551. For countries sharing a border with Vietnam (China, Cambodia and Lao PDR), the carrying of currency by individuals in or out of Vietnam with a border identity card or border entry pass is regulated through separate instrument, Decision No. 92/2000 which has the following thresholds:

- For entry/exit China- CNY6,000 (approx. USD850), VND10,000,000 (approx. USD430) and any other currency exceeding USD3,000.
- For entry/exit Cambodia- KHR1,000,000 (USD250), VND10,000,000 (approx. USD430) and any other currency exceeding USD3,000.
- For entry/exit Laos, LAK3,000,000 (approx. USD340), VND10,000,000 (approx. USD430) and any other currency exceeding USD3,000.

552. Decision No. 92/2000 does not cover carrying of BNIs by persons with a border identity card or border entry pass.

553. *Criterion 32.3* - Vietnam has implemented a declaration system.

554. *Criterion 32.4* - The Law of Customs provides customs officials with powers to inspect goods and request customs declarants to provide information and documentary evidence related to their goods to ensure accuracy of origin and customs value of goods (Article 19). The definition of 'goods' includes moveable assets in the Vietnamese list of imports and exports, which includes banknotes, coins and BNIs. The power to request and obtain further information about the origin and intended use is found in Article 89 of the Law on Customs which provides the authority to conduct investigation and verification of goods. This would include origin and intended use in the case of a false declaration or a failure to declare.

555. *Criterion 32.5* - Administrative penalties are available under Article 9 of Decree No. 127/2013, as amended by Decree No. 45/2016. The penalties for failure to declare or false declarations of currency when leaving Vietnam range from VND1,000,000 (approx. USD45) to VND50,000,000 (approx. USD2,150) based on the values involved. Penalties for failure to declare or false declarations of currency when entering Vietnam are lower and range from VND1,000,000 (approx. USD45) to VND20,000,000 (approx. USD860) based on the value involved. Penalties for failure to declare or false declarations of BNIs when entering or leaving Vietnam range from VND1,000,000 (approx. USD45) to VND50,000,000 (approx. USD2,150) based on the value involved. Once the penalty has been implemented, the currency or BNIs will be returned (Clause 6). This only applies when there has been no other crime committed.

556. In accordance with the Article 23, Clause 4 of the Law on Handling Administrative Violations 2012, the fine will be the average level of the range of penalties available unless there are extenuating circumstances (fine can be reduced but not lower than the minimum level) or aggravating circumstances (fine can be increased but not higher than the maximum level).

557. These administrative penalties are not proportionate, as the penalties when entering Vietnam are much lower than the penalties when exiting Vietnam (the highest penalty when entering is less than half the highest penalty when exiting). The reason for the difference is there are additional requirements imposed when exiting and therefore more violations. The penalties at the lower end of the scale only represent approximately 10% of the value involved in the offending and are not considered dissuasive (particularly considering the remaining currency/BNIs will be returned). However, the penalties at the higher end of the scale, which represent 50% of the value involved in the offending are considered dissuasive.

558. Articles 188 and 189 of the Penal Code 2015 criminalise smuggling and the illegal transport of goods or money across the border. If the value involved in the cross-border transportation is falsely declared or undeclared and the value is greater than VND100,000,000, it will constitute a criminal offence against Articles 188 or 189. There are various criminal sanctions available based on the value involved. Sanctions include fines ranging from VND200,000,000 (approx. USD8,600) to VND3,000,000,000 (approx. USD130,000) and imprisonment from 1-10 years for natural persons. For legal persons, the fines range from VND200,000,000 (approx. USD8,600) to VND5,000,000,000 (approx. USD215,000) and other

penalties include suspension of operations and permanent shutdown. These penalties are considered proportionate and dissuasive. However, these provisions only apply in relation to currency and not BNIs.

559. *Criterion 32.6* - According to Article 24 of the Law on AML 2012, GDC are responsible for disseminating information collected in cross-border declarations to SBV (AMLD). Article 15 of Decree No. 116/2013 mandates GDC must provide details of the transportation of cash, precious metals, precious stones and BNIs across the border to the SBV (AMLD). GDC transfers a monthly summary of cross-border declarations to the AMLD in the form of paper copies and electronic files. GDC does not provide the physical declarations, but they are available upon request. After receiving the information, the AMLD enters the information into the SBV database.

560. *Criterion 32.7* - Article 39 of the Law on AML 2012 places responsibility on the Ministry of Finance to direct GDC to provide collected information on cross-border transportation of currency and BNIs to SBV (AMLD) in accordance with Article 24. GDC has coordination arrangements in place with the Border Guard (Regulation No. 3929/2019) and Coast Guard (Regulation No. 10472/2014), which are not specific to cash couriers but are broad enough to include issues related to R.32.

561. *Criterion 32.8 (a) and (b)* - Articles 125, 127-129 of the Law on Handling Administrative Violations 2012 allow for currency or BNIs to be taken into custody when there is a failure to declare or a false declaration to prevent immediate acts of administrative violations for up to seven days. Provisions exist for the period to be extended if more time is required to ascertain whether evidence of ML or TF exists.

562. In the event there are signs of criminal offending, such as ML or TF, Article 62 of the Law on Handling Administrative Violations 2012 allows the case to be transferred to the MPS for investigation. MPS investigators can exercise general powers of distraintment when conducting a criminal investigation pursuant to the Criminal Procedure Code 2015.

563. *Criterion 32.9* - Article 6 of the Law on Customs enables international cooperation between Vietnam and other countries which includes the exchange of information and professional cooperation with customs authorities of foreign countries and relevant international organisations. GDC is a member of WCO and has a range of bilateral and multilateral cooperation agreements with foreign counterparts that facilitate international exchange of information. These instruments are framed broadly but are utilised to exchange cross-border declaration information. In addition, Article 6 of the Law on Customs gives the GDC authority to exchange and cooperate internationally to exchange information on the cross-border movement of currency and BNIs.

564. As outlined under R.40, the Law on AML (Article 37 and Chapter IV) and the AML Decree (Chapter IV) provide a legal basis for SBV (AMLD) to cooperate internationally with respect to ML and SBV has signed nine bilateral MOUs on the exchange of AML/CFT related information. As such, SBV (AMLD) can exchange the cross-border declaration information it holds internationally where it is relevant to AML.

565. Vietnam can also exchange cross-border declaration information internationally using mutual legal assistance processes and has agreements with China and Lao PDR for direct legal assistance.

566. There is no specific obligation on GDC or SBV (AMLD) to retain cross-border declaration information. However, in practice AMLD enters and retains the information it receives from Customs in its database. Circular No. 43/2011 does require SBV to retain

materials relating to ML crimes for a period of 20 years, which would apply to cross-border declarations related to ML.

567. The cross-border declaration information collected by Customs includes the name, passport number, nationality, date, port of entry/exit and the amount of currency or BNI.

568. *Criterion 32.10* - Vietnam imposes currency controls and permission from the SBV for the import and export of Vietnamese Dong. Ordinance No. 30/2000 on State Secrets Protection and the Law on AML 2012 have sufficient safeguards to ensure the proper use of information obtained from the declaration system. The cross-border declaration requirements for Vietnam do not appear to restrict trade payments or capital movements.

569. *Criterion 32.11* - In addition to the penalties outlined in c.35.5, where there is evidence that physical transportation of currency or BNIs is related to ML, predicate offences or TF, such cases would be referred by GDC to the MPS for criminal investigation. The Law on Handling Administrative Violations 2012 provides that agencies considering or imposing administrative sanctions must transfer a dossier to criminal procedure agencies if there are criminal signs (Article 62). The persons transporting the currency or BNIs would be subject to the penalties for these offences and the currency or BNIs would be subject to criminal forfeiture, as set out in R.4. However, there are deficiencies in the sanctions available for the TF offence (as described under R.5) and moderate shortcomings in the forfeiture regime (as set out in R.4).

Weighing and Conclusion

570. A minor deficiency remains in Vietnam's cross-border declaration system surrounding the administrative penalties which are not proportionate. **Recommendation 32 is rated largely compliant.**

Recommendation 33 – Statistics

571. The 2009 MER rated Vietnam partially compliant with these requirements. Deficiencies included a lack of information on supervision and a lack of detailed and disaggregated statistics.

572. *Criterion 33.1* - The Law on Statistics 2015 regulates statistical activities in Vietnam and the use of state statistical information; as well as the rights, obligations and responsibility of agencies, organisations and individuals involved in statistical activities and the use of state statistical information.

573. *33.1 (a)*: The AMLD maintains statistics regarding STRs received and disseminated and has provided such statistics for the period from 2014-2018. AMLD is able to break down statistics according to sector, however the types of criminal activity or other factors is not clear.

574. *33.1 (b)*: According to Article 34 of the Law on Organisation of People's Procuracies 2014, the SPP has primary responsibility for coordination with concerned agencies and collection of criminal statistics. The SPP maintains a statistical database of criminal investigations, prosecutions, and convictions (Joint Circular No. 05/2018). The SPP has a Department of Criminal Statistics that is responsible for the collection of these nationwide criminal statistics, which are stored centrally in the SPP's electronic database. Vietnam captures and maintains statistics on investigations, prosecutions, and convictions for all crimes, which includes ML/TF and predicate crime cases. ML statistics are broken down by predicate offence and by the type of ML. The MPS Homeland Security Department maintains statistics on TF investigations, prosecutions, and convictions.



575. 33.1 (c): MPS maintains a statistics database that includes the final value of distrained and frozen property, and the Supreme People's Court maintains a statistics database of confiscated property, from both civil and criminal cases.

576. 33.1 (d): Statistics for MLA are maintained by the SPP Department of International Cooperation, per Article 23 of the Law on Legal Assistance 2007. MPS maintains statistics on extradition, per Article 38 of the Law on Legal Assistance 2007. AMLD maintains statistics on incoming and outgoing foreign requests by country and type of crime (Decision No. 68/2019). Other agencies such as MPS, MOF, and GDC also maintain statistics on international cooperation.

Weighting and Conclusion

577. **Recommendation 33 is rated compliant.**

Recommendation 34 – Guidance and feedback

578. The 2009 MER rated Vietnam non-compliant with these requirements. There was a lack of feedback mechanisms or detailed and comprehensive guidelines.

579. *Criterion 34.1* - Government Agencies are required to direct and guide units in the systems and REs under their management to develop and implement AML measures (Article 26 of Decree No. 116/2013). SBV is responsible for issuing guidelines in implementing legal regulations on AML (Article 24 of Decree No. 116/2013). However, these provisions only relate to ML and not to TF. Article 18 of the Decree provides that SBV is responsible for guiding REs in the implementation of Article 30(1) of the Law on AML 2012, which relates to reporting ML activities that relate to TF.

580. The AMLD has issued letters to ministries and agencies instructing them to ask their respective REs to implement AML/CFT measures. Similarly, the Ministry of Finance issued letters to the securities, casinos, and insurance sectors and the Ministry of Construction issued letters to the real estate sector asking the relevant REs to apply AML/CFT measures. However, these letters are instructions to comply with AML/CFT obligations not guidelines to assist compliance.

581. AMLD has issued an AML/CFT Handbook to banks, which includes guidance on various AML/CFT obligations. The handbook includes detailed guidance on reporting suspicious transactions, which includes the list of red flag indicators to detect suspicious transactions, information on who to report to and what to include in a report, as well as information on ML methods and case studies. It also includes guidance on internal controls, CDD, risk, transaction monitoring and record keeping. However, while other FIs and DNFBPs can refer to this handbook, there are no sector-specific guidelines for other FIs or DNFBPs. In 2014, MOJ issued a special magazine on AML awareness which is publicly available. Detailed guidance has not been issued in relation to conducting CDD, including identification of beneficial ownership. SBV has issued limited guidance to credit institutions and foreign bank branches operating in Vietnam to implement relevant UNSCRs (risk indicators in 2016 and Official Letter 387/NHNN-TTGSNH (5 June 2019)), which include guidance on TFS obligations. Vietnam has not provided other FIs or DNFBPs with any written guidance on their obligations, best practices for TFS implementation⁴⁴.

⁴⁴ Vietnam took further steps in March 2020 to share the 2016 TF risk indicators with NBFIs and DNFBPs, however this took place after the conclusion of the onsite visit.

582. Article 6(2) of Circular No. 35/2013 requires AMLD to provide feedback to the REs on any issues in relation to STRs they have submitted. AMLD respond to REs confirm the receipt of STR and provides feedback to banks in relation to the STRs received, including advising if the STR does not meet the quality requirements, information is incomplete or the report has not been signed by the correct person. Where necessary, AMLD will require the RE to provide additional information in relation to the submitted STR and will give further guidance to the RE.

583. There are requirements for DNFBP regulators or other supervisory bodies to establish AML/CFT guidelines and provide feedback to their regulated sectors to assist them in applying AML/CFT measures and detecting and report STRs.

Weighting and Conclusion

584. AMLD has issued guidelines for banks on STRs and other matters AMLD provides feedback to REs reporting STRs. Moderate deficiencies remain in relation to the provision of guidance and feedback. At the time of the onsite visit AMLD no guidelines had been issued for non-bank FIs and DNFBPs and the guidance to banks did not extend to CFT matters. Limited guidance has been given on CDD and TFS implementation. **Recommendation 34 is rated partially compliant.**

Recommendation 35 – Sanctions

585. The 2009 MER rated Vietnam rated partially compliant with these requirements. The key technical deficiencies included a lack of a graded sanctions framework that outlined the specific sanctions to be imposed for non-compliance with AML/CFT requirements; lack of proportionate and dissuasive monetary sanctions; and no implementation of available sanctions for AML violations. Various regulatory instruments have been issued since the last MER.

586. *Criterion 35.1 - For Recommendation 6, Decree No. 96/2014 contains sanctions for the failure by banks to delay transactions of blacklisted parties or freeze accounts or assets when directed by competent authorities, as required by the Law on AML 2012, of fines of up to VND150,000,000 (approx. USD6,400) for individuals (double for organisations) (Article 45, Clause 2). There are also sanctions for failure by banks to report to competent authorities any assets frozen or actions taken in compliance with UNSCRs, of fines of up to VND 80,000,000 (approx. USD 3,450) for individuals (double for organisations) (Article 45, Clause 1). These fines are not proportionate or dissuasive.*

587. Vietnam does not have sanctions for failure to freeze without delay for other natural and legal persons, or any sanctions for breaching the prohibition on persons or entities in their jurisdiction providing funds or other assets, resources or services to designated persons and entities. There are no sanctions available for other FIs or DNFBPs that fail to report.

588. For Recommendation 8, Vietnam applies some measures to NPOs that broadly address TF risk. Decree No. 12/2012 contains sanctions for foreign NPOs that violate the Decree, violate registration requirements or otherwise violate Vietnamese law (Clause 1, Article 15 and Clause 2, Article 31). These sanctions include suspension or termination of operations and having their registration certificate revoked.

589. Article 29 and Clauses 1 and 2, Article 40 of Decree No. 45/2010 impose sanctions on domestic associations that violate the Decree, to include having their certificate to operate revoked, and persons acting on their behalf can be administratively sanctioned or potentially

criminally liable. Decree No. 30/2012 provides for suspensions of between 3 and 6 months, or dissolution of the NPO for violations relating to mismanagement of funds and failure to report.

590. There are no penalties other than suspension or dissolution available for violations by NPOs. Given the limited range and lack of penalties that can be described as punitive, sanctions are not considered proportionate and dissuasive.

591. Sanctions for preventive measures and reporting (Recommendations 9 through 23):

592. Banks: Penalties for violations AML requirements are stipulated in Decree No. 96/2014⁴⁵ which contains a range of administrative fines from VND10,000,000 (approx. USD430) to VND500,000,000 (approx. USD21,650) for individuals (double for organisations) for non-compliance with the requirements of the relevant Recommendations other than R.17. Banks are also requested to remove individuals who violate CDD requirements from the titles they hold and apply disciplinary measures to them (Article 39). Additional penalty measures, including revocation of licenses, certificates, services and other business activities or suspension of activities licenses by SBV may also be imposed (Article 3).

593. Life insurance companies: are regulated by Decree No. 98/2013, which was amended by Decree No. 80/2019 and provides a range of administrative fines from VND20,000,000 (approx. USD850) to VND100,000,000 (approx. USD4,250) for individuals (double for organisations) for non-compliance with some of the requirements of Recommendations 9, 10, 12, 15 and 18. Warnings and suspensions of certificates or business activities can also be applied (Article 3).

594. Securities companies: are regulated by Decree No. 108/2013, which was amended by Decree No. 145/2016 and provides a range of administrative fines from VND20,000,000 (approx. USD850) to VND150,000,000 (approx. USD6,350) for organisations (half for individuals) for non-compliance with some of the requirements of Recommendations 9, 10, 12, 15, 18, 20. Cautions, suspensions, certificate revocation and remedial measures are also available (Article 3).

595. However, there are no sanctions for other NBFIs and there are a range of deficiencies in Vietnam's preventive measures and reporting requirements (see R.9-23) and corresponding gaps in the sanctions framework for all FIs. The fines available are not considered proportionate and dissuasive.

596. DNFBPs: There are no sanctions available for failure by DNFBPs to comply with preventive measures and reporting requirements.

597. *Criterion 35.2* - Vietnam applies some sanctions to the directors and senior management of banks per Clause 4, Article 46 of Decree No. 96/2014, including suspension, removal and prevention from holding similar titles in FIs. However, these penalties only apply in relation to limited and specific violations. There do not appear to be sanctions applied to the directors and senior management of non-bank FIs and DNFBPs⁴⁶.

⁴⁵Vietnam finalised Decree No. 88/2019 during the onsite visit. This Decree, which includes sanctions for TF-related violations, replaced Decree No. 96/2014 but did not take effect until after the conclusion of the onsite visit.

⁴⁶ Decree No. 88/2019 extends a number of these sanctions to a wider range of breaches and to directors and senior management, however it did not take effect until after the conclusion of the onsite visit.

Weighting and Conclusion

598. There are administrative sanctions available for non-compliance with R.6 and 8-23. However, there are gaps in the sanctions framework and the fines that are available are not considered proportionate and dissuasive. Sanctions are only applicable to directors and senior management of FIs in limited circumstances and there are no sanctions for directors and senior management of DNFBPs. **Recommendation 35 is rated non-compliant.**

Recommendation 36 – International instruments

599. The 2009 MER rated Vietnam rated partially compliant with these requirements. Vietnam had not joined the Palermo Convention and there was a lack of implementation of the TF Convention and UNSCRs 1267 and 1373. Since then, the standard was strengthened with the addition of the Merida Convention.

600. *Criterion 36.1* - Vietnam is a party to all four conventions. Vietnam acceded 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 acceded to the TF Convention on 25 September 2002.

601. Upon ratification or accession to the Conventions, Vietnam expressed reservations and declarations relevant to the Articles covered under R.36. For the Vienna Convention, Vietnam made a reservation with respect to Article 6 on extradition. For the Palermo Convention, Vietnam made a declaration that it does not consider itself bound by the provisions with regard to the criminal liability of legal persons as set forth in Article 10, or take the Convention as the direct legal basis for extradition. For the Merida Convention, Vietnam made a declaration that it does not consider itself bound by the provisions with regard to the criminal liability of legal persons in Article 26. Vietnam also made a subsequent notification that it does not take the Convention as a legal basis for extradition.

Criterion 36.2 -

602. *Implementation of the TF Convention:* Vietnam has partly implemented the relevant articles of the TF Convention. TF is criminalized under Article 300 of the Penal Code. As analysed in detail under R. 5, TF is not criminalised fully on the basis of the TF Convention. There are gaps in terms of dissuasiveness of sanctions, particularly in case of legal persons, as well as TF preventive measures, cash couriers, supervision and international cooperation.

603. *Implementation of the Merida Convention:* To comply with the Merida Convention, Vietnam enacted the Law on Anti-Corruption in 2018. It has largely implemented the obligations provided under the Convention; yet, there are minor gaps related to the criminal liability of legal persons, freezing, seizure and confiscation (as discussed under R. 4), as well as MLA and other forms of international cooperation (as discussed under R. 37-38, and R. 40).

604. *Implementation of the Vienna Convention:* Vietnam has largely implemented the relevant articles of the Vienna Convention through Law on Drug Prevention 2000, Law on Drug Prevention and Fight 2013, Law on Legal Assistance 2007, Penal Code 2015, Criminal Procedure Code 2015, and through bilateral and multilateral treaties. There are minor gaps in Vietnam's implementation of articles relating to the ML offence (as discussed under R.3), MLA (as discussed in R. 37-38), and confiscation (as discussed under R.4).

605. *Implementation of the Palermo Convention:* Vietnam has largely implemented the relevant articles of the Palermo Convention through Law on AML 2012, Law on Legal Assistance 2007, Penal Code 2015, Criminal Procedure Code 2015, and through bilateral and multilateral

treaties. However, there are minor shortcomings in its implementation in relation to the ML offence (as discussed under R.3), the criminal liability of legal persons, cross-border transportation of cash and BNIs (as discussed under R. 32), as well as confiscation, and MLA (as discussed under R.4 and Rs. 37-38). There is limited implementation of articles relating to measures to enhance cooperation and prevention.

Weighting and Conclusion

606. While Vietnam is party to all four Conventions, there are minor deficiencies relating to implementation of relevant articles of all Conventions. **Recommendation 36 is rated largely compliant.**

Recommendation 37 - Mutual legal assistance

607. The 2009 MER rated Vietnam partially compliant and non-compliant with these requirements. There were gaps with mandatory requirement for dual criminality difficulties for Vietnam to provide MLA with respect to TF. Since that time, Vietnam has passed a new Criminal Procedure Code 2015, which also includes relevant MLA provisions.

608. *Criterion 37.1* - Article 491 of the Criminal Procedure Code 2015, the Law on Legal Assistance 2007, international conventions and bilateral and multilateral MLA treaties to which Vietnam is a party provide a legal basis for Vietnam to provide a wide range of mutual legal assistance in all criminal matters. Vietnam is a party to 19 bilateral MLA treaties and the multilateral ASEAN MLA treaty. In accordance with Article 4 of the Law on Legal Assistance 2007, Vietnam may provide legal assistance to a foreign country that has not signed a treaty with Vietnam on the basis of the principle of reciprocity, provided that it does not contravene Vietnamese laws and is in compliance with international law and practice. While the ASEAN MLA Treaty and bilateral MLA treaties require "prompt" assistance, there is no obligation in law to provide assistance "rapidly".

609. *Criterion 37.2* - The SPP is designated as the central authority for mutual legal assistance in criminal matters (Article 439, Clause 2 of the Criminal Procedure Code 2015,). Article 23 of the Law on Legal Assistance provides a basic procedure for receiving and handling request(s) from a foreign country. SPP recently issued a MLA prioritisation and execution procedure. However, the procedure is not comprehensive as it is focused only on reduced processing times in particular circumstances. SPP maintains a case management system, which is done in both paper and electronically.

610. *Criterion 37.3* - The grounds for refusal of requests are set out in Article 21 of the Law on Legal Assistance 2007, these include: (1) non conformity to treaties to which Vietnam is a contracting party or to Vietnamese law; (2) national sovereignty or security; (3) the examination of penal liability of a person for his/her criminal act for which he/she was sentenced, declared innocent or granted general or special amnesty in Vietnam; (4) expiry of statute of limitations of criminal acts; and (5) dual criminality, none of which are unduly restrictive or unreasonable.

611. *Criterion 37.4* - The Law on Legal Assistance 2007 provides five grounds for refusal of requests, as set out above (Article 21). None of these relate to the request involving fiscal matters or secrecy/confidentiality requirements. The ASEAN MLA Treaty and limited bilateral MLA treaties between Vietnam and foreign countries, including Indonesia and France, explicitly provide that requests shall not be refused solely on the grounds of secrecy of banks and other similar financial institutions or that the offence is considered to involve fiscal matters.

612. *Criterion 37.5* - Vietnam requires the foreign country to comply with confidentiality obligation (Article 27 of the Law on Legal Assistance 2007); yet this obligation is absent for Vietnamese public servants from LEAs and other agencies involved in MLA. However, where treaties are in place, a confidentiality clause is always incorporated that applies to all parties.

613. *Criterion 37.6* - The Law on Legal Assistance 2007 requires dual criminality when considering a MLA request except where there is a MLA treaty between states that specifies otherwise. This requirement applies whether or not a coercive action is involved or requested.

614. *Criterion 37.7* - While in the case of extradition, the Law on Legal Assistance 2007 (Article 33) states clearly that criminal acts of a person must not necessarily be in the same category of crimes or the same crimes under the laws of Vietnam and the requesting countries in order to satisfy the dual criminality requirement; it is silent on dual criminality in MLA matters. While in practice Vietnam applies the same approach to MLA and has not refused requests on the basis of a lack of dual criminality, this is not articulated in the law.

615. *Criterion 37.8* - The Law on Legal Assistance 2007, particularly Article 29, provides that the investigation, prosecution and trial applicable to MLA cases are to be conducted in compliance with the Criminal Procedure Code 2015. The powers of the competent authorities are further discussed under R. 31. There are some gaps in terms of compliance with R. 31 that have a flow on effect to this criterion, including the lack of powers to conduct undercover operations and controlled delivery, which mean that these investigative techniques are not available for use in response to MLA requests.

Weighting and Conclusion

616. Vietnam's legal framework authorises the provision of a wide range of MLA and does not impose any unduly restrictive conditions. Minor deficiencies remain related to the dual criminality requirement and the lack of confidentiality obligations for Vietnamese public servants in the law. **Recommendation 37 is rated largely compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

617. The 2009 MER rated Vietnam partially compliant with these requirements. There was a lack of provisions for providing effective and timely assistance for identifying, freezing, seizing and confiscating the proceeds of crime. Since that time, Vietnam has passed a new Criminal Procedure Code 2015, which also includes relevant MLA provisions.

618. *Criterion 38.1* - The Law on Legal Assistance 2007 does not provide specific authority for the freezing, seizing and confiscating assets in response to MLA requests. However, Article 507 of the Criminal Procedure Code 2015 provides that competent authorities of Vietnam shall cooperate with foreign competent authorities to trace, seize, distrain, freeze, confiscate and handle assets derived from crimes in order to support investigation, prosecution, adjudication and implementation of criminal judgements. The Law on Anti-Corruption 2018 provides for such cooperation with foreign authorities in distraining assets, freezing accounts, confiscating or forfeiting illegal assets (Article 91). The ASEAN MLA Treaty and bilateral MLA treaties between Vietnam and foreign countries authorise tracing, freezing, seizure and confiscation of proceeds and instruments of crime. These treaties require the parties to execute requests promptly in accordance with the laws of the country.

619. *Criterion 38.2* - Article 507, Clause 2 of the Criminal Procedure Code 2015 provides that the handling of assets pursuant to a MLA request must abide by the laws of Vietnam. Under Vietnamese law, confiscation is based on a conviction judgment. As such, Vietnam cannot

execute non-conviction based forfeiture orders but could provide other forms of assistance in such cases e.g. asset tracing, service of documents etc.

Criterion 38.3 -

620. *38.3 (a):* Article 507 of the Criminal Procedure Code 2015 provides that Vietnamese authorities shall cooperate with foreign competent authorities in the seizure and confiscation of assets derived from crime, and those assets shall be handled in accordance with international agreements and domestic laws, particularly the Criminal Procedure Code 2015. Article 508 also provides for investigations and special proceedings to be coordinated with foreign counterparts. However, specific arrangements for coordinating seizure or confiscation action were not demonstrated.

621. *38.3 (b):* Vietnam did not demonstrate any mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated in response to MLA requests. Vietnam has some basic asset management mechanisms in the Criminal Procedure Code 2015, as detailed in R.4. However, these do not constitute a comprehensive asset management framework and the extent to which these provisions apply in the context of MLA is not clear.

622. *Criterion 38.4 -* Under Article 507 Paragraph 3, assets gained through crimes in Vietnam shall be handled according to international agreements that Vietnam has signed or on a case-by-case basis between relevant competent Vietnamese authorities and foreign competent authorities. Furthermore, under Article 91 of the Law on Anti-Corruption 2018, Vietnamese authorities shall cooperate with foreign authorities in restraining assets, freezing accounts, confiscating or forfeiting illegal assets and returning them to their legitimate owners or managers. However, it is not clear if there is a procedure for how these illegal assets are returned to the legitimate owners or managers, and whether or not the terms "owner" or "manager" cover foreign state authorities. The ASEAN MLA Treaty and Vietnam's bilateral MLA treaties contain provisions concerning the return or sharing of confiscated property with the requesting country upon final judgment.

Weighting and Conclusion

623. Vietnam has legal authority under the Criminal Procedure Code 2015, Law on Anti-Corruption 2018 and MLA treaties to identify, freeze, seize and confiscate property gained through crime pursuant to MLA requests. Vietnam cannot execute non-conviction based forfeiture orders and there are other moderate shortcomings in relation to coordinating asset seizure and confiscation action, asset management and sharing confiscated assets.

Recommendation 38 is rated partially compliant.

Recommendation 39 – Extradition

624. The 2009 MER rated Vietnam partially compliant with these requirements. Vietnam did not extradite its own citizens, did not have any standard procedures for cooperation with foreign authorities for the extradition of persons in Vietnam, and did not have detailed statistics to demonstrate effective implementation of bilateral extradition agreements. Vietnam has expressed reservations or made notifications in relation to extradition provisions contained in various international conventions, including the Vienna, Merida and Palermo Conventions.

Criterion 39.1 -

625. *39.1 (a):* Under the Law on Legal Assistance 2007, a person can be extradited if they commit a criminal act for which the Penal Code 2015 or the criminal law of the requesting country prescribes a penalty of a term of imprisonment of 1 year or more, life imprisonment or

death sentence. In this regard, the ML and TF, which both have imprisonment penalties of a term of one year or more, are extraditable offences.

626. *39.1 (b):* In accordance with Article 493, Clause 1 of the Criminal Procedure Code 2015, MPS is legislated to be the central authority in case of extradition. Articles 38-40 of the Law on Legal Assistance 2007 set out the process for the receipt and execution of extradition requests. Based on this process, the request appears to be dealt with in a timely manner.

627. MPS has recently issued prioritisation and execution procedure for extradition requests. According to the procedure, priority is given to a case that meets any of the following conditions: (1) the extradited person is from a country with which Vietnam has an extradition treaty; (2) the extradited person is likely to flee to a third country; (3) the request is related to crimes of terrorism, ML, TF, drugs, human trafficking, corruption, property appropriation and fraud; or (4) the request is related to China, Lao PDR, Cambodia, Russia, Australia, the US, the UK, and Czech Republic. These countries were selected as priority countries because they share land borders with Vietnam or because they have large expatriate Vietnamese communities.

628. MPS is responsible for monitoring and managing extradition requests. MPS maintains a case management system, which is done in both paper and electronically.

629. *39.1 (c):* Except for a reason of being Vietnamese citizen (discussed in detail below), other grounds for refusal of extradition stated in Article 35 of the Law on Legal Assistance 2007 are not unreasonable or unduly restrictive.

630. *Criterion 39.2 -* Under Article 17 of the Constitution, Vietnamese citizens cannot be 'expelled and delivered to another state'. Similarly, under Article 35 of the Law on Legal Assistance 2007, Vietnam may refuse an extradition request if the person requested for extradition is a Vietnamese citizen. However, if extradition is refused on this basis, the Criminal Procedure Code 2015 (Articles 498-501) provides a detailed procedure for submitting the case to competent authorities for prosecution.

631. According to Article 499 of the Criminal Procedure Code 2015, within 10 days upon the rejection of foreign request for extradition of a Vietnamese citizen, the competent court that decided to reject extradition shall transfer documents from abroad to the SPP for the latter's consideration of criminal prosecution according to the laws. The authorities can also request foreign counterpart to provide and supplement evidence, documents and items to assure the justification and legitimacy of activities of investigation, prosecution and adjudication.

632. *Criterion 39.3 -* Even though dual criminality is a requirement in case of extradition, Article 33, Clause 2 of the Law on Legal Assistance 2007 provides that this requirement is satisfied regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology.

633. *Criterion 39.4 -* While the Law on Legal Assistance 2007 does not contain simplified extradition procedures, 7 out of 8 bilateral agreements on extradition provide for a simplified extradition procedure where the person sought consents to be extradited.

Weighting and Conclusion

634. Vietnam has a strong legal framework for extradition, encompassing both domestic legislation and bilateral treaties. However, a minor deficiency remains as Vietnam can refuse requests that relate to Vietnamese citizens, though in these cases they can be addressed domestically. **Recommendation 39 is rated largely compliant.**

Recommendation 40 – Other forms of international cooperation

635. The 2009 MER rated Vietnam partially compliant and non-compliant with these requirements. The FIU was unable to directly exchange information with counterpart FIUs; there was a lack of standard procedure to exchange information; and no legal basis to allow Vietnam to exchange information with other countries on TF.

General Principles

636. *Criterion 40.1* - Vietnamese competent authorities have broad authority to cooperate internationally with foreign counterparts under the laws that outline their respective roles and functions and under special laws dealing with particular fields. General provisions in these laws provide the legal basis for competent authorities to enter into MOUs and agreements and provide cooperation. The agencies that are considered competent authorities include AMLD, SBV, SSC, MOFA, MOJ, MPS, SPP, MOF, SPC, MOC, MOD, MOP, Customs (part of MOF), Border Guard, Coast Guard and INV.

637. Chapter IV of the Law on AML 2012 provides a legal basis for Vietnamese authorities, including SBV, MOJ, MPS and SPP to cooperate internationally with respect to ML. Chapter VI of the Law on Anti-Terrorism 2013 provides a legal basis for Vietnamese authorities, led by the MPS, to cooperate internationally to prevent and combat terrorism, including TF. While these laws do not explicitly authorise spontaneous exchanges of information the authority is not limited to provision of cooperation upon request.

638. Vietnam is a member of 22 relevant multilateral international treaties and can provide international cooperation pursuant to those treaties as well as on the basis of the principle of reciprocity. In addition, Vietnamese competent authorities have signed bilateral and multilateral MOUs with foreign counterparts and can also cooperate internationally by virtue of their membership in a number of international organisations including INTERPOL, ASEANAPOL, IOSCO and WCO.

639. Whilst Vietnam's statutes are silent on the speed of international cooperation, many of Vietnam's MOUs either require prompt cooperation or have measures to allow expedited exchange of information (e.g. by phone, email or fax) in urgent cases. In practice, Vietnam has demonstrated that information can be exchanged rapidly under its international cooperation framework, particularly using telephone hotlines.

Criterion 40.2 -

640. *40.2 (a)*: Vietnamese competent authorities have lawful bases for providing cooperation, as outlined under c.40.1.

641. *40.2 (b)*: Vietnamese law authorises all competent authorities to cooperate on the basis of international agreements or the principle of reciprocity. As such, there is no requirement to enter into an agreement in order to provide cooperation and there are no other restrictions on competent authorities using the most efficient means to cooperate. With respect to ML specifically, the Decree No. 116/2013 authorises exchange of information in writing, by email, fax or other electronic means by SBV, MOFA, MPS, MOJ/SPP/SPC who are given specific areas of responsibility for international cooperation but other government agencies (all competent authorities as per Clauses 1, 2, 3, Article 2 of the Law on AML) are also authorised to cooperate but are required to notify SBV (Art 27, Clause 5, Decree No. 116/2013).

642. *40.2 (c)*: While LEAs have secure mechanisms and channels, the FIU lacks secure gateways for information exchange. Vietnam is not a member of Egmont, which means AMLD

is unable to use Egmont Secure Web. To ensure security of information exchange, the Director of AMLD issued Decision No. 68/2019 outlining the process for handling international requests for AML/CFT information. According to this Decision, AMLD transmits information by registered mail (signed and sealed according to the secrecy regime), email/fax that allows encryption or in sealed envelopes via diplomatic channels. MPS utilises INTERPOL's I24/7 system to transmit and execute requests. It is not clear what gateways or mechanisms other competent authorities use.

643. *40.2 (d):* AMLD's processing of international cooperation requests is internally regulated by a clear process for the prioritisation and timely execution of international cooperation requests (AMLD Decision No. 68/2019). MPS has implemented operational measures such as direct hotlines to ensure timely execution of international requests particularly in relation to terrorism and drug cases. Vietnam did not demonstrate processes for prioritisation and timely execution of international requests for other competent authorities.

644. *40.2 (e):* Vietnam has clear processes and statutory controls to safeguard information received. Many of Vietnam's bilateral and multilateral MOUs contain confidentiality articles. There is also a general information security provision in the Law on AML 2012 (Article 45), which requires all relevant authorities to implement information security pursuant to law and given the 'other government agencies' catch all provision, there are no agencies excluded. Ordinance No. 30/2000 on the Protection of State Secrets 2000 applies to safeguarding information received through international cooperation requests as well. Chapter III of the Law on AML specifies the state agencies with responsibilities under the law, it includes: SBV – specifically authorised to conduct international cooperation and be the focal point for Vietnam's AML international cooperation activities; MPS – specifically authorised to implement international cooperation; MOF (includes Customs); MOC; MOJ; SPP/SPC and the People's Committees. The information security provision in Article 45 applies to all of these authorities.

645. *Criterion 40.3 -* Vietnamese law authorises competent authorities to cooperate internationally on the basis of international agreements that Vietnam has signed or on the basis of the principle of reciprocity. As such, bilateral or multilateral arrangements are not needed to cooperate.

646. *Criterion 40.4 -* AMLD has provided feedback on one occasion to Malaysia regarding the use of information received from them. Vietnam did not demonstrate that other competent authorities provide feedback to foreign counterparts on the use and usefulness of information received pursuant to an international cooperation request.

647. *Criterion 40.5 -* Vietnam does not prohibit, or place unreasonable or unduly restrictive conditions on, the provision of exchange of information or assistance. There are some restrictions in relevant Vietnamese laws on the provision of international cooperation, for example, requests can be refused on the basis of national sovereignty, security or other important interests of Vietnam; or because they are inconsistent with Vietnamese law or international agreements to which Vietnam is a party (Criminal Procedure Code 2015, Article 294; Law on AML, Article 46 and 48; Law on Anti-Terrorism 2013, Article 36; Decree No. 116/2013). These conditions are not unreasonable or unduly restrictive.

648. *40.5 (a), (c) and (d):* There is no provision in Vietnamese law specifically authorising or requiring international cooperation requests to be refused on the grounds set out in Sub-Criteria 40.5(a), (c) and (d).

649. *40.5 (b):* Requests for international cooperation may be refused on the basis that they are inconsistent with Vietnamese law. Whilst there are provisions in Vietnamese law requiring

credit institutions to maintain confidentiality, Article 28 of the Law on AML requires REs to provide information to SBV and other competent authorities upon request and provides that this shall not be regarded as violating provisions of law ensuring secrecy of deposits, property, account information and customer transactions. As such, requests for international cooperation on AML/CFT are not refused on the basis they are inconsistent with laws requiring FIs to maintain confidentiality.

650. *Criterion 40.6* - There are provisions in most of Vietnam's international MOUs (including both AMLD and Customs MOUs) requiring that information exchanged by competent authorities is only used for the purpose, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested competent authority. However, no such requirement applies where (1) cooperation is provided not pursuant to a MOU, (2) it is against Vietnamese national interest or security (Article 27, 4, a, Decree 116/2013) and (3) it involves an ongoing investigation or should be actioned under formal assistance protocols.

651. *Criterion 40.7* - There are provisions in most of Vietnam's international MOUs (including both AMLD and Customs MOUs) requiring that information exchanged should be kept confidential. Vietnam also has a legal framework for the protection of state secrets. There are no specific provisions in law or MOUs authorising competent authorities to refuse to provide information if the requesting competent authority cannot protect the information effectively. However, competent authorities could do so on the basis that it is contrary to Vietnamese national interests. The information received from foreign counterparts is classified and treated with the same confidentiality as the data and information received from domestic sources.

652. *Criterion 40.8* - Vietnamese special laws, including the Law on AML, Law on Anti-Terrorism 2013, Law on Securities 2006 etc. authorise broad international cooperation. However, these laws do not specifically authorise conducting inquiries on behalf of foreign counterparts. Other than in Decree No. 116/2013 (Article 27) which is broad, there are no restrictions in law on the type of information that can be exchanged. Article 27 of Decree No. 116/2013 specifies the types of information related to ML that can be exchanged though this provision is framed broadly and covers all necessary information.

Exchange of Information between FIUs

653. *Criterion 40.9* - The Law on AML 2012 (Article 37 and Chapter IV) and Decree No. 116/2013 (Chapter IV) provide a legal basis for SBV to cooperate internationally with respect to the prevention of ML. SBV does not have an explicit basis in law to cooperate internationally with respect to TF. However, pursuant to Article 37 of the Law on Anti-Terrorism 2013, it could coordinate with MPS to cooperate internationally. There is no explicit legal basis for SBV to cooperate internationally with respect to predicate offences.

654. SBV, on behalf of AMLD, has signed nine MOUs on the exchange of AML/CFT related information with counterpart FIUs. In accordance with SBV Decision No. 2393/QD-NHNN, the AMLD can sign MOUs with foreign counterparts with authorisation of the Governor of SBV. Previously MOUs were entered into by SBV. While it is not explicit in the Law on AML 2012 or Decree No. 116/2013 that AMLD can provide international cooperation on the basis of the principle of reciprocity, AMLD Decision No. 68/2019 recognises that AMLD can exchange information with a foreign partner with no MOU with Vietnam and AMLD has done so in practice.

655. *Criterion 40.10* - During the period 2014-2019, AMLD has provided feedback only once to FIU Malaysia in relation to use and usefulness of the intelligence received. The feedback provided to the Malaysian FIU was upon request not on a spontaneous basis.

656. *Criterion 40.11* - Article 27 of the Decree No. 116/2013 authorises the AMLD to exchange a broad range of information. However, the deficiencies outlined under R.29 have an impact on compliance with this criterion, particularly with respect to STRs related to TF.

Exchange of Information between Financial Supervisors

657. *Criterion 40.12* - The AMLD is empowered to cooperate internationally with respect to ML in its capacity as an AML/CFT supervisor as well as FIU (Law on AML (Article 37 and Chapter IV) and Decree No. 116/2013 (Chapter IV)). The SBV is empowered to undertake international cooperation in the monetary and banking sector and authorises them to exchange information and coordinate with foreign banking inspection and supervision authorities (Law on the State Bank of Vietnam 2010). The SBV has signed 27 MOUs with foreign counterparts to exchange information on banking supervision. Apart from the MOU with US Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation, none of these MOUs have specific AML/CFT supervision related provisions.

658. Ministries with responsibility for AML/CFT inspections (SBV, MoF and MoC) are empowered to carry out international cooperation on inspection work (Decree No. 86/2011, which guides the implementation of the Law on Inspection 2010 (Articles 58-59)). The MoJ is responsible for presiding over AML obligations of REs who provide notary, accounting services, legal services and legal service-providers (Law on AML, Art. 41), though it does not specifically reference conducting of inspections.

659. The State Securities Commission is empowered to cooperate internationally in the field of securities and the securities market (Law on Securities 2006, Art. 8). The MoF is party to three multilateral MOUs, including IOSCO, and has a bilateral MOU with Cambodia in the securities field. These MOUs authorise the exchange of regulatory and supervisory information related to the securities market and do not explicitly include provisions related to AML/CFT.

660. The MoF is empowered to cooperate internationally cooperation in the field of insurance (Law on Insurance Business 2000, Art.5). The MoF has a bilateral MOU with South Korea and has exchanged letters of cooperation with Chinese Taipei and Japan for international cooperation in the insurance sector. These instruments do not contain explicit provisions related to AML/CFT supervision.

661. *Criterion 40.13* - The relevant Vietnamese laws as cited in c.40.12 above, authorise broad international cooperation but do not extend explicit permissions to exchange information domestically available to them, including information held by FIs. However, there are also no limitations on the types of information that can be exchanged.

662. *Criterion 40.14* - The relevant Vietnamese laws, as cited in c.40.12 above, authorise broad international cooperation and do not restrict the types of information that can be exchanged. SBV's supervisory MOUs explicitly authorise the exchange of regulatory and prudential information. There are no explicit permissions to exchange information held by financial institutions. However, there are also no limitations on the types of information that can be exchanged. Only the MOU with US Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation explicitly provides for the exchange of AML/CFT related information. The securities MOUs similarly authorise the exchange of regulatory and prudential

information but do not explicitly provide for the exchange of AML/CFT related information. Vietnam did not demonstrate other international agreements.

663. *Criterion 40.15* - SBV is authorised to exchange information and coordinate with competent foreign banking inspection and supervision authorities in inspecting and supervising foreign entities subject to banking inspection and supervision that operate in Vietnam's territory and Vietnamese entities subject to banking inspection and supervision that operate overseas (Law on State Bank of Vietnam 2010, Art.61). Additionally, some of SBV's MOUs provide for foreign counterparts to conduct inquiries in Vietnam with certain conditions and for SBV to conduct inquiries on their behalf. Decree No. 86/2011 provides broad authorisation for those agencies with responsibility for inspections (which includes SBV, MoF and MOC for AML/CFT inspections) to carry out international cooperation on inspection work which would extend to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country, in order to facilitate effective group supervision.

664. *Criterion 40.16* - There is no requirement in law that financial supervisors must obtain the prior authorisation of the requested financial supervisor for any dissemination of information exchanged or use of that information for supervisory and non-supervisory purposes. SBV's MOUs contain provisions requiring prior approval for transfer and disclosure of information exchanged. The IOSCO MOU also requires prior authorisation for information exchanged to be used for a purpose other than those stated in the request. It is not clear whether other international agreements contain this requirement.

Exchange of Information between Law Enforcement Authorities

665. *Criterion 40.17* - MPS is responsible for implementing international cooperation on the prevention of ML within its competence (Law on AML, Article 38). While Article 48 of the Law on AML limits their duties and powers to perform the tasks of international cooperation on legal assistance in the prevention of ML, the MPS has separate and broader authority to cooperate with international counterparts under the Law on Organisation of People's Procuracies (Article 38). MPS is also MPS as the lead agency for international cooperation related to terrorism, which includes TF (Law on Anti-Terrorism Law 2013 (Article 37)). The MPS has signed over 100 MOUs with foreign counterparts that authorise the exchange of law enforcement information. Some of these MOUs explicitly authorise cooperation on ML, predicate crimes and TF, including MOUs with New Zealand, Australia and Italy.

666. The MoF on behalf of Customs has entered into a range of agreements and MOUs pursuant to Law on Customs 2014 (Article 6) for the exchange of customs information. The National Borders Law 2003, Border Guard Ordinance and a number of Decrees authorise the Border Guard to cooperate with foreign border protection authorities and governments on border protection. The Vietnam Coast Guard Law authorises the Coast Guard to cooperate internationally with respect to a range of predicate offences and other legal violations at sea.

667. The relevant international cooperation provisions in Vietnamese law are framed broadly and do not specifically authorise cooperation in identifying and tracing proceeds and instrumentalities of crime. However, some MPS MOUs have specific provisions on this.

668. Vietnam is also a member of INTERPOL, ASEANAPOL and the WCO and can exchange information with foreign counterparts through those channels, as well as on the basis of the principle of reciprocity.

669. *Criterion 40.18* - Vietnamese laws and MOUs provide broad authorisation for LEAs to cooperate internationally. However, they do not specifically authorise LEAs to use their powers to conduct inquiries and obtain information on behalf of foreign counterparts.

670. *Criterion 40.19* - The Criminal Procedure Code 2015 (Article 508) allows competent authorities of Vietnam to carry out joint or special investigations with foreign competent authorities. This article provides that cooperation shall adhere to international agreements that Vietnam has signed or on a case-by-case basis between relevant Vietnamese and foreign authorities.

Exchange of Information between Non-Counterparts

671. *Criterion 40.20* - The international cooperation provisions in Vietnamese law (Criminal Procedure Code 2015, Law on AML 2012, Law on Anti-Terrorism 2013) are broad enough to allow competent authorities to exchange information indirectly with non-counterparts. The relevant statutory provisions are not limited to direct disclosures of information and do not require that the information only be transmitted between counterparts. For example, Article 37 of the Law on AML authorises SBV to cooperate internationally with AML agencies and organisations as prescribed by law. This could include a broad range of foreign agencies involved in AML.

Weighting and Conclusion

672. Vietnam's legal framework enables competent authorities to exchange information with foreign counterparts on a broad basis which is provided significant weight. There are minor deficiencies in relation to informal international cooperation which are given less weight. These include that AMLD's challenges with exchanging information in a timely and secure manner. Vietnam has also only provided very limited feedback to foreign counterparts about the use and usefulness of the information received. There are no defined processes for safeguarding information though confidentiality is maintained. Supervisors' MOUs also do not have provisions specifically related to AML/CFT cooperation. It is not clear whether Vietnamese authorities can conduct inquiries on behalf of foreign counterparts. SBV does not have an explicit basis in law to cooperate internationally with respect to predicate offences and TF, however it is able to cooperate internationally through MPS. **Recommendation 40 is rated largely compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> Risk assessments do not consider some designated categories of offences, foreign trusts and some important sectors (c.1.1). Assessments have some gaps with analysis and a wider range of data (c.1.1). Risk assessments are not kept up to date as Vietnam does not conduct other specific threat assessments or sectoral assessments regularly to complement the NRA process (c.1.3). The Post-NRA Action Plan uses the findings of the NRA to a limited extent to address the identified risks with no risk-based application to allocating resources and implementing measures to prevent or mitigate ML/TF risks identified by the NRA (c.1.5). No requirement on all REs to take enhanced measures to manage and mitigate higher risks areas identified by the NRA (c.1.7). Not clear if the identification or assessment of a low risk customer is consistent with the NRA (c.1.8). Apart from simplified CDD measures on lower risk customers, Vietnam has not allowed simplified measures on other lower risk areas (c.1.8). Weaknesses with supervision and lack of requirements on REs to enhance controls apply to risk management (c.1.9) No requirement on REs to enhance controls in keeping with their risks (c.1.11)
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> Action plans and policies are not yet fully informed by identified ML/TF risk (c.2.1). No regulations to authorise agencies and relevant ministries to coordinate and exchange information in situations where no MOUs are in place (c.2.3).
3. Money laundering offence	PC	<ul style="list-style-type: none"> The ML offence does not cover all forms of transfer and conversion of proceeds of crime (c.3.1). Gaps with aspects of the coverage of predicate offences (c.3.2). Not clear that the ML offence extends to property that indirectly represents the proceeds of crime (c.3.4). Available fines are not proportionate and dissuasive (c.3.9). Criminal liability of legal persons does not apply on all designated categories of predicate offences and to all forms of legal persons (c.3.10).
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> No provisions that enable the authorities to take steps to void or prevent actions that may prejudice Vietnam's ability to freeze, seize or recover property subject to confiscation (c.4.2). Limited legislative provisions relating to management of frozen, seized or confiscated property (c.4.4).
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> Criminalisation of financing terrorist acts is not explicitly covered (c.5.1). Gap in criminalisation of financing of terrorist acts (c.5.2). Financing the travel of foreign fighters is not criminalised (c.5.2^{bis}). In the absence of explicit criminalisation of financing terrorist acts, there are no related sanctions for natural or legal persons (c.5.6 and c.5.7). Penalties for corporate legal entities are not proportionate and dissuasive (c.5.7). Ancillary offences of preparation and attempt do not apply to financing terrorist acts (c.5.8).
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> No specification of an evidentiary standard of proof when deciding whether or not to make a proposal for designation, nor did Vietnam provide any other documentation referring to evidentiary standards for this process (c.6.1). Not clear whether entities owned or controlled, or persons acting on behalf of or at the direction of designated persons and entities can be domestically designated (c.6.2). The evidentiary standard of proof of "reasonable grounds" or "reasonable basis" is not articulated in law (c.6.2) Gaps in the obligation to freeze without delay and without prior notice (c.6.5).

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • Freezing obligations are enforceable against banks, but not all natural and legal persons (c.6.5). • Prohibitions does not extend to providing funds, assets services or resources to entities owned or controlled, or persons and entities acting on behalf or at the direction of, designated persons and entities (c.6.5). • Prohibitions on providing funds are not enforceable (c.6.5). • Obligations to report freezing actions or prohibition of services are only enforceable against banks (c.6.5). • No guidance issued on freezing or unfreezing (c.6.5 & c.6.6). • No notice is given to REs when designations or de-listings are made (c.6.6). • No publicly known procedure dealing with for false positives (c.6.6).
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> • The TFS-PF framework was not fully implemented at the conclusion of the on-site (c.7.1.). • Freezing obligations are not enforceable (c.7.2). • No enforceable prohibition applied directly to persons or entities (c.7.2). • Reporting obligations not enforceable (c.7.2). • Mechanism for communicating designations and de-listings not established (c.7.2 and c.7.4). • No guidance on freezing and unfreezing issued (c.7.2 and c.7.4). • No civil, administrative or criminal penalties for failure to comply with TFS-PF TF obligations (c.7.3). • No publicly known procedures for de-listing requests or false positives (c.7.4).
8. Non-profit organisations	LC	<ul style="list-style-type: none"> • The assessment of TF vulnerabilities is basic and does not include any analysis of regional TF risk (c.8.1.). • Most outreach and education on best practice has not related to TF vulnerabilities and measure to protect against TF abuse (c.8.2). • No risk-based monitoring of NPOs (c.8.3). • Sanctions for violations are not proportionate and dissuasive (c.8.4). • Lack of clarity on the process of sharing of reports by MPS to the Investigation Security Agency of the MPS to investigate NPOs for suspected TF abuse or complicity (c.8.5). • No clear mechanisms to respond to international requests for information regarding domestic NPOs (c.8.6).
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> • No explicit provisions lifting confidentiality requirements in relation to TF-related reports or the sharing of information between FIs where this is required by R. 13, 16 or 17 (c.9.1).
10. Customer due diligence	PC	<ul style="list-style-type: none"> • No explicit requirements for FIs to undertake CDD measures in circumstances where an occasional transaction is carried out in several operations that appear to be linked, or where ML is suspected under other circumstances other than transactions, or when TF is suspected (c.10.2). • No enforceable verification measures including requirement to use reliable, independent source documents, data or information when FIs are verifying customers' identity (c.10.3). • No enforceable requirements for FIs, apart from securities companies, to identify and verify persons who act on behalf of a customer (c.10.4). • No specific provision for FIs to use the relevant information or data obtained from a reliable source when verifying the identity of the beneficial owner (c.10.5). • No explicit requirements for FIs to obtain information on the intended nature of the business relationship (c.10.6). • No explicit requirement for FIs to scrutinise transactions undertaken throughout the course of relationship or on an on-going basis (c.10.7). • No specific requirements for FIs to update information on "high-risk" customers or undertake reviews of existing records (c.10.7). • Other than insurance companies, no enforceable requirements for other FIs to understand the nature of the customer's business (c.10.8). • No requirement for FIs to understand the nature of the business of a customer who is a legal person or legal arrangement (c.10.8).

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> The verification measures for legal persons' information are not enforceable for FIs (c.10.9). No enforceable requirement of taking reasonable measures to verify the identity of beneficial owner (c.10.10). No explicit requirements for FIs to identify the beneficial owner who controls the legal person by other means, when there is a doubt regarding beneficial ownership or where no natural person exerts control through ownership interests (c.10.10). Lack of clarity in the measures of identification of beneficial ownership of legal persons in relation to the "private enterprise owners" and, any other individuals who actually dominate and control the legal person and natural person who holds the position of senior managing official (c10.10). No express provisions for the settlor and protector of a trust to be identified (c.10.11). Where a beneficiary is designated by certain characteristics, by class or by other means, no specific requirements to obtain sufficient information on the beneficiary to be able to establish identity at the time of payout (c.10.12). For life and other investment-related insurance policies, where a beneficiary is designated by characteristics or by class or by other means, no specific requirement to verify the identity of the beneficiary (c.10.12). No provisions explicitly requiring verification of identity at the time of payout (c.10.12). No specific requirement for relevant FIs to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable (c.10.13). No specific requirement to take enhanced measures, which include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout (c.10.13). Lack of comprehensive coverage on conditions for a delayed verification (c.10.14). No provision requiring FIs to adopt risk management procedures concerning the condition under which a customer may utilise the business relationship prior to verification (c.10.15). No specific provisions in relation to existing customers and no obligations for FIs to apply the CDD requirements to existing customers based on materiality and risk, and at appropriate times (c.10.16). No explicit requirements for FIs to undertake enhanced measures where the TF risk is higher, or when under other circumstances regardless of the risk level of customers (c.10.17). No specific requirements for Vietnam or FIs to conduct adequate analysis of risks for the purpose of R.10 (c.10.18) No explicit provisions stating that the simplified measures are not acceptable when there is a suspicion of ML/TF, or specific higher risk scenarios apply (c.10.18). No obligations for FIs not to open accounts, commence business relations or perform the transaction, or to terminate the business relationship when CDD cannot be completed and no obligations to consider filing an STR (c.10.19). No explicit provisions permitting FIs not to pursue the CDD process where there are suspicions of ML or TF and there is a risk that the CDD process will tip-off the customer (c.10.20).
11. Record keeping	PC	<ul style="list-style-type: none"> Lack of clarity on the completion of the transaction and whether all necessary records and records of international transactions are covered (c11.1). No specific requirement of retaining all CDD and all results of any analysis undertaken and business correspondence (c.11.2). No specific requirements on form of maintaining transaction records and other relevant information sufficient to permit reconstruction of individual transactions (c.11.3). Lack of clarity on FIs to ensure that all CDD information and transactions records are available swiftly to authorised agencies (c.11.4).

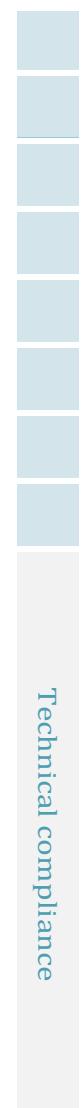
Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
12. Politically exposed persons	NC	<ul style="list-style-type: none"> • Lack of comprehensive coverage of foreign PEP and obligations (c.12.1). • No requirement for REs to obtain senior management approval before establishing (or continuing, for existing customers) business relationships with foreign PEPs (c.12.1). • No requirement for REs to identify the source of the customer's assets when a beneficial owners is a foreign PEP (c.12.1). • No requirements for REs to conduct enhanced monitoring on ongoing basis (c.12.1). • No obligation for REs to implement specific requirements for domestic PEPs and persons who have been entrusted with a prominent function by an international organisation (c.12.2). • No obligation to apply controls to close associates of all types of PEPs (c.12.3). • No controls on the beneficiaries or the beneficial owner of beneficiaries of life insurance policies who may be PEPs (c.12.4).
13. Correspondent banking	PC	<ul style="list-style-type: none"> • No direct requirement for FIs to determine respondent institution's quality of supervision, including whether the respondent has faced ML/TF investigation or regulatory action (c.13.1). • No explicit requirement for the FIs to clearly understand the respective AML/CFT responsibilities of each institution (c.13.1). • No requirements for FIs to satisfy themselves that the respondent banks do not permit their accounts be used by shell banks (c.13.3).
14. Money or value transfer services	PC	<ul style="list-style-type: none"> • No actions undertaken against illegal MVTS and no proportionate and dissuasive sanctions applied (c.14.2). • Deficiencies in relation to inspection and supervision for CFT purposes apply (c.14.3). • Not clear whether natural person can become an agent for MVTS providers (c.14.4) • No explicit requirements on the principal MVTS to include their agents in their AML/CFT compliance programmes (c.14.5).
15. New technologies	NC	<ul style="list-style-type: none"> • No assessment of ML/TF risk by Vietnam and the ML/TF risk assessment by FIs only cover non-face to face transactions only (c.15.1). • Not clear whether FIs are required to undertake the risk assessment prior to the launch or use of such products, practices and technologies and the limitation of the coverage of new technologies apply (c.15.2) • Limited steps in assessing ML/TF risks emerging from VA/VASPs and no specific assessment of ML/TF risks emerging from VA/VASPs activities and the activities or operations of VASPs (c.15.3). • Limited prohibitions in place on VAs and no obligations for VASPs to take appropriate steps to identify, assess and mitigate their ML/TF risks (c.15.3). • No measures or requirements on licensing or registering VASPs, and preventing criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a VASP (c.15.4). • No actions to enforce the partial prohibition or to identify natural or legal persons that carry out VASP activities without the requisite license or registration, and apply appropriate sanctions (c.15.5) • No measures or requirements in relation to supervision of VASPs (c.15.6). • No measures or requirements imposed on the areas (c.15.7-c.15.9). • Deficiencies in relation to TFS apply and not clear whether the obligation to monitor the MPS blacklist applies to VASPs (c15.10). • No measures or requirements imposed on VASPs in relation to reporting obligations (c15.10) • No legal basis for supervisors to exchange information with their foreign counterparts for VASPs (c15.11).
16. Wire transfers	PC	<ul style="list-style-type: none"> • No explicit requirement for cross-border wire transfer information of FIs, including required and accurate originator and beneficiary information accompanied with cross-border wire transfers (c.16.1).

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • No specific requirements for batch file cross-border wire transfers (c.16.2). • No specific requirements for cross-border wire transfers under USD 1,000 (c.16.3). • No verification requirements for cross-border wire transfers under USD 1,000 when there is a suspicion of ML/TF (c.16.4). • Not clear that all originator and beneficiary information collected should be maintained by the ordering institution in accordance with R.11 and other payment service providers who can implement wire transfers are not covered (c.16.7). • No provision that the ordering FI should not be allowed to execute wire transfers if it does not comply with the requirements (c.16.8). • No explicit requirement for intermediary institutions to ensure all originators and beneficiary information that accompanies a cross-border wire transfer is retained (c.16.9). • No explicit provision which covers the circumstances where technical limitations prevent the required information accompanying the wire transfer (c.16.10). • No specific regulation for intermediary institutions to take reasonable measures consistent with straight-through processing to identify cross-border wire transfers that lack required originator or beneficiary information (c.16.11). • No explicit requirements related to follow-up action by intermediary FIs (c.16.12). • No explicit requirements related to follow-up action by beneficiary FIs (c.16.15). • Unclear whether agents of foreign currency remittance services are also required to comply with R.16 when they are providing money or value transactions (c.16.16). • No specific requirement for MTS that controls both the ordering and beneficiary side of the wire transfer, to consider all information to determine whether a STR should be or has been filed (c.16.17).
17. Reliance on third parties	PC	<ul style="list-style-type: none"> • Deficiencies on CDD and record-keeping apply and no requirement for the FIs to obtain immediately the necessary CDD information from the third parties (c.17.1). • No requirement on financial groups to implement group-wide programmes against ML/TF and deficiencies regarding CDD, record-keeping and politically exposed-persons apply (c.17.3).
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> • No specific provision covering screening procedures to ensure high standards when hiring employees (c.18.1). • No obligation for the financial groups to implement group-wide programmes, including information sharing mechanisms (c.18.2). • No specific requirements on FIs to ensure their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements and no requirement on the financial groups to apply appropriate additional measures to manage the ML/TF risks, and inform their home supervisors in a situation where the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements (c.18.3).
19. Higher-risk countries	PC	<ul style="list-style-type: none"> • The scope of enhanced due diligence measures to be applied by FIs on natural and legal persons from countries which is called for by the FATF does not cover business relationships (c.19.1). • There is no specific provision for Vietnam to apply proportionate countermeasures on higher risk countries (c.19.2). • No specific measures to ensure FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries on an on-going basis (c.19.3).
20. Reporting of suspicious transaction	PC	<ul style="list-style-type: none"> • No explicit requirement to report STRs related to TF to AMLD (c.20.1). • The requirement to report attempted transactions does not apply to attempted transactions related to TF (c.20.2).
21. Tipping-off and confidentiality	PC	<ul style="list-style-type: none"> • No specific provisions to protect FIs, their directors, officers and employees from administrative, civil, or criminal liability if they report STRs (c.21.1).

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> No explicit prohibition on directors, officers, and employees from disclosing that a report has been made to the FIU (c.21.2).
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> All relevant DNFBP are subject to CDD obligations, however the gaps set out in R.10 apply to DNFBPs (c.22.1). All relevant DNFBP are subject to record keeping obligations, however the gaps set out in R.11 apply to DNFBPs (c.22.2) All relevant DNFBP are subject to the limited PEP obligations and the gaps set out in R.12 apply to DNFBPs (c.22.3) All relevant DNFBP are subject to new technology obligations, however the gaps set out in R.15 apply to DNFBPs (c.22.4) All relevant DNFBP are subject to reliance on third party obligations, however the gaps set out in R.17 apply to DNFBPs (c.22.5)
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> Gaps in relation to R.18, 19, 20 and 21 apply equally to DNFBPs.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> Information regarding creation and types of non-commercial legal persons is only publicly available in the decrees governing their formation (c.24.1). Deficiencies in the assessment of risks of different types of legal persons, including gaps with certain not-for profit legal persons (c.24.2). Basic information publicly available does not cover all regulating powers as the charter of the company is not publicly available (c.24.3). Gaps with mechanisms to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority (c.24.4). No obligation that information on basic regulating powers is kept up to date (c.24.5) Gaps with the availability of information obtained through CDD undermines the mechanism to ensure that information on beneficial ownership of a legal person can be determined in a timely manner by a competent authority (c.24.6). No specific provisions requiring that beneficial ownership information held by REs should be “accurate” and up-to-date (c.24.7). No specific requirements or obligations for natural persons or DNFBPs to cooperate with competent authorities on behalf of legal persons (c.24.8). Gaps with aspects of record keeping obligations (c.24.9). Some weaknesses in powers of competent authorities to obtain timely access to all basic and beneficial ownership information (c.24.10). Weaknesses in sanctions available to enforce compliance with measures related to transparency of legal persons (c.24.13) It is unclear whether there are any explicit mechanisms for Vietnamese competent authorities to obtain beneficial ownership information on behalf foreign counterparts (c.24.14). No monitoring of the quality of assistance Vietnam receives from other countries in response to requests for basic and beneficial ownership information (c.24.15).
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> No requirements that trustees of foreign trusts operating in Vietnam maintain the information required under this recommendation (c.25.1). No requirements for trustees to keep records accurate and up to date. However, in the limited circumstances of professional trustees acting in their capacity as REs, there are obligations to comply with CDD requirements to collect and update information (c.25.2). No obligations on trustees to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out the occasional transactions (c.25.3). No provisions allowing timely access to information held specifically by trustees in Vietnam (c.25.5). It is unclear whether there are any explicit mechanisms for Vietnamese competent authorities to obtain beneficial ownership information on behalf foreign counterparts (c.25.6)

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> No sanctions for trustees who fail to perform the duties relevant to meeting their obligations under this recommendation (c.25.7). A lack of clarity for REs who fail to disclose information and no sanctions specifically against trustees (c.25.8).
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> No designated AML/CFT regulator and supervisor for intermediary payment service providers and online lending institutions (c.26.1). While SBV is the supervisor and regulator of CFT, there is no clear authorisation in the law to formulate regulatory requirements and carry out supervision (c.26.1). No clarity on the licensing authority for fund management companies or that online lending institutions must be licensed or registered before operating (c.26.2). Limited fit and proper requirements in place to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a FI (c.26.3). No clear consolidated group supervision for AML/CFT purposes (c.26.4). No supervision or monitoring of the non-cash payment sector, or of online lending institutions (c.26.4). The frequency and intensity of supervision undertaken by supervisors is not based on ML/TF risks, policies, internal controls and procedures associated with the institution or group (c.26.5). Supervisors have not assessed the risk profile of FIs and financial groups or review the risks periodically in response to major events (c.26.6).
27. Powers of supervisors	PC	<ul style="list-style-type: none"> No supervisors have powers to supervise or monitor online lending institutions and IPSPs for compliance with AML requirements (c.27.1). Minimal CFT requirements imposed on FIs, other than TFS (c.27.1). Supervisors do not have the authority to conduct CFT inspections or apply sanctions for non-compliance with CFT requirements (c.27.2). AML/CFT supervisor's power to compel production of information for IPSPs and online lending institutions are not explicitly covered (c.27.3). Penalties that can be imposed by SBV only apply for breaches of the Law on AML 2012 and not to CFT breaches (c.27.4). No legal basis authorising any AML/CFT supervisor to sanction foreign currency exchange companies, IPSPs, or online lending institutions for non-compliance with AML requirements (c.27.4).
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> Limited fit and proper checks on DNFBPs and their beneficial owners (c.28.1 & 28.4) Minimal CFT supervision of casinos, other than TFS (c.28.1) No clear powers to apply sanctions for AML/CFT failures (c.28.1 & 28.4) No competent authority is designated to monitor and ensure DNFBPs' compliance with CFT obligations other than TFS (c.28.2) A lack of systems to monitor DNFBPs' compliance with AML/CFT requirements (c.28.1 & 28.3). No instruments setting out which competent authority is designated to apply sanctions against DNFBPs to deal with failures to comply with AML requirements (c.28.4). Supervision of DNFBPs is not undertaken on a risk-sensitive basis (c.28.5).
29. Financial intelligence units	PC	<ul style="list-style-type: none"> The deficiency in R.20 and R.23 regarding the lack of explicit obligation to report TF-related STRs cascades to this Recommendation (c.29.1 & c.29.2). No authority to access information related to TF (c.29.3). Limited strategic analysis conducted by AMLD (c.29.4). No use of dedicated, secure and protected channels for dissemination of intelligence (c.29.5). No security clearance process for AMLD staff members or security policy. (c.29.6)

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> AMLD is not fully operationally independent and autonomous from the SBV (c.29.7).
30. Responsibilities of law enforcement / investigative authorities	C	<ul style="list-style-type: none"> The Recommendation is fully met.
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> No powers to compel natural persons to produce records (c.31.1). No authority to use undercover operations or controlled delivery (except in relation to drug offences) (c.31.2). Other 'special methods of investigation' can only be used for specified offences (c.31.2).
32. Cash couriers	LC	<ul style="list-style-type: none"> Administrative penalties are not proportionate, as penalties when entering Vietnam are much lower than penalties when exiting Vietnam and Penalties are at the lower end of the scale and are not considered dissuasive (c.32.5). Powers to confiscate currency or BNI reflect some gaps identified in R.4 (c.32.11).
33. Statistics	C	<ul style="list-style-type: none"> The recommendation is fully met.
34. Guidance and feedback	PC	<ul style="list-style-type: none"> No guidance issued for NBFIs and DNFBPs and guidance to banks did not extend to CFT matters (c.34.1). Limited guidance has been given on CDD and TFS implementation (c.34.1)
35. Sanctions	NC	<ul style="list-style-type: none"> For R.6 – no sanctions for breach of TFS obligations; sanctions for banks that fail to report are not proportionate and dissuasive; and there are no sanctions for other FIs or DNFBPs that fail to report (c.35.1). For R.8 – sanctions are not proportionate and dissuasive due to limited range and lack of penalties (c.35.1). For R.9-23 – there are weaknesses with the range of proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the requirements for preventive measures and there are no sanctions for DNFBPs and some FIs (c.35.1). Limited sanctions for directors and senior management of banks; no sanctions for directors and senior management of NBFIs and DNFBPs (c.35.2).
36. International instruments	LC	<ul style="list-style-type: none"> Vietnam made a declaration that it does not consider itself bound by the provisions with regard to the criminal liability of legal persons for the Merida Convention and it also does not take the Convention as a legal basis for extradition (c.36.1). Minor deficiencies in implementation of relevant articles of all four Conventions (c.36.2).
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> No explicit obligation to provide assistance 'rapidly' (c.37.1). Prioritisation procedure is not comprehensive (c.37.2). No obligation in law to maintain confidentiality of MLA requests (c.37.5). Dual criminality is a required whether or not the request involves coercive action (c.37.6). The Law on Legal Assistance 2007 is silent on whether dual criminality will be satisfied regardless of category and denomination of the offence provided both countries criminalise underlying conduct (c.37.7). Deficiencies in powers and investigative techniques under R.31 cascade to this Recommendation (c.37.8).
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> No authority to provide assistance on the basis of non-conviction based proceedings (c.38.2). No specific arrangements for coordinating seizure or confiscation (c.38.3). No mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated in response to MLA requests (c.38.4).



Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
39. Extradition	LC	<ul style="list-style-type: none"> • Vietnam can refuse requests that relate to Vietnamese citizens, though in these cases they can be addressed domestically (c.39.1). • There are minor gaps in relation to simplified procedures for extradition (c.39.4)
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> • Most competent authorities do not have clear and secure gateways, mechanisms or channels to facilitate cooperation (c.40.2). • Most competent authorities do not have processes for prioritisation of execution of requests (c.40.2). • Most competent authorities do not provide feedback (c.40.4). • No restrictions on use of information outside of MOUs (c.40.6). • No provisions in law or MOUs allowing Vietnam to refuse to provide information if the requesting authority cannot protect the information (c.40.7). • No explicit powers to conduct inquiries on behalf of foreign counterparts (c.40.8). • No explicit legal basis for SBV (AMLD) to cooperate internationally with respect to TF (except through MPS) or ML predicate offences (c.40.9). • AMLD has only provided feedback once to a foreign counterpart (c.40.10). • Some gaps in explicit powers for AMLD to exchange TF related information with a foreign counterpart (c.40.11). • Laws and most MOUs on supervisory cooperation do not explicitly cover AML/CFT (c.40.12). • supervisors are explicitly empowered to be able to exchange with foreign counterparts information domestically available to them (c.40.13) • Only some MOUs require supervisors to obtain prior authorisations before dissemination of information exchanged (c.40.16). • No explicit authority in law for LEAs to cooperate in identifying and tracing proceeds and instrumentalities of crime (c.40.17). • No explicit authority for LEAs to use their powers to conduct inquiries and obtain information on behalf of foreign counterparts (c.40.18).

Glossary

AMLD	Anti-Money Laundering Department of the SBV
COMINGO	Committee for foreign non-governmental organization affairs
EFT	Electronic funds transfer
CTR	Cash transaction report
GDC	The General Department of Customs
IPSP	Intermediary payment service providers
MIT	Ministry of Industry and Trade
MIC	Ministry of Information and Communications
MLA	Mutual legal assistance
MLLC	Multi-member limited liability companies
MOC	Ministry of Construction
MOD	Ministry of Defence
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOHA	Ministry of Home Affairs
MOJ	Ministry of Justice
MPI	Ministry of Planning and Investment
MPS	Ministry of Public Security
NBFI	Non-bank financial institution
NCC	National Coordinating Committees for AML and CFT
NRA	National Risk Assessment on ML and TF
REs	Reporting entities
SBV	State Bank of Vietnam
SLLC	Single-member limited liability companies
SPC	Supreme People's Court
SPP	The Supreme People's Procuracy
SSC	State Securities Commission
UNSCR	United Nations Security Council Resolution
VA	Virtual assets
VASP	Virtual asset service providers
VND	Vietnam Dong

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Anti-money laundering and counter-terrorist financing measures

3rd Round APG Mutual Evaluation Report - Vietnam

In this report: a summary of the anti-money laundering (AML)/counter-terrorist financing (CTF) measures in place in Vietnam as at November 2019. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Vietnam's AML/CFT system, and provides recommendations on how the system could be strengthened.