

Comprehensive Insights into the Impact of Vietnam's Anti-Money Laundering Law on Financial Transactions and Reporting Requirements

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Introduction

Starting 1 December 2023, transactions with the minimum value of 400,000,000 Vietnamese dong will require reporting to the State Bank of Vietnam (SBV). In line with this change, this article delves into the key aspects of Law No. 14/2022/QH15 on Anti-Money Laundering (AML Law 2022), Prime Minister Pham Minh Chinh's recent Decision No. 11/2023/QD-TTG and Circular No. 09/2023/TT-NHNN.

The AML 2022, which was promulgated by the National Assembly on 15 November 2022, took effect on 1 March 2023. On 27 April 2023, Prime Minister Pham Minh Chinh introduced Decision No. 11/2023/QD-TTG outlining the mandatory reporting requirements for a range of high-value transactions and State Bank of Vietnam issued Circular No.09/2023/TT-NHNN on guiding implementation of the AML. Accordingly, detailed provisions on know-your-customer (KYC) have been launched:

- allowing verification of KYC information through outsourced services;
- enabling KYC through third parties; and
- expanding the organisations responsible for conducting KYC procedures and the subjects obligated to issue anti-money laundering reports to the SBV.

Views on KYC Procedures

The AML Law 2022 introduces distinct regulations on identifying information of individual customers, particularly those with the following client profiles:

- Vietnamese nationals;
- foreign nationals residing in Vietnam;
- foreign nationals not residing in Vietnam;
- individuals holding dual nationalities; and
- stateless individuals.

As a new key update, the "financial institutions providing intermediary payment services", a highly regarded service in Vietnam, will be subject to the same KYC procedures as financial institutions¹.

¹ Article 4.1.dd of the AML Law 2022

The distinctive feature about the AML Law 2022 is its provision of the verification of KYC information through outsourced services offered by other organisations operating under the laws of Vietnam². Hiring an external vendors for KYC verification must adhere to the parties' agreement and relevant laws. The financial organisations must ensure that the outsourced service provider maintains the confidentiality of its customer's information as required by law, as well as the outcomes of the KYC verification conducted by the service provider.

The AML Law 2022 has thus ushered in a new service industry for businesses in Vietnam. According to this regulation, the service provider of "verifying customer identification information" is only required to be a legally established entity operating under the laws of Vietnam to enjoy this legal update. However, upon closer observation, it is imperative to note the absence of specific regulations governing this service in Decision No. 27/2018/QĐ-TTg on promulgating the Vietnam Standard Industrial Classification System (VSIC). Consequently, in order for financial institutions and service providers to fully leverage this regulation, guidance from business registration agencies on VSIC for this service is essential to ensure compliance and proper categorization of outsourced service.

The KYC procedure may also be carried out through outsourced vendor, subject to specific requirements and criteria, encompassing³:

- It is a financial institution or relevant non-financial business or profession engaged in relationships with customers. This requirement does not extend to outsourcing or agency relationships.
- If it is a foreign legal person, it must identify customers under the provisions of the AML Law 2022 or the recommendations of the Financial Action Task Force.
- It must deposit and timely, fully provide the customer identification data to reporting entities upon request. Additionally, it must execute privacy and information security practices as mandated by law.
- It must be supervised or monitored by competent authorities.

The AML Law 2022 also aims to alleviate the inconvenience experienced by customers who must undergo KYC procedures multiple times when opening accounts with different credit institutions or using e-wallet services offered by different intermediaries. Accordingly, customers who have already established a relationship with a financial institution will only need to undergo KYC once. Other financial institutions can rely on the initial KYC results for that customer. However, to practically apply this regulation, an open data system must be established by SBV and the system of financial organisations, accessible for all banks and financial institutions to employ KYC data of any individual or organisation similar to the existing National Credit Information Center of Vietnam.

Reporting electronic funds transfer, high-value and suspicious transactions

In terms of reporting, consistent with regulations on KYC subjects, the AML Law 2022 has officially incorporated "financial institutions providing intermediary payment services" to those subject to anti-money laundering reporting requirements.

² Article 13 of the AML Law 2022

³ Article 14 of the AML Law 2022

Financial institutions are now entrusted with reporting obligations for electronic funds transfer (EFT). Circular 09/2023/TT-NHNN (Circular 09) stipulates that domestic EFT with a minimum value of 500,000,00 Vietnamese dong or international EFT with a minimum value of 1.000 USD, conducted by the following financial institutions, must be reported to AML authority of SBV⁴:

- initiating institutions (ie, entities originating transfer orders on behalf of clients);
- intermediary institutions (ie, institutions that receive and transmit transfer orders between initiating and beneficiary institutions); and
- beneficiary institutions (ie, institutions that receive transfer orders and disburse funds to recipients).

Consequently, specific conditions have been placed upon local institutions involved in EFT processing⁵:

- Initiating institutions must contain complete and accurate information, adhering to regulations on cashless payment and foreign exchange.
- Intermediaries institutions and beneficiaries must possess a mechanism to identify non-compliant transfers as per regulations on cashless payment and foreign exchange. They may reject, suspend or implement post-transaction control measures or report such non-compliant transfers as suspicious transfers.

In light of the above, the report of financial institutions need to encompass at least the following:

- initiating and beneficiary institutions;
- individual and corporate customers; and
- transaction details such as account numbers, currency, date and purpose of transaction.

Certain customer identification details (ie, date of birth, identity card or passport number, business registration number or enterprise tax code) are not mandated for either beneficiaries of outbound transfers from Vietnam or individuals transferring from overseas to Vietnam.

On the other hand, the aforementioned reporting obligations do not extend to the following scenarios:

- intermediary financial institutions engaged in e-transaction;
- transactions stemming from debit or credit card payments or pre-paid cards to pay for the purchase of goods or services; and
- transactions occurring between transmitters and beneficiaries that are both financial institutions.

Regarding high-value transactions, from 1 December 2023, transactions with a minimum value of 400,000,000 Vietnamese dong must be reported to the SBV⁶. Whilst the current regulation, which will be in place until 30 November 2023, designates the threshold for high-value transactions at 300,000,000 Vietnamese dong.

⁴ Article 9.1 of the Circular 09

⁵ Article 4.1.dd of the AML Law 2022

⁶ Decision No. 11/2023/QĐ-TTG

Further, financial organisations are compelled to report suspicious transactions. Notably, the AML Law 2022 distinguishes itself from the prior anti-money laundering regulations by providing more precise and comprehensive guidelines for identifying "suspicious signs". In particular:

Suspicious signs in the payment intermediary sector include:

- fast deposits and withdrawals from e-wallets;
- cases where there is a high-value transaction volume during the day but the e-wallet balance is low or zero;
- cases where the e-wallet suddenly receives a substantial deposit;
- deposits into or withdrawals from e-wallets or transfers of money between e-wallets made by organisations or individuals involved in the crime of creating illegal assets that are posted on the internet; and
- customers who regularly use login devices or overseas internet protocol (IP) addresses to access e-wallets.

With regard to banking sector, new suspicious signs have been added, namely:

- an indication that customers use personal accounts to perform transactions related to the organisation's activities or trade on behalf of other individuals; and
- online transactions through accounts that constantly change their login devices or IP addresses abroad.

Meanwhile, some suspicious signs have been removed, namely:

- sudden trading without reasonable grounds when the customer's account had not carried out any transactions for over a year; and
- when information about the origin of assets used for financial leasing of customers is not transparent.

In the field of securities, suspicious signs have been amended as follows:

- Removing the sign that "customers transfer securities outside the system without a reasonable reason".
- Supplementing the new sign for cases where "foreign investors residing in countries or territories with a high risk of money laundering . . . contribute capital to establish securities investment funds and securities investment companies in Vietnam".

Concluding Remarks

The AML Law 2022 has implemented more stringent regulations, resulting in heightened barriers and controls for money transfers by individuals and organizations within Vietnam, as well as transactions involving foreign countries. Furthermore, such stringent regulations will entail greater compliance costs for reporting entities, including expenses related to staff

training, system upgrades and the establishment of AML units or personnel. The true test lies in effective execution by reporting entities, including reviews of existing policies, procedures, and systems to identify gaps against requirements under Circular 09.

Popular payment intermediaries like e-wallets are now officially required to abide by KYC procedures and reports related to anti-money laundering. The AML Law 2022 also explicitly outlines the specific indicators of suspicious activities in the banking sector that necessitate reporting to the SBV.

On the other hand, the AML Law 2022 introduces more flexible regulations, such as:

- raising the minimum threshold for reporting high-value transactions;
- streamlining and expediting the KYC process without overlap (as it is at present) by allowing financial institutions to leverage KYC results obtained from another financial institution for the same customer or through an outsourced service to verify KYC information.

However, for these new regulations to be effectively implemented, it is necessary to receive support from state management agencies, namely:

- the SBV establishing a centralized KYC data center system that handles customer information for both individuals and organisations; and
- business registration agencies that can guide business registration codes for services of verification of KYC information.

This would facilitate access and utilization of data by all financial institutions operating in the market, a similar system to the existing operation of the SBV's National Credit Information Center.