



VIETNAM ME1

# Mutual Evaluation Report

Anti-Money Laundering and Combating the  
Financing of Terrorism

# VIETNAM

8 July 2009

Vietnam is a member of the Asia Pacific Group on Money Laundering (APG). This evaluation was conducted by the APG and was adopted as a 1st mutual evaluation by its Plenary on 8 July 2009.

2009 ASIA/PACIFIC GROUP ON MONEY LAUNDERING. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission. Requests for permission to further disseminate, reproduce or translate all or part of this publication should be obtained from the APG Secretariat, Locked Bag A3000, Sydney South, NSW 1232, Australia.  
(Telephone: +612 9286 4383 Fax: +612 9286 4393 Email: [mail@apgml.org](mailto:mail@apgml.org))

<b>Table of Contents</b>	<b>Page</b>
Acronyms .....	5
Preface .....	6
Executive Summary .....	7
1. GENERAL.....	17
1.1. General Information on Vietnam .....	17
1.2. General Situation of Money Laundering and Financing of Terrorism.....	20
1.3. Overview of the Financial Sector and DNFBP .....	25
1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements .....	34
1.5. Overview of strategy to prevent money laundering and terrorist financing.....	35
2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES .....	40
2.1 Criminalization of Money Laundering (R.1 & 2) .....	40
2.2 Criminalization of Terrorist Financing (SR.II) .....	50
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3) .....	52
2.4 Freezing of funds used for terrorist financing (SR.III).....	61
2.5. The Financial Intelligence Unit and its Functions (R.26) .....	63
2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28) .....	74
2.7. Cross Border Declaration or Disclosure (SR.IX).....	84
3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS.....	94
3.1. Risk of money laundering or terrorist financing .....	97
3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8).....	97
3.3. Third Parties and Introduced Business (R.9).....	108
3.4. Financial Institution Secrecy or Confidentiality (R.4) .....	108
3.5. Record keeping and wire transfer rules (R.10 & SR.VII) .....	111
3.6. Monitoring of Transactions and Relationships (R.11 & 21) .....	115
3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)..	117
3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22) .....	125
3.9. Shell Banks (R.18) .....	129
3.10. The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25).....	130
3.11. Money or Value Transfer Services (SR.VI).....	145
4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS.....	148
4.1. Customer Due Diligence and Record-keeping (R.12).....	148

4.2.	Monitoring Transactions and other Issues (R.16) (Applying R.13 to 15 & 21).....	150
4.3.	Regulation, Supervision, and Monitoring (R.24-25).....	150
4.4.	Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20) .....	153
5.	LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS .....	155
5.1.	Legal Persons—Access to Beneficial Ownership and Control Information (R.33) .	155
5.2.	Legal Arrangements — Access to Beneficial Ownership and Control Information (R.34).....	160
5.3.	Non-Profit Organizations (SR.VIII).....	161
6.	NATIONAL AND INTERNATIONAL CO-OPERATION .....	166
6.1.	National Co-Operation and Coordination (R.31) .....	166
6.2.	The Conventions and UN Special Resolutions (R.35 & SR.I).....	167
6.3.	Mutual Legal Assistance (R.36-38, SR.V).....	170
6.4.	Extradition (R.37, 39, SR.V).....	179
6.5.	Other Forms of International Co-Operation (R.40 & SR.V).....	182
7.	OTHER ISSUES.....	185
7.1.	Resources and Statistics .....	185
7.2.	Other relevant AML/CFT Measures or Issues .....	185
7.3.	General Framework for AML/CFT System (see also section 1.1).....	185

#### Tables

1.	Ratings of Compliance with FATF Recommendations.....	187
2.	Recommended Action Plan to Improve the AML/CFT System.....	198

#### Annexes

Annex 1.	Authorities' Response to the Assessment .....	213
Annex 2.	Details of All Bodies Met During the On-Site Visit.....	220
Annex 3.	List of All Laws, Regulations, and Other Material Received.....	221
Annex 4.	Copies of Key Laws, Regulations, and Other Measures.....	223

## ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AMLIC	Anti Money Laundering Information Centre
BCP	Basel Core Principles
CDD	Customer Due Diligence
CPC	Criminal Procedure Code
CSP	Company Service Provider
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FSRB	FATF-style Regional Body
FT	Financing of terrorism
IAIS	International Association of Insurance Supervisors
KYC	Know your customer/client
MFA	Ministry of Foreign Affairs
MOU	Memorandum of Understanding
ML	Money laundering
MLA	Mutual legal assistance
MOF	Ministry of Finance
MPS	Ministry of Public Security
NPO	Non-profit organization
PEP	Politically-exposed person
ROSC	Report on Observance of Standards and Codes
SBV	State Bank of Vietnam
SSC	State Securities Commission
SPP	Supreme People's Procuracy
SPC	Supreme People's Court
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution
VND	Vietnam Dong
VUFO	Vietnam Union of Friendship Organisation

## **PREFACE**

### **Information and methodology used for the evaluation of Vietnam**

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Vietnam was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Vietnam, and information obtained by the evaluation team during its on-site visit to Vietnam from 6-20 of November, 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Vietnam government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and regulatory issues. The Evaluation Team consisted of:

#### **Legal expert**

- Mr Steven Parker, Senior Counsel, Hong Kong Monetary Authority (Hong Kong, China)

#### **Financial experts**

- Mr Bob Perry, Senior Manager – Supervision Banking and Finance, AUSTRAC (Australia)
- Mr. Edwin R. Firmacion, Bangko Sentral ng Pilipinas (The Philippines)

#### **Law enforcement expert**

- Miss Supranee Satitchaicharoen, AMLO (Thailand)
- Mr Mohammad Mustafa Massoudi, Deputy Director General FinTRACA (Afghanistan), additional expert

#### **APG Secretariat**

- Mr Lindsay Chan, Executive Officer

3. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

4. This report provides a summary of the AML/CFT measures in place in Vietnam as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Vietnam levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

## **EXECUTIVE SUMMARY**

### **Key Findings**

1. The key Anti-Money Laundering (AML) laws in Vietnam concerning the criminalization of Money Laundering are Articles 250 and 251 of the Penal Code 1999 and Article 3 (5) in the Law on Drug Prevention of 2000. AML preventative and institutional measures are contained in AML Decree 74 of 2005 but not Combating the Financing of Terrorism (CFT) measures. Neither the Penal Code nor AML Decree 74 criminalizes terrorist financing as an autonomous offense.
2. Vietnam has claimed 603 convictions under Article 250 and one conviction under Article 251. Convictions have been predominately confession based. However, there is a lack of comprehensive statistical data on convictions under Article 250.
3. The Anti Money Laundering Information Centre (AMLIC), Vietnam's Financial Intelligence Unit (FIU), is based within the State Bank of Vietnam (SBV); and is essentially the lead agency on AML/CFT. AMLIC has a staff of 23, and has disseminated 19 Suspicious Transaction Reports (STRs) from 58 received to date.
4. The SBV has implemented AML Decree 74 obligations through SBV Guideline 281 for credit institutions. The SBV Guideline covers banking and non-banking credit institutions. However, only the banking sector has commenced implementation of AML Decree 74 requirements despite a number of other financial "credit institutions" being defined in Article 12 of the Law on Credit Institutions. Furthermore, no other central government ministries, covering financial and Designated Non-Financial Businesses and Professions (DNFBPs) sectors, have issued such guidance and implemented AML Decree 74 in their sectors.
5. There has been no AML/CFT on-site inspection undertaken to date by financial and DNFBP sectors supervisors.
6. Vietnam has ratified the 1988 UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention) but has expressed reservations on Article 6. It has not ratified or acceded to the UN Convention against Transnational Organized Crime (Palermo Convention). Vietnam has acceded to the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (CFT Convention).

### **1. General**

7. Vietnam has been in transition from a centrally-planned to a market-based economy since 1986 with the adoption of the Doi Moi (reform) policy. Vietnam is now the second fastest growing economy after China in Asia. GDP growth has averaged 7.5% per year since 2001.
8. According to authorities, the main sources of illicit funds in Vietnam are fraud, gambling, trading in weapons, prostitution, trading in illegal narcotics, trafficking and counterfeiting of fake goods, corruption and trafficking in women and children. Based on predicate crime statistics, fraud and drug trafficking are the major proceeds of crime.

9. Vietnam is not regarded as a major risk for international terrorism. Certainly, there has been no terrorist incident in Vietnam linked to known international terrorist groups, although there have been numerous cases over the years of overseas Vietnamese being charged and convicted under the Terrorism Article 84 of the Penal Code.

10. Vietnam is taking a phased approach to the implementation of its main AML legislation, AML Decree 74 of 2005. It has focused implementation on credit institutions, but predominately on the banking sector, and the SBV issued Guideline No.281 on 30 June 2006 to instruct credit institutions to implement AML Decree 74.

## **2. Legal Systems and Related Institutional Measures**

11. The wording of Article 251 of the Penal Code criminalizes some of the requirements in Article 6(1)(a) of the Palermo Convention. However, there are also some serious deficiencies in this Article and amendments need to be made in the Penal Code to meet the requirements of the Conventions.

12. Article 250 of the Penal Code meets a requirement of criminalizing the “acquisition, possession or use” in Article 6(1)(b)(i) of the Palermo Convention. However, it does not apply to self laundering.

13. Both Articles 250 and 251 do not criminalize the concealing or disguising of the origin of the property using methods such as disguising information on ownership, the movement of property or the location of property, or the use of the proceeds of funds, without acquisition or possession.

14. The word “property” is not defined in the Penal Code. There is no legal requirement in the Penal Code or the Criminal Procedure Code that a person must be convicted of a predicate crime in order to prove that property is the proceeds of crime.

15. For the purposes of Articles 250 and 251, all offences in the Penal Code can be predicate offences. The offences in the Penal Code do not cover all the FATF “Designated categories of offences”, including terrorist financing, piracy, insider dealing and market manipulation, the participation in an organized criminal group, and racketeering.

16. Legal persons are not subject to criminal liability under the Penal Code.

17. The level of penalties for a conviction under Article 250 or Article 251 are proportionate when compared to other offences in the Penal Code and when compared to the penalties imposed by other countries for similar offences. Article 250 provides for the imposition of a fine, non-custodial reform and prison terms from six months to 15 years and confiscation of property. Article 251 provides for the imposition of a prison term from one to 15 years. In addition, Clause 4 of Article 251 provides for additional confiscation penalties.

18. The legal provisions for the freezing, seizing and confiscation of money and assets obtained through the commission of crime are contained in the Penal Code, the Criminal Procedure Code, AML Decree 74 and Government Decree 64/2001. Overall the Penal Code and Criminal Procedure Code appear to allow for the seizure, confiscation and possibly freezing of the proceeds



and instrumentation of crime, but there are gaps in their coverage. However, the Penal Code and the Criminal Procedure Code do not provide for confiscation of a) property intended for the use in the commission of money laundering/terrorist financing offences; and b) property of corresponding value.

19. Vietnam does not have an effective set of laws and measures for the provisional freezing and seizing of assets. For the most part, the Government relies on the powers granted to the relevant legal authorities to investigate crime and take evidence. AML Decree 74 grants more specific powers, but has limited application. There is nothing in the Penal Code, The Criminal Procedure Code, Decree 64 or AML Decree 74 that specifically allows for provisional measures to be taken on an ex parte (without notice), basis.

20. Vietnam has neither passed any laws that allow for the freezing of funds or other assets of terrorists nor established any mechanism to give effect to United Nations Security Council Resolutions (UNSCRs) 1267 and 1373. Vietnam indicated that it has cooperated with the requests of other countries to have credit institutions conduct searches of individuals and organizations. There have been no matches to date. However, it is uncertain how Vietnam could enforce a freezing action in accordance with the UNSCRs' requirements, given terrorism financing has not been criminalized, and there has been no terrorism financing case for Vietnam's current measures to be tested and possible effectiveness demonstrated.

21. Article 14 of AML Decree 74 provides the authority to the SBV to establish AMLIC as Vietnam's FIU and was subsequently established on 8 July 2005. AMLIC is now headed by a director and supported by 2 deputy directors. Including the director and deputy directors, it has a total of 23 staff in three divisions.

22. AMLIC plays the lead role in AML/CFT implementation in Vietnam, including national coordination and general awareness raising among other competent authorities and reporting institutions. The before mentioned tasks have consumed significant staffing resources in the last 18 months.

23. Based on statistics provided for the period 2006 to 2008, AMLIC has disseminated a total of 19 reports to the Ministry of Public Security (MPS) based on 58 STRs received. Comparing the total number of STRs with the number of current reporting institutions in the country, the STR reporting ratio is very low. There was no indication from AMLIC that they had received feedback from the MPS regarding the value of the reports disseminated.

24. Overall, AMLIC lacks sufficient operational independence and human and technological resources to carry out its functions.

25. According to Article 16 (3) of AML Decree 74, the MPS is the lead agency responsible for investigating money laundering. The two key MPS Departments are the Economics Crimes Investigation Department which undertakes money laundering investigations and the Anti-Terrorism Department. Other major departments of the MPS include the Security Department, Drug Crime Department, Legal Department, Interpol Division, Immigration Office, and Division of Suppressing Violent Crimes.

26. The MPS informed the Mutual Evaluation (ME) team during the on-site assessment that there is a special unit for preventing and combating the financing of terrorist acts, although authorities did clarify that this was in respect of the categories outlined in Article 84 on Terrorism in the Penal Code.

27. The Supreme People's Procuracy (SPP), as an independent agency reporting directly to the National Assembly, plays an important role in money laundering and potential terrorist financing investigations. In addition to its role as a prosecutor, the SPP has a supervisory role in investigations, particularly in ensuring compliance with the Criminal Procedure Code and the Ordinance on Criminal Investigations.

28. Even though the Criminal Procedure Code provides certain powers to heads of investigating bodies, there is no specific provision in law that would allow or prevent investigating bodies to postpone or waive the arrest of suspected persons, and/or postpone or waive the seizure of money for the purpose of identifying persons involved in terrorist financing.

29. The Criminal Procedure Code and the Ordinance on Criminal Investigations provide the MPS and other investigating bodies with significant powers of investigation. Under the Code, once the SPP has approved the opening of a formal criminal investigation, investigative bodies are able to compel the production of, search, and obtain bank account records, financial transaction records, customer identification records, and other records maintained by credit institutions and other entities or persons.

30. In general, the MPS, SPP, Customs and other investigative bodies including the Ministry of Defence have powers to summon and obtain witnesses' statements for the purpose of assisting in their investigations.

31. There is no single law addressing the physical cross border transportation of currency or bearer negotiable instruments. Vietnam has a declaration system that requires incoming and outgoing passengers, both residents and non-residents, to truthfully declare physical cross-border movements of currency with amount above US\$7,000 or other foreign currency of an equivalent amount or 15 million in Vietnamese dong (VND) including gold and precious stone weight above 300 grams. The current declaration system does not include bearer negotiable instruments. The Law on Customs includes a definition of "goods" to cover foreign currencies and Vietnamese currency but not bearer negotiable instruments.

### **3. Preventive Measures—Financial Institutions**

32. The two key documents in relation to preventative measures on money laundering are the AML Decree 74 and SBV Guideline 281 on AML for credit institutions. The requirements in AML Decree 74, both in scope and depth, fall significantly short of the preventative measures required under the FATF Recommendations. For example, both are currently limited to credit institutions, there is no requirement for enhanced or ongoing due diligence, and it is specific to money laundering only with no reference to terrorist financing.

33. There are other relevant regulations and enforceable means issued by Vietnam, both prior to and subsequent to AML Decree 74 which, while not issued specifically for AML purposes, do impact on customer identification, record keeping requirements and information access concerns.
34. The overall implementation within the banking credit institutions sector is difficult to assess fully due to no formal AML/CFT supervision activity.
35. Vietnam has not adopted any risk-based approach as outlined in the FATF standards but rather treats all circumstances in the same manner.
36. Articles 8 and 9 of the AML Decree 74 prescribe a number of core requirements of Customer Due Diligence (CDD) but are deficient in four areas: threshold for cash transaction; the *De Minimus* thresholds for occasional customers conducting a wire transfer; CDD requirements when there is suspicion does not cover suspected terrorist financing; and general lack of guidance as to how an entity would establish the veracity or adequacy of previously obtained customer identification data.
37. AML Decree 74 at Clause 3, Article 8, prescribes the contents of customer identification information and Clause 4 stipulates the means of conducting customer identification to determine the authenticity of the information.
38. There is no centralized identification system in Vietnam for natural persons, except for passports and drivers' licenses. In Vietnam, the identification card is the primary means of identification and not the passport. The identification card includes ID number, photo, full name, place originated (supported by the family record book, which is registered by local commune authority), date of birth, place of residence, nationality, fingerprints and the signature and the stamp of the local police authority.
39. Regulations on opening and use of deposit accounts at credit institutions were issued under the Decision No. 1284/2002 on 21 November 2002. The Decision prescribes various requirements as to the content of account opening dossiers. Amongst these requirements are registered names of an organisation, specimen signatories and required identification.
40. There are other CDD deficiencies regarding beneficial ownership; ongoing due diligence; enhanced due diligence; updating CDD on the basis of materiality and risk; and to terminate business relationships.
41. Vietnam has no legislative obligations or other enforceable means covering Politically Exposed Persons (PEPs); enhanced CDD in relation to correspondent banking obligations or relationships; and the misuse of technological developments for money laundering or terrorist financing, or addressing any specific risks associated with non face-to-face transactions.
42. Vietnam's law does not have specific provisions which would allow financial institutions to rely upon a third party in the process of implementing CDD. As prescribed in AML Decree 74, financial institutions shall be responsible for the identification information of customers, and SBV Decision No 1284/2002 dated 21 November 2002 requires the same for credit institutions.

43. All financial services related laws, ordinances and decrees contain confidentiality provisions prohibiting the disclosure of customer information by persons who acquire such information in the course of their business. These provisions are, for the most part, overridden with respect to any requests submitted by relevant competent authorities within the scope of such laws.

44. While the AML Decree 74 record keeping obligations have not been implemented past the credit institutions sector, and primarily within the banking sector only, there are other laws in relation to the record keeping requirements, some of which extend beyond the FATF requirements. However, there are no requirements to retain business correspondence or account files or a clear timeframe articulated to produce records.

45. There are no clear requirements concerning originator information for both domestic and international wire transfers consistent with the FATF requirements.

46. Article 10 of AML Decree 74 set out thirteen general features of a suspicious transaction. These criteria include, inter alia, the identification and monitoring of large value or unusual patterns of transactions when they are not consistent with the nature and size of the customer's business operations.

47. Vietnam has not set up any system to alert financial institutions to countries and territories that do not implement or implement inadequately the FATF Recommendations.

48. Suspicious transaction reporting (STR) obligations are specified in AML Decree 74 and were introduced in 2006. However, at present only credit institutions are subject to STR reporting requirements as promulgated in SBV Guideline 281. Other non-bank financial institutions such as money changers, remittance agents, insurance, securities etc are not subject to STR reporting obligations. There is no explicit provision under AML Decree 74 which covers the obligation of STR reporting where there are reasonable grounds to suspect funds are related to terrorism or financing of terrorism.

49. There is no explicit provision under AML Decree 74 requiring individuals or financial institutions to make an STR in instances related to any attempted or uncompleted transactions that are suspicious in nature.

50. The total STR figure of 58 from the date of effect of Guideline 281 is low given the size of the financial sector i.e. 109 credit institutions, including 84 banks. There have been no reports from privately owned Vietnamese banks and only eight STR reports from foreign banks.

51. AML Decree 74 does not contain explicit safe harbour provision that no administrative, criminal or civil proceedings shall lie against any individual or organization that makes a cash or suspicious transaction report in good faith or in regular performance of duties.

52. Article 9 of AML Decree 74 provides the mandatory reporting of cash threshold reports (CTRs). According to AMLIC, there are about 18 million CTRs held by credit institutions on their own premises. AMLIC does not maintain any CTRs because of IT constraints; however the banks are required to provide them upon request.

53. Article 7 of AML Decree 74 and SBV Guideline 281 pertain to internal controls, compliance and audit requirements. For the latter, internal controls, compliance and audit relating to AML/CFT are not effectively implemented because of limited technical expertise and a lack of supplemental guidance from supervisory authorities. The internal manuals developed by domestic credit institutions in Vietnam are simply repetitions of the provisions of AML Decree 74 or SBV Guideline 281, and neither is sufficiently comprehensive in detail and scope. Moreover, there has been no independent audit or review by the SBV or by the credit institutions themselves of their internal procedures and documentations.

54. There is no definition of Shell banks in Vietnam and legislation does not specifically prohibit the establishment or continued operation of a Shell bank. However, under Article 22 of the Law of Credit Institutions, which relates to banking operations, there are specific criteria necessary for the granting of a banking license requiring an actual banking operation within Vietnam. There are no legislative requirements restricting financial institutions from entering into or continuing correspondent banking relationships with Shell banks, or that their respondent banks are not dealing with Shell banks.

55. Vietnam has adopted a non-integrated approach in implementing the supervisory requirements of AML Decree 74. Under this model, the sectoral supervisor is also responsible for AML supervision, namely the SBV for credit/banking institutions, the State Securities Commission (SCC) for securities companies and the Ministry of Finance (MoF) for insurance companies. Additionally, those engaged in money changing or remittance businesses are also subject to supervision by the SBV.

56. Under existing laws and regulations in Vietnam, there are strict licensing requirements before any financial institution may operate. These requirements are explicitly provided under the Law on Credit Institutions, Securities Law and the Law on Insurance Business. Relevant government agencies, such the SBV, SSC and MoF, undertake comprehensive evaluation on qualifications of prospective members.

57. However, the fit and proper test is limited in scope for controlling shareholders and there are gaps in terms of preventing potential criminal control through nominee arrangements due to the lack of beneficial ownership requirements at the licensing and registration stage.

58. The AML Decree 74 provides authority in respect to AML monitoring, inspection and sanction powers under Articles 3, 15, 16, 17, 18, 19 and 24. There are more general or sector specific powers in the Law on Inspection, Law on the State Bank of Vietnam, Law on Credit Institutions, Securities Law, Insurance Law and Ordinance on Handling of Administrative Violations. However, since AML onsite inspections have not yet been conducted for any financial sector, it is not possible to assess the effectiveness of these available measures in terms of compliance with AML/CFT requirements, as opposed to prudential purposes.

59. The administrative sanctions provided for under AML Decree 74, the Ordinance on Handling of Administrative Violations and in the primary legislations of supervisors, are dependent upon the nature and seriousness of the violations. A “warning” may be issued for any minor administrative violations and then graduating to “monetary fines.

60. There no available criminal sanctions for violations of preventative measures and the available monetary sanctions are not proportionate and dissuasive. The maximum penalty in AML Decree 74 is thirty million dong which is just under US\$1,780. In the Ordinance of Administrative Violations, the maximum is 70 million dong or about US\$4,000. The powers in the AML Decree 74 and in the Ordinance of Administrative Violations to revoke, either temporarily or permanently, an organization's license would be dissuasive.

61. There has been no application of sanctions under AML Decree 74, the Ordinance of Administrative Violations or under any other laws for violations of requirements under AML Decree 74. The authorities have also not provided any evidence to the assessment team concerning any credit institution, securities company or insurance company having had its license withdrawn for prudential violations.

62. The providers of formal money or value transfer services (remittance services) are licensed by the SBV. There is however a significant alternative or informal remittance system in operation in Vietnam which caters for the large Vietnamese diaspora around the globe. The informal remittance system is unregulated and well known to authorities. There are no measures currently in place to identify options for regulating this informal system.

#### **4. Preventive Measures—Designated Non-Financial Businesses and Professions**

63. Article 6 (2) of AML Decree 74 describes other individuals and organizations that are responsible to prevent and combat money laundering in accordance with the Decree. These entities include DNFBPs, however, accountants and other company service providers are not covered in AML Decree 74 and the definition of real estate agent is limited to companies. This is not consistent with the FATF requirement to include all real estate agents regardless of the nature of their business. The Decree is silent on the CDD requirements in relation to the threshold limits for casinos.

64. Currently, there is no obligation to meet the requirements of AML Decree 74 by DNFBPs in Vietnam. At the time of the on site assessment, there has been no guidance issued by responsible national ministries defined under Article 17 of AML Decree 74, addressing their specific sector responsibilities, although the Haiphong People's Committee has undertaken some measures concerning a casino based in Haiphong.

65. Vietnam has approved licenses for five small-size casinos. However, only three casinos have actually commenced operations in Vietnam. There are no internet casinos operating in Vietnam. The casino at Haiphong Bay is the largest and is a joint venture with a well known international casino operator. It is illegal for a Vietnamese national to enter a casino and the market is targeted at foreigners, principally those working in or visiting Vietnam. The size of the Haiphong Bay casino is relatively small, with a turnover of US\$3 million a year and a maximum payout of US\$2,000, which is available under its roulette game.

#### **5. Legal Persons and Arrangements & Non-Profit Organizations**

66. The Law on Enterprises 2005 sets out the business registration requirements for sole proprietorships, partnerships, limited companies and shareholder companies. Only shareholder

companies issue share certificates. The Securities Law regulates public offerings, listing, dealing, trading, investing and the securities market.

67. Neither the Law on Enterprises nor the Securities Law contains any requirement for the identification or verification of beneficial ownership requirements, including under any nominee arrangement upfront during the registration or licensing stage. The requirements are limited to legal ownership. The Law on Enterprise does contain some obligations for board members and senior management to disclose information on “related persons” to the company. The definition includes individuals, close relatives or person(s) with controlling interests or any individual who is authorized to represent persons with controlling interests. It is not exactly clear how these requirements work in practice but they do seem to cover a limited aspect of beneficial ownership requirements. It should be noted however that the obligation of disclosure is to the company, rather than to the government.

68. Vietnam is, in part, a Civil Code jurisdiction, whose legal system has been modelled after the Civil Code system of France. Civil law jurisdictions generally do not recognize trusts. However, it is not certain whether foreign trusts are operating in Vietnam as there are no specific laws prohibiting or regulating the operations of foreign trusts.

69. All domestic Non-Profit Organisations (NPOs) are now governed by Government Decree 48 of 2008 which assigns the Ministry of Home Affairs as the primary agency for NPO affairs. For international NPOs, the Prime Minister issued Decision No. 340 dated 24 May 1996 that promulgated the Regulations on the Operation of Foreign Non-Governmental Organizations in Vietnam. This was followed by Prime Minister Decision No. 64 dated 26 May 2001 that provided further regulation on the Management and Utilization of grants from international Non-Governmental Organizations.

70. Vietnam has undertaken a review of laws and regulations. However, it has not undertaken a comprehensive review of all NPOs registered in Vietnam, both domestic and international, to develop a risk profile of its NPO sector and determine which ones might be potentially at risk or facilitating terrorist financing.

71. There is an established system of registration for both domestic and international NPOs. However, there is a lack of outreach and supervision of the NPO sector, both in respect of broader governance concerns and terrorist financing vulnerabilities.

## **6. National and International Cooperation**

72. At the time of the on-site assessment, there was no National Coordination Committee (NCC) for AML/CFT. However, Vietnam was making significant efforts to establish a NCC, in the form of the Multi-Ministry Directive Committee.

73. Vietnam’s Law on Mutual Legal Assistance (MLA) came into effect on 1 July 2008 and has signed 14 agreements with other countries on mutual legal assistance. The MLA law and Criminal Procedure Code also cover extradition. Vietnam will not extradite its own citizens and dual criminality is required.

74. Article 17 of the Law on Mutual Legal Assistance provides for the forms of mutual legal assistance that can be offered. Vietnam is also able to provide mutual legal assistance pursuant to

Articles 340 to 346 of the Criminal Procedure Code, which cover some of the subject matters in the Law on Mutual Legal Assistance. Vietnam's laws, and in particular the Law on Mutual Legal Assistance, meet a significant number of the requirements of the international requirements. However, because of Vietnam's lack of laws for identifying, tracing, freezing, seizing, and confiscating the proceeds of crime, its laws on mutual legal assistance are not fully compliant.

75. Item 1(e) of Article 21 of the Law on Mutual Legal Assistance appears to provide that legal assistance shall be refused where the *“request relates to a law violation which does not constitute a criminal offence under the Penal Code of Vietnam”*.

76. Vietnam has not criminalized the financing of terrorism, terrorist acts or terrorist organizations and therefore cannot provide international co-operation according to its existing laws.

77. Extradition is dealt with in Articles 343 and 344 of the Criminal Procedure Code and by Articles 32 to 48 of the Law on Mutual Legal Assistance. Article 344 of the Code and Article 36 of the MLA state that Vietnam will refuse to extradite its own citizens and dual criminality is required. Vietnam has expressed reservation in relation to the entirety of Article 6 on extradition in the Vienna Convention.

## **7. Other Issues**

78. Vietnam needs to assign additional resources to AML/CFT efforts in the country. While AMLIC is the lead agency, it cannot accomplish these targets without additional staffing resources, not just within AMLIC and the SBV, but in other competent authorities. Furthermore, continued capacity building is required for existing and new staff working on AML/CFT matters.



## **1. GENERAL**

### **1.1. General Information on Vietnam**

79. The Socialist Republic of Vietnam has a population estimated at 86.1 million. It is bordered by China to the north, Laos to the northwest, Cambodia to the southwest, and the South China Sea to the east. Vietnam has three regions: the north, the centre and the south. Spoken Vietnamese differs considerably between them.

#### **Economy**

80. Vietnam has been in transition from a centrally-planned to a market-based economy since 1986 with the adoption of the Doi Moi (reform) policy. Vietnam is now the second fastest growing economy after China in Asia. GDP growth has averaged 7.5% per year since 2001. GDP is estimated at US\$70 billion and income per capita is US\$818. Inflation is estimated to be about 22% in 2008.

81. Economic development has been patchy geographically. Ho Chi Minh City in southern Vietnam and the surrounding provinces constitute the power-house of economic development with GDP per capita of US\$2,100 in 2007, as against the national average of US\$818.

82. Total disbursed foreign direct investment (FDI) in 2007 topped US\$8 billion. Total approved FDI in 2007 was US\$21.3 billion. The first eight months of 2008 recorded a surge in FDI, with US\$47 billion of investment capital committed. However, the recent global economic downturn has affected FDI flows into Vietnam.

83. The State Bank of Vietnam (SBV) estimates remittances from overseas Vietnamese in 2007 exceeded US\$6 billion, reflecting the increasing trend of Vietnam as an exporter of labour regionally and globally including the Middle East.

84. Vietnam has adopted a managed float of foreign currencies, particularly the US dollar. SBV advises of the exchange rate between the US dollar and Vietnam Dong. At the time of the on-site, the official rate was US\$1:VND16, 850. *(Note: This is the exchange rate used in this report for the conversion of Vietnam Dong into equivalent US dollar.)*

85. The unregistered money changers, the team observed, provided a marginally higher rate on the US dollar. There is a thriving black market for currency, which usually offers a higher rate often for currencies that would not normally be traded in the official market.

86. Foreign currency accounts can be opened by Vietnamese and foreigners – the latter would need to submit appropriate papers proving residence in Vietnam.

87. Vietnam is still predominately a cash economy, where the US dollar and gold are widely accepted, although becoming less so. In 2007, cash made up 16.36% of the total liquidity, continuing the decreasing trend in recent years. It fell to 17.21% in 2006 from 19.01% in 2005 and 20.35% in 2004, reflecting the fact that non-cash payments are becoming increasingly popular as the banking system promotes such payment modes as debit or credit cards and ATMs. The Government's decision to pay all Government employees' salaries directly into bank accounts has also contributed to the

growth of ATM usage. This has certainly had a positive effect on the reduction of cash in the economy.

### **System of Government**

88. Vietnam is a single party socialist country under the leadership of the Vietnam Communist Party. The Communist Party decides all major policy issues. The present 14-member Politburo is headed by the Communist Party General Secretary and its Secretariat oversees day-to-day policy implementation.

89. The National Assembly is the highest representative organ of the people; and the sole constitutional and legislative body. The National Assembly convenes twice per year. Elections to the 500-Member National Assembly are held every five years. The last election was in May 2007.

90. The Government is the executive organ of the National Assembly. Components of the Government are: Prime Minister, Deputy Prime Ministers, and Ministers and Heads of ministerial-level agencies. The National Assembly elects the President from among the members of the National Assembly. The National Assembly also appoints the Prime Minister from its members; and the Prime Minister appoints the Deputy Prime Ministers.

91. The Government is accountable to the National Assembly, the National Assembly's Standing Committee and the President of State. The Standing Committee of the National Assembly is a permanent executive body of the National Assembly and is elected by it. The Standing Committee is composed of the Chairman; the Vice-Chairmen; the Secretary General and other members.

92. There are 64 provinces in Vietnam, including the capital city, Hanoi and the commercial centre, Ho Chi Minh City. Provinces are divided into districts, cities, and towns. People's councils and administrative committees are established in all the before-mentioned administrative units. All Central Government ministries and agencies have provincial level offices or branches. These local offices are also accountable to the local People's Committee, in addition to head office accountability in Hanoi.

93. The Supreme People's Court, the local people's courts, and the military courts form the judicial organs of Vietnam. The Supreme People's Court is accountable to the National Assembly. The Supreme People's Procuracy acts as the State prosecutor, and is accountable directly to the National Assembly.

94. The Supreme People's Court is the highest judicial organ in Vietnam and consists of the Chief Judge, Deputy Chief Judge, jurors and court secretaries. Based on the request of the State President, the National Assembly elects and dismisses the Chief Judge of the Supreme People's Court. The State President nominates/dismisses Deputy Chief Judge and Judges at the Chief Judge's request

## **Legal system and hierarchy of laws**

95. The National Assembly is the only organization with legislative authority under the current Constitution, which was enacted in 1992. Article 84 (1) specifically empowers the National Assembly to issue and amend laws. Under the Constitution, key laws passed include the Civil Code 1995, the Commercial Law 1997, an amended Penal Code 1999 and the Enterprise Law 1999.

96. The hierarchy of laws and enforceable means is as follows:

- Constitution;
- Laws enacted by the National Assembly;
- Ordinances issued by the Standing Committee of the National Assembly;
- Decrees and Decisions issued by the Prime Minister; and
- Decisions and Circulars issued by Cabinet Ministers or equivalent.

97. Essentially, the National Assembly is empowered under the constitution to pass laws, while its Standing Committee is empowered to enact subsidiary legislations in the form of ordinances. Its Executive arm, the Government, can issue regulations in the form of decrees and decisions. Government ministries can also issue circulars and guidelines, which are not always other legally enforceable means based on the FATF's criteria of enforceability.

## **Transparency, good governance, ethics and measures against corruption**

98. Vietnam was ranked 121 out of 180 countries in the 2008 Transparency International's Corruption Perception Index.

99. In recent years, the National Assembly has become increasingly active and influential in setting national priorities, with members prepared to criticize the Government. In 2007, the Assembly introduced parliamentary "question time," in which heads of government agencies must answer questions from National Assembly members.

100. Vietnam signed the United National Convention Against Corruption (UNCAC) on 10 December 2003 but has not yet ratified it. It subsequently passed a Law against Corruption on 29 November 2005 with effect on 1 June 2006. According to this law, corruption is an act committed by a person holding a position and having power who has abused his or her position and/or power for undue benefits. It designates 12 corrupt acts, imposes reporting obligations and requirements for asset declaration by public officials, and calls for the implementation of other anti-corruption measures.

101. The Law covers government officials including military personnel, managers in state owned enterprises or other persons who are assigned and have power to perform a task or an official duty. The law extends to the National Assembly and law enforcement agencies at the central and local levels, and also to civil society including the media and professional associations.

102. The Government Inspectorate, Ministry of Public Security and Supreme People's Procuracy are the key agencies tasked with implementation of the Law against Corruption, and have established specialized anti-corruption units as required under the Law.

103. Article 36 of the Law Against Corruption specifies the Code of Conduct for Cadres, Public Officials and Servants. Various laws on accounting, real estate, etc also contain provisions on professional integrity and professionalism. Vietnam has a law on Civil Servants and Office Cadre which was passed in 1998

104. According to Global Integrity, Vietnam receives a “very strong” score in its “Anti-corruption law” category, but a “very weak” score in its “Enforcement” category. The other major drawback of these laws is the narrow focus on state and public sector corruption, with only limited focus given to private sector corruption. The lack of a truly independent anti-corruption agency in Vietnam is also often seen by observers as a major gap in current efforts to curb corruption. The Government Inspectorate has been the main anti-corruption institution in Vietnam

105. The following statistics were provided by the Government Inspectorate on measures taken:

**Table: Statistics on Corruption Investigation and Prosecution since 1 June 2006**

Description	Data
No. of Detected corruption cases	820
No. of prosecuted corruption cases	759
No. of corruption cases adjudicated	631
Number of convicted persons	1,477
Value of corrupt assets	418.2 billion dongs (US\$24.8 million)
Value of recovered assets	92.3 billion dongs (US\$5.5 million)

## **1.2. General Situation of Money Laundering and Financing of Terrorism**

### **Sources of Illicit Funds**

106. According to authorities, the main sources of illicit funds in Vietnam are fraud, gambling, trading in weapons, prostitution, trading in illegal narcotics, trafficking and counterfeiting of fake goods, corruption and trafficking in women and children.

107. The following two tables provide summary statistics on predicate crimes in Vietnam since 2006:

**Table: Crime Statistics by Cases and Persons**

Year	Investigation		Prosecution		Adjudication by Courts at all Levels	
	Number of cases	Number of Defendants	Number of cases	Number of Defendants	Number of cases	Number of Defendants
2006	45,298	71,165	39,316	67,379	38,734	66,173
2007	44,006	69,053	39,191	69,892	38,772	90,293 (i)
6/2008	24,120	38,985	19,321	34,899	19,321	33,805

(i) includes 20,556 defendants prosecuted before 2006

**Table: Predicate Crime Statistics**

Penal Offences	Percentage (%) of total Adjudications
Fraud e.g. particularly involving real estate	61.00
Gambling, trading in weapons, prostitution	19.27
Trading in illegal narcotics	15.75
Trafficking and counterfeiting of fake goods, etc	2.22
Corruption	1.13
Trafficking in women and children	0.4

108. **Fraud involving immovable property:** Fraudulent activities involving property, based on the predicate crime statistics provided, constitute a significant source of illicit proceeds. State Bank of Vietnam Guidance No.4294, issued to all State owned and joint venture banks in May 2008, highlighted some of these fraudulent practices. Common techniques used by criminals included: falsifying land and house use right certificates as collateral for bank loans; fraudulent real estate investment proposals and loan applications using forged signatures of bank staff; fraudulent use of other people's IDs to obtain loans on false pretences; use of stolen or falsified IDs by foreigners to raise funds fraudulently and then absconding with the funds; bank staff misappropriating cash repayments by borrowers; and conspiracy by bank officials in different banks to alter paperwork to defraud the employees' banks.

109. **Other Fraudulent activities:** There are increasing reports of online ponzi schemes where gullible investors have their life savings defrauded. A recent article in the local media reported thousands of people in the southern province of Dong Thap had their savings defrauded from an online money trading scam.

110. **Trafficking in illegal narcotics:** Official UNODC statistical tables no longer list Vietnam separately in drug production analysis. Most of the opium and heroin seized in Vietnam is cultivated and manufactured in both Myanmar and Lao PDR, the world's second and third largest producers of raw opium respectively. Cultivation in Vietnam probably accounts for only about one percent of the total cultivation in Southeast Asia. However, Vietnam is an important Southeast Asian transit route for the trafficking of illicit drugs, mainly heroin and opium, amphetamine-type stimulants (ATS) and cannabis. According to the US State Department International Narcotics Control Strategy Report (INCSR) 2008 Report, foreign law enforcement sources do not believe that major trafficking groups have moved into Vietnam. It concluded that relatively small groups comprised of from 5 to 15 individuals (who are often related to each other) usually do most of the narcotics trafficking.

111. Cannabis is also being smuggled into Vietnam. In recent years, Cambodia has emerged as one of the major producers of cannabis in the Asian region. For Vietnam, this has led to increased domestic trafficking of cannabis. It tends to be transported overland through Ho Chi Minh City and Hai Phong and Quang Ninh in the north from where a large proportion was shipped to North America and Europe.

112. Various types of ATS manufactured in Cambodia, China, Lao PDR, Myanmar and Thailand are smuggled into Vietnam for local consumption. There is a substantial black market for psychotropic pharmaceutical products, and this feeds the domestic illicit drug market.

113. **Illegal Gaming:** Gambling is illegal in Vietnam, except in a small number of establishments licensed for small scale casino operations and electronic gaming operations catering for foreigners. Illegal gaming does however occur on a regular basis amongst the local population. Illegal sport gambling in Vietnam is common. The Government is considering the issuance of a legal framework for such activities and providing licenses to organisations under State management to design and create products which are attractive to betters. This will hopefully ensure control over gambling, protect the rights of betters, limit the negative aspects of gambling and raise revenue.

114. **Trafficking and counterfeiting of fake goods:** Based on international reports, Vietnam is considered the world leader in software piracy. The team observed significant market activity in the sale and purchase of fake products, including DVDs and well known books, both in English and Vietnamese.

115. **Counterfeit money:** UNODC reports note that drug traffickers have been found to be involved in counterfeiting money. Fake US dollar notes are most common, but Chinese Yuan and Vietnamese Dong also have been discovered. The Government has launched an information campaign to make people aware of the presence of counterfeit notes and how to detect them. The State Bank of Vietnam has also withdrawn the old notes and replaced them with polymer notes.

116. **Trafficking in women and children:** According to the US State Department Trafficking in Persons Report of June 2008, Vietnam is primarily a source country for women and children trafficked for commercial sexual exploitation and forced labour. The end destination jurisdictions are the People's Republic of China (PRC), Cambodia, Thailand, the Republic of Korea, Malaysia, Chinese Taipei, and Macau. The end destinations of PRC, Cambodia and Macau, China are mainly for sexual servitude purposes. There have been unofficial reports that amounts of US\$1,000 to US\$1,500 have been paid to traffickers by victims who are then bonded until the amount is repaid.

117. Vietnamese workers also migrate willingly to seek employment in the Middle East and in Eastern Europe but often under demanding employment conditions.

118. **Corruption:** The extent of corruption is not fully documented but there are some high profile corruption cases. The Ministry of Public Security recently announced an investigation into allegations that a foreign contractor had bribed a senior official who was overseeing the East-West Highway Project, Ho Chi Minh City's biggest infrastructure project funded by Japan. The Ho Chi Minh City (HCMC) government last November 2008 suspended the official from his position as project head and deputy director of the HCMC Department of Transport. He allegedly accepted bribes of US\$820,000 in 2003 and 2006 from the foreign contractor in exchange for helping the company win the contract for the project.

### **Money laundering methods and trends**

119. **Co-mingling:** In Vietnam, the most popular way of money laundering is through investments in businesses, real properties, stock market and transactions through banks' services. The organizations involving in money laundering are mainly legally established businesses.

120. **Securities:** The Over-the-Counter (OTC) market for securities is a significant risk as it was unregulated until November 2008. Essentially the OTC market involves the buying and selling of shares of 3,000-4,000 unlisted joint stock companies through registered securities companies – the latter which provide share registry services for companies. The securities companies provide a brokering service between a potential buyer and seller.

121. **Cash Courier:** The INSCR Report 2008 notes that, "there is evidence that large amounts of cash are hand carried into Vietnam, which is legal as long as the funds are declared." However, the government of Vietnam does not require any information on the source or use of funds brought into the country.

122. There have been some high profile cases of Vietnam Airlines' employees. A pilot of Vietnam Airlines was arrested in 2006 in Australia and subsequently jailed for 4½ years for attempting to smuggle AU\$6.5 million out of Australia. In April 2008, a second pilot was arrested for and was accused of collecting the proceeds of drug sales amounting to AU\$4 million on 17 occasions in 2005 and 2006 from Vietnamese money remitters in Melbourne and Sydney. In April 2008, two flight attendants were arrested for illegally transporting US\$300,000 into South Korea. In September 2008, two employees were sentenced in Hanoi for illegally transporting money across the border. The accused had admitted that he had transported money previously back from Germany. In the most recent case, a Vietnam Airline employee was caught carrying a bag with 342,000 Euros at Hanoi Noi Bai Airport.

123. **Bank Transfers:** There have been many cases of account opening followed by immediate withdrawals of large amounts by foreigners. There have been attempts by foreigners allegedly hired to use counterfeit passports to withdraw funds, in a recent case of more than AU\$200,000 (US\$164,600).

124. **Alternative Remittance Systems:** Law enforcement agencies have noted the use of alternative remittance systems to transfer proceeds of drug sales back to Vietnam and then abroad again.

125. **Precious stones and metals:** The retail gold sector is largely unregulated. It is also the accepted practice to use gold as the currency for real estate transactions. Together with the high historical incidence of real estate related fraud, and the tendency for gold and jewellery shops to offer illegal money changing and remittance services, this sector remains subject to abuse for the conversion, transfer and integration of illicit proceeds.

126. **Multiple Methods:** According to the INSCR Report 2008, the ecstasy and marijuana trafficking network between the US and Vietnam are capable of laundering tens of millions of dollars per month back to Vietnam, using not just the formal banking system and bulk cash smuggling, but also involving multiple US based money remittances businesses that have reportedly remitted over US\$100 million annually to Vietnam. It is suspected that the vast amount of that money is derived from criminal activity. Law enforcement agencies in Australia and the United Kingdom have also tracked large transfers of drug profits back to Vietnam, and then out of the country again.

### **Terrorism**

127. Vietnam is not regarded as a major risk for international terrorism. Certainly, there has been no terrorist incident in Vietnam linked to known terrorist groups, although there have been numerous cases over the years of overseas Vietnamese being charged and convicted under the Terrorism Article 84 of the Penal Code. The following statistics has been provided for the most recent cases.

**Table: Terrorism Cases**

<b>Year</b>	<b>Investigation</b>		<b>Prosecution</b>		<b>Adjudication</b>	
	<b>Number of cases</b>	<b>Number of Defendants</b>	<b>Number of cases</b>	<b>Number of Defendants</b>	<b>Number of cases</b>	<b>Number of Defendants</b>
<b>2006</b>	0	0	1	7	1	7
<b>2007</b>	0	0	0	0	0	0
<b>6/2008</b>	1	3	1	3	1	3

128. The Vietnamese authorities charged and convicted seven defendants under Article 84 (Terrorism) of the Penal Code on 10 November 2006. The defendants were members of a group called the Government of Free Vietnam, which Vietnam considers to be a terrorist organization, and the defendants found guilty of attempting to destroy and interrupt local broadcasting stations and for inciting to overthrow the Government. It was alleged that the group also organised to bomb Vietnamese embassies in neighboring countries.



129. The court sentenced all seven defendants to 1 year and 3 months jail. In addition, the court ordered that three defendants be deported to their country of citizenship (the US) at the completion of their sentences. Some of the convicted were subsequently deported prior to the completion of their sentences.

130. The most recent case was on 13 May 2008; Ho Chi Minh City's People's Court convicted three overseas Vietnamese, including US and Thai citizens, under Article 84 for their involvement in the Viet Tan (Vietnam Reform Party). However, because all the accused confessed, they received lighter sentences.

### **1.3. Overview of the Financial Sector and DNFBP**

131. Vietnam is reforming and modernising its banking sector and bringing it in line with international requirements including World Trade Organization obligations. This includes developing a revised legal and regulatory framework for supervision; granting more powers and autonomy to the SBV; adopting international standards in accounting, loan classification, and anti-money laundering framework; strengthening prudential regulations for banks; and privatising state-owned commercial banks.

132. In 2006, the Vietnamese Government approved a banking development plan up to 2020. The plan includes moving the SBV towards a modern central bank, with more independence in its monetary and exchange rate policy, and improved supervision capacity over the banking system.

133. The Law on Credit Institutions 1997 and amendments to the Credit Institutions Law 2004 govern the operations of state credit institutions, state joint stock credit institutions, cooperative credit organizations, joint-venture credit institutions, and non-bank credit institutions with 100% foreign capital.

134. The following two tables set out (a) an overview of the financial sector; and (b) types of financial institutions that can engage in the financial activities that are within the definition of "financial institutions" in the FATF 40+9.

**Table (a): Overview of Financial Sector, 2008**

	<b>Number of Institutions</b>	<b>Authorized/ registered and supervised by:</b>
<b>Banks (see table below )</b>	<b>84</b>	<b>State Bank of Vietnam</b>
People's Credit Funds (Cooperatives)	997	State Bank of Vietnam
Insurance Companies	48	Ministry of Finance
Securities Companies	90	Ministry of Finance/State Securities Commission
Foreign exchange providers	3,862	State Bank of Vietnam

Money transmitters	80	State Bank of Vietnam
Leasing and factoring (see table below on credit institutions)	25	State Bank of Vietnam

**Table (b): Financial Activity by Type of Financial Institution**

<b>Type of financial activity (See glossary of the 40 Recommendations)</b>	<b>Type of financial institution that performs this activity</b>	<b>AML/CFT regulator &amp; supervisor</b>
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Banks Cooperatives	State Bank of Vietnam
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks Cooperatives	State Bank of Vietnam
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Non-Bank Credit Institutions	State Bank of Vietnam
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Banks Authorised Money remitters Alternative Remittance Providers	State Bank of Vietnam
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks	State Bank of Vietnam
6. Financial guarantees and commitments	Banks Non-Bank Credit Institutions	State Bank of Vietnam
7. Trading in: (a) money market instruments (b) foreign exchange; (c) transferable securities	Banks  Securities Company (only trading in securities)	State Bank of Vietnam  Ministry of Finance/State Securities Commission

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
8. Participation in securities issues and the provision of financial services related to such issues	Securities Companies	Ministry of Finance/State Securities Commission
9. Individual and collective portfolio management	Securities Companies	Ministry of Finance/State Securities Commission
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks	State Bank of Vietnam
11. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	Life insurance companies Life insurance agents	Ministry of Finance/Insurance Department
12. Money and currency changing	Banks Licensed Exchange Bureaus	State Bank of Vietnam

## **Credit Institutions**

### **Banking Sector**

135. The banking system currently consists of six state-owned commercial banks, 36 local joint stock commercial banks, five joint venture banks and 37 branches of foreign banks. There are also 54 representative offices of foreign banks in Vietnam. Most of the local banks were established in the early 1990s following the passage of the 1990 Banking Ordinance, and had relatively small initial capitalisation. The years 2006 and 2007 saw a number of these banks substantially raise their capitalisation, in part thanks to the booming stock market, to meet new banking capitalisation requirements.

136. According to some estimates, 80 per cent of the banking sector's capitalisation is dominated by five state owned banks. Another 12 per cent of the market is controlled by semi-autonomous domestic banks. The branch network is confined largely to the state-owned banks.

137. There is also a system of People's Credit Funds (PCF) which is a form of cooperative micro finance at the community level. PCFs collect deposits from both members and non-members. However, loans are only provided to members. The average loan size is usually less than VND1

million or US\$59. As of end 2007, the system of PCFs included the Central PCF with 24 branches and 996 local PCFs. They are subject to the Credit Institutions Law and regulated and supervised by the SBV.

138. Vietnam is predominately a cash-based economy but there is a rapid expansion of the formal banking sector, including increasing availability of ATMs with about 6,000 to 7,000 machines now in operation throughout the jurisdiction.

### **Non-Banking Sector**

#### **Vietnam's system of Credit Institutions on July of 2008**

<b>Types of Credit Institutions</b>	<b>Number</b>	<b>Total number of branches and operation centers</b>
<b>(a) Banks</b>		
State credit institutions	6	515
Cities' joint stock credit institutions	35	593
Rural joint stock credit institutions	1	2
Branches of foreign banks	37	
Joint venture credit institutions	5	24
Representative offices of foreign banks	54	
<b>Sub-total</b>	<b>138</b>	<b>1134</b>
<b>(b) Finance companies</b>		
Financial Companies	12	12
Financial Leasing Companies	13	10
<b>Sub-total</b>	<b>25</b>	<b>22</b>
<b>(c ) Cooperatives</b>		
People's Credit Funds (PCF) - Central	1	24
People's Credit Funds (PCF) - Local	996	996
<b>Sub-total</b>	<b>997</b>	<b>1020</b>
<b>TOTAL</b>	<b>1160</b>	<b>2176</b>

### **Insurance Companies**

139. There are 48 insurance companies, of which 24 are foreign and 24 locally owned. About 63% of the market share is by domestic insurers and 37% by foreign insurers. Non-life insurance companies account for slightly over 50% of insurance companies, with life insurance about 25% and the remaining consisting of one reinsurer and insurance brokers. There is one state owned insurance company.

140. There are 134,925 insurance agents in Vietnam – of which 75,595 are life insurance agents and 59,330 other insurance agents. Agents are paid on a commission only basis. Insurance agents are licensed by the actual insurance companies, as the Ministry of Finance has now delegated this authority. There is an agreement in place between the company and the agent, and a license is only issued after satisfactory completion of an in-house training course, normally of five days. Insurance companies are required to report licenses issued to the Ministry of Finance.

141. The average annual sum insured for a term life endowment policy – the most common policy – is 28 million dong (about US\$1,661). About 4% of policy holders surrender their policy within two years.

142. There are also 37 representative offices of foreign insurance companies in Vietnam. They do not provide insurance services.

### **Securities**

143. The securities market is governed by the Securities Law of 2006, and supplemented by Decree 14 of the State Securities Commission (SSC) on Implementation of the Securities law. The SSC is a regulatory agency under the Ministry of Finance which has oversight of Vietnam's two stock exchanges, the Ho Chi Minh Stock Exchange and the Hanoi Securities Trading Centre, and the Vietnam Securities Depository which acts as a centralized share registry for all publicly listed companies.

144. There are about 90 securities companies licensed by the SSC, 10 of which are funds management companies. Buying and selling of securities can only be conducted through these licensed securities companies. New clients of securities companies are required to open a bank account with an affiliated bank and are subject to the normal customer due diligence (CDD) requirements.

145. There are about 1,000 Joint Stock public companies registered with the SSC but which not listed on any of the stock exchanges. Until November 2008, trading in the shares of these unlisted public companies was through the over-the-counter unregulated securities market. However, the Ministry of Finance issued Decision 108 in November 2008 on the Regulations on the organization and management of trading unlisted public company securities.

### **Money or Currency Changers**

146. The operations of money or currency changers are regulated by the SBV and subject to the Ordinance and Decree on Foreign Exchange Control, in addition to other SBV regulations. Money changers or currency exchange units include banks and economic institutions that are permitted to conduct currency exchange activities under an agency arrangement with banks. As at June 2008, there are 3,862 currency exchange units, of which 1,309 are credit institutions and 2,553 economic entities acting as agents for credit institutions.

147. There are a large number of illegal money changers i.e. black market operators in Vietnam. Numerous gold shops offer money changing services. The black market during the on-site offered US\$1: VND17,300/17,350 as against the official exchange rate of US\$1: VND16, 850. Banks are prohibited from exchanging more or less than five percent of this amount.

### **Money or Value Transfers Systems**

148. In Vietnam, there are 80 service providers that provide currency transfer services including commercial banks, Western Union, Money Gram, Vina USA, PayPal, CMT, and RIA.

149. There is a significant alternative remittance system in operation in Vietnam which caters for the large Vietnamese diaspora around the globe. These include Vietnamese contract workers in neighboring countries such as Malaysia, which has around 110,000 Vietnamese contract workers, and in more remote locations such as Russia, the Czech Republic, other eastern European countries and the Middle East. They also cater for Vietnamese who have migrated to countries such as Australia, Canada and the US.

150. According to the 2008 INSCR Report, the informal remittance system often operates through the use of jewellery and gold shops as a means to transfer funds and these informal remittance services have not been brought under regulation or supervision for money laundering and terrorist financing activities.

**a. Casinos (which also includes internet casinos).**

151. **Background:** Articles 248 and 249 of the Penal Code criminalize gambling and the organization of gambling dens respectively. However, certain exemptions from this prohibition have been provided to allow for the operations of casinos and electronic gaming to cater exclusively for foreigners. The Law on Investment (Article 37) and related Decree No. 108 of September 2006 provide the overarching legal framework for casinos in Vietnam, although provincial authorities can and do issue detailed regulations within this framework. Under Article 37 of Decree 108, only the Prime Minister can approve casino license. Electronic gaming is governed by Prime Ministerial Decision 32 on Regulations on Prize Winning Electronic Games for Foreigners.

152. Vietnam has approved licenses for five small-size casinos. However, only three casinos have actually commenced operations in Vietnam. There are no internet casinos operating in Vietnam. The casino at Haiphong Bay is the largest and is a joint venture with a well known international casino operator. It is illegal for a Vietnamese national to enter a casino and the market is targeted at foreigners, principally those working in, or visiting Vietnam. The size of the Haiphong Bay casino is relatively small with a turnover of US\$3 million a year and a maximum payout of US\$2,000.

153. Under Prime Ministerial Decision 32, electronic gaming establishments are permitted to operate in high end hotels. There are 40 high standard hotels (4 - 5 stars) with such operations. The team visited one of these and observed slot machines and electronic games operating, but the size of the establishment was no more than 80sq metres. The team noted there were neither dealers nor card cards. The Ministry of Planning and Investment does not consider these to be casinos.

154. The supervision of casino operations is multi-faceted. Currently, casino supervision is implemented in two forms: (1) reports from casino businesses, (2) multi-ministry inspection in accordance with specific inspection purposes. The latter involves an array of ministries.

155. The People's Committee in Province where casinos are located is responsible for comprehensive and specific supervision of activities of licensed entities in the local area. The Ministry of Planning and Investment is responsible for ensuring compliance with the business registration and investment certification requirements. The SBV is responsible for supervision on foreign exchange and money transfer activities. The Ministry of Public Security is responsible for supervision on public security, including circulating criminal or terrorist black list to casinos.

156. **AML Implementation:** Article 6 (2) (b) includes “entities doing business on games of chance, casino or lottery...” as a designated sector, in respect of CDD and STR and threshold reporting obligations. There has been limited implementation of Decree No 74. The Haiphong People’s Committee has issued local requirements in respect of the casino based in Haiphong.

**b. Real estate agents.**

157. **Background:** The Housing Law 2005 and the Law on Real Estate Business 2006 govern real estate brokers and agents in Vietnam, with the latter more directly related to natural or legal persons providing real estate brokerage services, which requires brokers to be licensed by obtaining a practice certificate after completion of a certification process. The deadline for this licensing is 1 January 2009, thereafter individuals and legal entities without a practice certificate must cease practicing, or be in violation of Article 16 (Prohibited conduct) and subject to sanctions under Article 17 of the Real Estate Law.

158. There are some 5,000 real estate trading firms of which 3,000 are in HCM City, but the number of staff who have undergone training in the field is relatively small. The team was not provided with statistics on the actual number of individuals providing real estate brokerage services.

159. Real estate agents are not involved in accepting payments – payment is direct between the seller and buyer and normally conducted using gold or Vietnam Dong.

160. **AML Implementation:** No guidelines have been issued in respect of the application of Decree 74 to real estate brokers, although real estate agents are covered by in Article 6 (2) (b) of the Decree.

**c. Dealers in precious metals**

161. **Background:** Gold is considered a ‘foreign exchange’ under the Ordinance 28 on Foreign Exchange 2005 and the Decree 160 on the Implementation of the Ordinance of Foreign Exchange 2006. Under the current legal framework, gold business organizations are allowed for exporting-importing block, bar, or piece or grain of gold. At present, there are 30 gold import-export authorized enterprises, mainly in Hanoi and Ho Chi Minh City. Pursuant to Decree 160 on the implementation the Foreign Exchange Ordinance, the SBV is responsible for managing raw gold import-export activities. Decree 174 of 1999 governs the management of gold business activities.

162. Export and import is subject to SBV license. Retail gold shops are licensed by the provincial level of the MPI in terms of business registration.

163. The Taxation Bureau is responsible for oversight and monitoring of revenue collection.

164. Gold is used extensively in real estate transactions in Vietnam. It is accepted as a monetary instrument.

165. There is a Vietnam Gold Traders Association established in 2002. The Association is supervised by the SBV. Membership consists of the 100 largest gold traders in Vietnam, and 10 major importers/exporters.

166. **AML Implementation:** Article 6 (1) d of AML Decree 74 designates precious gold traders as subject to the Decree. However, no action has been undertaken to give effect in this sector. The Association has passed Decree 74 to its members but has not issued any guidance to date.

**d. Dealers in precious stones**

167. **Background:** Decree 65 of 1995 promulgated the Regulation on Management of Activities in Gem, and Ministry of Trade Circular No.17 of 1999 on Guidance on the Gem Trade provide the overarching legal framework for trading in diamond, ruby, sapphire and emerald and other precious stones, including the use of precious stones in jewelry and art work, as defined in the Decree. This includes obedience to other relevant existing laws such as MPI business registration, foreign investment law, and export and import permit law.

168. There is an industry association but it is more concerned with production of stones rather than regulatory matters.

169. There were no statistics provided to the team on this sector. However, international studies estimate that in 2006, gold, gems and precious-jewelry sales in Vietnam reached US\$6.3 billion, and demand is expected to reach US\$8.19 billion in 2008.

170. **AML Implementation:** Article 6 (1) d of AML Decree 74 designates precious stone and gem dealers as subject to the Decree. However, no action has been undertaken to give effect in this sector.

**Lawyers and Notaries**

171. **Background:** The Law on Lawyers of 2006 governs the practice of lawyers in Vietnam, including the operations of Bar Associations, professional standards including requirements for practice certificates, and measures to address violations.

172. There are 4,141 individual lawyers and 1,993 lawyers in apprenticeship. There are 1,040 based in Hanoi and 1,600 in HCM City. There are 1,476 lawyer practice organizations, of which 1,284 are law offices operating on a non-incorporated basis, and 192 are law firms. Law firms include law partnerships and limited liability law firms, the latter can be formed with one lawyer.

173. Vietnam's Notary Law, promulgated in November 2006, governs the scope of notary, notaries, notaries' organizations, notaries' procedures and state management on notaries. For notary practice, there are two forms of notary public organizations: Notary public's chamber and Notary public's office. Notary public's chambers are established by provincial People's Committee's decision. A Notary public's chamber is a unit under the Ministry of Justice and its members are government officials. The Chief of Notary public's chamber is appointed, dismissed or removed by the Provincial Chairman of People's Committee. A notary public's office is established by a notary or notaries as a private enterprise or collective company respectively.

174. A notary public's office is established by a decision of the provincial People's Committee. A notary public's office is permitted to operate after registration and issuance of the certificate of operation by the Ministry of Justice.



175. The Bar Association of Vietnam was established in June 2008. In order to qualify to practice law in Vietnam, candidates must hold a Bachelor of Law and have acquired 18 months of practical training. The practice certificate in the past was issued by the Ministry of Justice, based on a national examination. This function has now been delegated to the Bar Association. Lawyers are now required to be a member of the Bar Association and be issued with a practice certificate and membership ID card to practice.

176. **AML Implementation:** Article 6 (2) (a) of AML Decree 74 designates Lawyers, legal consultant companies, law offices, law partnerships conducting monetary transactions or transactions involving other assets on behalf of customer as subject to the ambit of this decree.

177. The Bar Association has indicated that no guidelines or advice has been issued to its members in relation to Decree 74. The Association did highlight challenges involved in the application of STR reporting and client confidentiality.

### **Accountants**

178. **Background:** The profession of accountancy is governed by Chapter IV (Articles 55 to 58) of the Accountancy Law of 2003. This law covers accountants in public practice and internal accountants and covers professional, ethical and practice certificate requirements.

179. In order to practice as Certified Public Accountants (CPAs), membership of the Vietnam Association of CPAs is required. Admission requires an appropriate degree, 5 years experience in auditing accounting, and successful completion of CPA examinations. An ongoing practice certificate is issued by the Ministry of Finance once all requirements are met.

180. There are 1,000 individual members of the Association. There are 150 auditing/public accountancy firms in Vietnam.

181. **AML Implementation:** Accountants are not included as a designated group having responsibility to implement Decree 74. The Association is, however, aware of Decree 74.

### **Trust and Company Service Providers**

182. **Background:** Lawyers are permitted and act as formation agents of incorporation of legal persons, including company registration for local and foreign investors. Accountants also provide company establishment services and are permitted to act as nominees and provide representative office services.

183. There are also numerous companies offering company incorporation services and representative or registered office services. These are mainly targeted at foreign investors.

184. The Ministry of Justice advised that trust arrangements cannot be established under Vietnamese law.

185. **AML Implementation:** There is no requirement in AML Decree 74 in relation to company service providers.

#### **1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements**

186. Vietnam's Enterprise Law of 2005 has fostered the creation of over 200,000 registered private domestic enterprises, accounting for around 10 per cent of the economy and a smaller proportion of the labour force.

187. The Law on Enterprise of 2005 provides the framework for the establishment, organisation, management, and operation of limited liability companies, share-holding companies, partnerships, and private enterprises in all economic sectors, as well as provisions on company groups. Chapter II of the Enterprise Law sets out detailed requirements for enterprise establishment and business registration, covering both foreign owned and domestic enterprises. It prohibits State bodies, including the armed forces, from using state assets to establish enterprises for private profit.

188. Individuals and economic organizations must submit full business registration documents to establish an enterprise, as specified in the Law on Enterprise, to the competent Business registration bodies. The Provincial office of the Ministry of Planning and Investment (MPI) is primarily responsible for processing and issuing registration certificates. The Central Office of the MPI is responsible for collating registration details from its provincial offices and maintaining a central registry of all registrations.

189. The various categories of economic enterprises are defined in the Law on Enterprise as follows:

*Private Enterprise (sole trader):* An enterprise owned by an individual who is liable for all of its operations with his/her entire property. Each individual shall only be entitled to establish one private enterprise.

*Partnerships:* An enterprise in which there are no less than two partners who are joint owners of the company and jointly conduct business under one common name. These are called the general partners, and they must be individuals and liable for all enterprise liabilities with his/her own entire property. Besides general partners, there may also be limited liability partners. The latter shall bear debts of the partnership only to the extent of their capital contributions to the enterprise.

*Single Member Limited Liability Company:* An enterprise owned by one organisation or one individual (the company owner); the company owner is liable for debts and other liabilities of the company within its charter capital. A single member limited liability company may not issue shares.

*Limited Liability Company:* Must have more than two or more members but not more than 50 members. A limited liability company may not issue shares.

*Shareholding Companies:* An enterprise where its charter capital is divided into shares; shareholders can be organisations or individuals; there must be at least three shareholders but there is no restriction on maximum number of shareholders. A shareholding company may issue securities of any kind to mobilize capital.

*Public Companies:* Under the Securities Exchange Act No.70 2006, a public company is a joint stock company (shareholding company) which has (a) A company which has offered shares to the public;

(b) A company which has securities listed in the Stock Exchange or the Securities Trading Centre; (c) A company the shares of which are owned by at least 100 investors, excluding professional securities investors, and which has the paid-up charter capital of 10 billion VND or more.

190. Chapter IV of the Civil Law 2005 provides for the establishment of legal persons including non-economic enterprises that can independently enter into legal relations in its own name. Legal persons consists of:

1. Government agencies
2. Political organizations
3. Economic organizations
4. Social organizations, society-employment organizations
5. Social funds, charity funds.
6. Other organization with enough conditions under Regulations in Article 84 of this Law.

191. Articles 104 and 105 of the Civil Code cover non-profit organisations (NPOs) such as social organisations, social funds and charities.

192. Articles 111 to 120 covers Cooperative groups, which are formed on the basis of cooperation contracts certified by People's Committees and which are entered into by three or more individuals who jointly contribute property and labour, enjoy benefits and bear liabilities. Cooperative groups, which meet all the conditions to become legal persons in accordance with the provisions of law, shall register their activities in the capacity of legal persons at competent state agencies.

193. Trusts are not provided for in Vietnamese law. Trusts are not recognized in Vietnam. The concept is not applicable in Civil code Vietnam which is based on the French and German continental law family.

## **1.5. Overview of strategy to prevent money laundering and terrorist financing**

### **a. AML/CFT Strategies and Priorities**

194. Vietnam is taking a phased approach to the implementation of its main AML legislation, AML Decree 74 of 2005. It has focused implementation on credit institutions, but predominately on the banking sector, and the SBV issued Guideline No.281 on 30 June 2006 to instruct credit institutions to implement AML Decree 74.

195. The SBV aims to issue implementation guidelines for remaining sectors (outside the banking system) such as: securities, insurance, real estate, gold and precious stones, legal consultancy, gambling etc in the medium, term. The SBV has proposed to the Government to assign responsibility to relevant ministries and agencies to facilitate implementation as soon as possible.

196. In the interim, the SBV has coordinated with other ministries and agencies in order to raise public awareness of AML, as well as to provide training to competent authorities including law enforcement. The Anti Money Laundering Information Centre (AMLIC) is working with agencies to issue guidelines for financial institutions other than credit institutions.

197. Vietnam has a formal Plan on the Implementation of FATF 40 Recommendations on Money Laundering, which was agreed by relevant agencies in July 2008. The plan outlines the outputs for each FATF Recommendation, lead and other responsible agencies, and expected completion dates.

198. Vietnam is considering the establishment of a National Coordination Committee. This formalized arrangement will build on the foundation established by AMLIC and the SBV in working with agencies to develop the AML/CFT regime in Vietnam, including in preparing for the APG Mutual evaluation.<sup>1</sup>

### **Terrorist Financing**

199. Vietnam has the National Steering Committee on suppressing terrorism guided directly by the Prime Minister. The Prime Minister has issued an instruction to all level government-bodies, ministries, and agencies to enhance the effort to combat terrorism, and has designated the SBV to be the lead agency in preventing and combating terrorist financing.

200. Vietnam issued Prime Ministerial Directive 25 in 2007 to prevent and combat terrorism. There is a proposed amendment to the Penal Code, to insert a new Article 230b on financing of terrorism.

### **b. The Institutional Framework for Combating Money Laundering and Terrorist Financing**

201. The AML Decree 74 stipulates the responsibilities of individuals, state authorities, and organizations in the prevention and combating of money laundering as follows:

202. **Anti-Money Laundering Information Centre (AMLIC):** Pursuant to AML Decree 74, on 8 July 2005, the Governor of the SBV signed Decision No. 1002 to establish the Anti-Money Laundering Information Centre (AMLIC) within the SBV. AMLIC has the function of receiving, processing and disseminating information concerning money laundering. In the first stage to July 2007, AMLIC was a unit of the State Bank's Inspectorates. Since August 2007, AMLIC has been a separate unit of the SBV.

203. **The State Bank of Vietnam:** The SBV acts as the central bank for Vietnam and the inspectorate for credit institutions. It also has regulatory and supervisory responsibility in gold trading, as gold is considered a foreign exchange instrument. It is responsible for reviewing the effectiveness of the AML system in Vietnam as stipulated in Article 15 of AML Decree 74, including reporting and recommending to the National Assembly in respect of AML/CFT. Under AML Decree 74, it is responsible for regulating and supervisory credit institutions, licensed money exchange bureaus and gold dealers' compliance with the Decree, and advising such institutions of UNSCR requirements.

---

<sup>1</sup> The Prime Minister of Vietnam issued Decision No.470 on 13 April to establish a National Steering Committee on AML/CFT

204. **Ministry of Public Security:** The Ministry of Public Security is responsible to: organise teams to investigate money laundering and related crime and terrorism acts; provide guidance to other agencies in conducting preliminary investigations into money laundering related crime in accordance with law on criminal prosecution and Decree 74; and advise the SBV of the results of investigations into money laundering. It also works closely with the Supreme People's Procuracy and the Supreme People's Court in investigating, prosecuting and sentencing money laundering related crime.

205. **Supreme People's Procuracy:** The Supreme People's Procuracy (SPP) initiates public prosecution of money laundering cases following investigations. The SPP will officially "open" a case if there are sufficient grounds, including relevant evidence provided by the Ministry of Public Security and other agencies.

206. **Supreme People's Court:** The Supreme People's Court is responsible for criminal trials under appeal or reopening of cases under the Penal Code, including Article 250 and 251 cases in relation to money laundering, and also terrorism cases under Article 84 of the Penal Code. It is also responsible for guiding provincial courts.

207. **Ministry of Justice:** The Ministry of Justice is responsible for drafting and amending laws approved by the National Assembly, including the Penal Code. It also reviews international conventions prior to signature and accession. It is currently reviewing the Palermo Convention with other laws in Vietnam before it formally accedes to the Palermo.

208. The Ministry has a regulatory and supervisory role in terms of implementation of the Law on Lawyers 2006, including the oversight of the accreditation process.

209. **Ministry of Finance:** The Ministry is the budget oversight ministry for government agencies, including Customs and the State Securities Commission. Government ministries and agencies have to submit budget proposals to the Ministry for review and consolidation for submission to the National Assembly for approval. It has specific responsibility for regulating and supervising the insurance sector and oversight of other agencies, including Customs and the State Securities Commission.

210. **State Securities Commission:** Decree No. 75 established the State Securities Commission (SSC) as a governmental agency, under the Ministry of Finance, charged with the mission of organizing and regulating the securities market. The SSC is responsible for implementation of AML Decree 74 in the securities sector.

211. **Government Inspectorate:** The Government Inspectorate is an agency of the Government, answerable to the Government for performing inspection work and tasks. It is the lead anti corruption agency in Vietnam.

212. **Ministerial Inspectorates:** Regulatory and supervisory responsibility is delegated to respective sectoral ministries including the SBV, Ministry of Finance and the State Securities Commission. The proposed duties of government inspectorates include undertaking inspections and checks of units under their administration of any transactions related to money laundering, as proposed by the AMLIC or any other competent State authorities; and to deal with administrative

breaches within the jurisdiction in accordance with the Ordinance on Handling of Administrative Violations and AML Decree 74.

213. **Customs:** Vietnam Customs' duties include to: inspect and control goods and means of transportation; prevent and combat smuggling and illegal transportation of goods across borders; organize implementation of the laws on tax with respect to imported or exported goods; and make proposals for policies and measures with respect to imported or exported goods. Its duties include implementation and enforcement of Customs declaration requirements under the Law on Customs 2001.

214. **Ministry of Defence/Border Guards/Rangers:** They play a key role in interdicting illegal cross border activities including working closely with the Customs Department.

215. **Ministry of Foreign Affairs:** The Ministry, together with the Ministry of Justice, is responsible for Vietnam's obligations in relation to international treaties and conventions, including UN Security Council Resolutions. It is a member of the Committee for Non-Governmental Organization Affairs which regulates and supervises international Non-Profit Organisations in Vietnam.

216. **Ministry of Planning and Investment:** The ministry and its provincial branches within the Provincial People's Committees are responsible for registration, regulation and supervision of economic enterprises under the Enterprise Law of 2005. It also has responsibility in respect of overseeing casinos and electronic gaming establishments.

217. **Ministry of Construction:** The Ministry of Construction is primarily responsible for the state management of real estate business activities and requirements under the Law on Real Estate Business 2006.

218. **Ministry of Trade and Industry:** The Ministry of Trade and Industry has oversight responsibility for the precious stone and gems sector and has issued a Circular in 1999 providing guidance on trading in gems and other precious stones.

219. **Ministry of Home Affairs:** The Ministry is responsible for registering domestic Non-Profit Organisations (NPOs) and oversight of all NPOs operating in Vietnam. The Ministry is also a member of the Committee for Non-Governmental Organization Affairs for international NPOs.

220. **People's Committees:** Article 19 of AML Decree 74 stipulates that People's Committees have responsibilities to guide their units and sections to implement the Decree within the scope of their duties and powers and to cooperate and combat money laundering.

221. **Vietnam Union of Friendship Organisation (VUFO):** The Vietnam Union of Friendship Organisation (VUFO) is the standing office of the Committee for Foreign NGO Affairs. This organisation has an interagency coordination role, including with the Commission for External Relation of the Party Central Committee, Government Office, Ministry of Foreign Affairs, Ministry of Public Security, Ministry of Finance, Ministry of Planning and Investment, Ministry of Home Affairs, Government Commission for Religious Affairs and Vietnam Union of Friendship Organisation.

222. **Vietnam Association of Accountants and Auditors:** The Vietnam Association of Accountants and Auditors (hereinafter referred to as “the Association”) is a professional body of organisations and individuals involved in the accounting and auditing (accountancy) practice in Vietnam. The Association has the aim to bring together and unite all organisations and individuals involved in accountancy in Vietnam.

223. **Vietnam Bankers Association:** Membership is limited to Vietnamese banks only; branches of foreign banks are excluded.

224. **Bar Association:** The Bar Association was only recently established in June 2008. It has studied Articles 250 and 251 in the Penal Code and AML Decree 74. At this stage, it has not provided any guidelines to its members.

225. **Vietnam Gold Traders Association:** The Association is under the supervision of the SBV, which has oversight of gold trading in Vietnam. It was established in 2002 and currently is in its second term – 2006 to 2011. It has 100 members. It has passed on AML Decree 74 to all its members.

**c. Approach Concerning Risk**

226. Vietnam has not undertaken a comprehensive or national risk assessment of money laundering or the financing of terrorism.

**d. Progress since the Last Mutual Evaluation**

227. This is Vietnam’s first Mutual Evaluation. Vietnam was admitted to the APG as the 33rd member in May 2007.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### 2.1 Criminalization of Money Laundering (R.1 & 2)

#### 2.1.1. Description and Analysis

##### **Legal Framework:**

228. Some types of money laundering are covered in Articles 250 and 251 of the Criminal Code. Article 3 (5) in the Law on Drug Prevention No.23 of 2000 criminalizes money laundering in relation to drug trafficking.

229. Vietnam signed the United Nations Convention against Transnational Organized Crime on 13 December 2000 ("Palermo Convention"), but has not yet ratified it. Vietnam acceded to the 1988 Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on 4 November 1997.

##### *Criminalization of Money Laundering*

230. The Penal Code was passed by the National Assembly in 1999. Article 250 provides as follows:

*Article 250 – Harbours or consuming property acquired through the commission of crime by other persons:*

1. *Those who without prior promise, harbours or consume property with the full knowledge that it was acquired through the commission of crime by other persons, shall be sentenced to a fine of between five million dong and fifty million dong, non-custodial reform of up to three years or a prison term of between six months and three years.*
2. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between two and seven years of imprisonment:*
  - a) *In an organized manner;*
  - b) *Being of professional character;*
  - c) *The property or things involved in the offence are of high value;*
  - d) *Gaining large amount of illicit profits;*
  - e) *The offence constitutes a case of dangerous recidivism.*
3. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and ten years of imprisonment:*
  - a) *The property or things involved in the offence are of very high value;*
  - b) *A very large amount of profit is illegally gained.*
4. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:*
  - a) *The property or things involved in the offence are of particularly great value;*
  - b) *Particularly great amount of profit is illegally gained.*
5. *The offender may also be subject to a fine of between three million dong and thirty million dong and/or the confiscation of part or whole of their property.*



231. The Ministry of Justice advised that the words in Clause 1, “without prior promise” mean that a person who harbours or consumes property must not have any prior agreement with the person who committed the crime. Where a person has such prior knowledge or has made such a prior agreement, he will be charged with the predicate crime itself. The phrase “without prior promise” is used to distinguish between persons involved in the predicate offence, from persons who, although not involved in the predicate offence, know that the property they harbored or consumed was obtained through a crime.

232. The Ministry of Justice advised that the word “harbor” includes concealing property in addition to acquiring and possessing. This was not supported by anything in writing, such as a written decision of a court. It is noted that the word “conceals” is specifically used in Article 21 – Concealment of crimes of the Penal Code, which raises a question of why the word was not used in Article 250. The authorities also advised that “consume” means use or using. However, there is no definition of “consume” in the Penal Code.

233. Article 6(1)(b)(i) of the Palermo Convention requires criminalization of the simple act of “*acquisition, possession or use of property, knowing, at the time of receipt that such property is the proceeds of crime*”. According to the Ministry of Justice, the 603 convictions under Article 250 since 2006 have been based on possession only and not on concealment or other factors. There is no requirement to prove possession and concealment, proof of either will be sufficient to obtain a conviction under Article 250.

234. Therefore, Article 250 meets a requirement of criminalizing the “acquisition, possession or use” in Article 6(1)(b)(i) of the Palermo Convention. However, it does not apply to self laundering and is restricted to property acquired through the commission of crime by other persons. The Palermo Convention’s definition of “*Proceeds of crime shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence*”. This definition is applicable to any property regardless of how the property was acquired and therefore all that is required by Article 6(1)(b)(i) ultimately, is for the property to be the proceeds of crime and the person to have knowledge of this, regardless of how many layers the property has gone through.

235. In respect of Article 6(1)(a)(i) and (ii) of the Palermo Convention, the word “harbor” is not defined and does not appear to be broad enough to meet the requirements in the Convention of criminalizing, “*The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; and (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property knowing that such property is the proceeds of crime,*” respectively.

236. Article 251 of the Penal Code provides as follows:

*Article 251 – Laundering money and/or property attained through the commission of crime:*

1. *Any person using financial and/or banking operators or other transactions, legalize money and/or property obtained through the commission of crime or use such money*

*and/or property to conduct business activities or other economic activities, shall be sentenced to between one and five years of imprisonment.*

2. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonments:*
  - a) *In an organized manner;*
  - b) *Abusing positions and/or powers;*
  - c) *Committing the offence more than once.*
3. *Committing the crime in particularly serious circumstances, the offenders shall be sentenced to between five and fifteen years of imprisonment.*
4. *The offenders may also be subject to the confiscation of property, a fine treble the amount of money or the value of the property that have been legalized, to a ban from holding certain posts, practicing certain occupations, or doing certain jobs for one to five years.*

237. The wording of Article 251 criminalizes some of the requirements in Article 6(1)(a) of the Palermo Convention. However, there are also some serious deficiencies in this Article, which include:

- a) The use of the word “legalize” does not adopt, the wording used in Article 6(1)(a)(i) of the Palermo Convention, which only requires the act of conversion or transfer of property for the purposes concealing or disguising the illicit origin of the property;
- b) Article 251 requires a person to be using financial and/or banking operators or other transactions. It is not clear what “other transactions” means;
- c) Article 251 does not criminalize the act of possession or acquisition of property knowing that such property is the proceeds of a crime as required under Article 6(1)(b)(i) of the Palermo Convention, although this is covered, to a certain extent, by Article 250; and
- d) The second limb to Article 251 makes it a crime to use money or property to conduct business activities or other economic activities, but this would apparently not include activities, such as using money to finance terrorism, gambling with the money, etc.

163 Articles 250 and 251 do not criminalize the concealing or disguising of the origin of the property using methods such as disguising information on ownership, the movement of property or the location of property and Articles 250 and 251 do not criminalize the use of the proceeds of funds, without acquisition or possession.

164. The word “property” is not defined in the Penal Code. Article 251 uses the word “property” as well as the word “money”, while Article 250 only uses the word “property”, which suggests that there is a distinction between the two.

165. The Ministry of Justice advised that there is a defect in the Code and that the word “property”, as it is used in Articles 250 and 251, is meant to have the same meaning given to property in Vietnam’s Civil Code, where Article 163, with the heading “Property” states: “*Property comprises tangible things, money, valuable papers and property rights.*”

166. The Ministry of Justice went on to state that the reference to money in Article 251 should be deleted and the word property given the same meaning in the Penal Code as it is given in the Civil Code. Finally, we were told that in practice the word “property” in Article 250 is interpreted to include money. We were not provided with any material to support this comment.

167. However, regardless of this, the word property in the Penal Code does not conform to the definition of property in Article 2(d) of the Palermo Convention that “*Property shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interests in, such assets.*”

168. Finally, neither Article 250 nor Article 251 conform completely to Article 3(1)(b) and (c) of the Vienna Convention.

169. Article 3 (5) in the Law on Drug Prevention No.23 of 2000 specifically prohibits, “*Legalizing money and/or property acquired through the commission of drug related crimes.*” However, there are no specific administrative or criminal penalties in this law for a breach of this prohibition. Article 53(2) states that those who, inter alia, “*use their own property and/or means to harbour or create conditions for illegal drug-related activities ... shall ... be administratively handled or examined for penal liability; if causing damage, they must pay compensations therefore as prescribed by law.*” There is also no definition of money or property in this law.

#### *The Laundered Property*

170. Article 251 of the Penal Code appears to cover any type of property. However, as noted above, the use of the word “property” in Article 250 and the words “money” and “property” in Article 251 means that it is not completely clear about whether there are any limits in respect of the type of property directly or indirectly acquired through the commission of a crime in Article 250.

#### *Proving Property is the Proceeds of Crime*

171. We were informed by the Ministry of Justice that there is no legal requirement that a person must be convicted of a predicate crime in order to prove that property is the proceeds of crime. No such legal requirement was found in the Penal Code or the Criminal Procedure Code.

#### *The Scope of the Predicate Offences*

172. For the purposes of Articles 250 and 251, all offences in the Penal Code can be predicate offences. The offences in the Penal Code do not cover all the FATF “Designated categories of offences”, including terrorist financing, piracy, insider dealing and market manipulation, the participation in an organized criminal group and racketeering. Article 84 of the Penal Code establishes the crime of “Terrorism”, but it is restricted to domestic terrorism.

173. Article 20 – Complicity of the Penal Code (quoted in criterion 1.7 below) criminalizes a person who takes an active part in a criminal activity, but it does not criminalize participation in an organized criminal group or create the offence of conspiracy, which includes only an agreement to commit an offence.

### *Threshold Approach for Predicate Offences*

174. For the purposes of bringing Articles 250 and 251 of the Penal Code Vietnam has adopted on all crime approach.

### *Extraterritorially Committed Predicate Offences:*

175. Article 6 gives extraterritorial effect to the Penal Code by making Vietnamese citizens subject to penal liability for acts committed outside of Vietnam that would be criminal offences if committed in Vietnam. It states:

1. *Vietnamese citizens who commit offences outside the territory of the Socialist Republic of Vietnam may be examined for penal liability in Vietnam according to this Code. This provision also applies to stateless persons who permanently reside in the Socialist Republic of Vietnam.*
2. *Foreigners who commit offences outside the territory of the Socialist Republic of Vietnam may be examined for penal liability according to the Penal Code of Vietnam in circumstances provided for in the international treaties which the Socialist Republic of Vietnam has signed or acceded to.*

176. Under this Article, Vietnamese citizens, stateless persons who reside permanently in the territory of Vietnam, and possibly foreign individuals, who have committed a predicate offence outside of Vietnamese territory could be prosecuted under the Penal Code. The Ministry of Justice advised the ME team that in practice it would be difficult, on an evidentiary basis, to convict a person for acts committed outside of Vietnam.

### *Laundering One's Own Illicit Funds*

177. Article 250 cannot apply to a person who commits the predicate offence because such a person would not meet the requirement of not having prior notice and not having a prior agreement. Article 251 could be used to prosecute a person who has legalized money obtained through an offence that he has committed, or a person who has used money he obtained through an offence to conduct business activities or other economic activities.

178. In practice, the Ministry of Justice advised that a person who has obtained money through a predicate offence and has legalized the money, or used it to conduct business activities or other economic activities, will usually only be charged with that predicate offence and not also under Article 251. The reason given for this practice by the Ministry of Justice was by way of the example of a Government official charged with corruption. The penalty for such a crime can be very severe, including the death penalty. Therefore, the view of the Government is only to proceed with the corruption charge and not waste resources on a lesser charge under Article 251. There does not appear to be any fundamental principle of domestic law that would prevent the criminalizing of self-laundering.

### *Ancillary Offences*

179. The following articles of the Penal Code relate to ancillary offences:

(i) Article 17 of the Penal Code defines the “*Preparation for crime commission*” as follows:

*Preparation for a crime commission is to search for, prepare instruments or create other conditions for committing crimes.*

*Persons who prepare for the commission of a very serious crime or a particularly serious crime shall bear penal liability for their attempted crime.*

(i) Article 18 of the Penal Code defines “*Incompleted commission of a crime*” as follows:

*Incompleted commission of a crime is an intentional commission of a crime which cannot be carried out to the end due to causes beyond the control of the offender. Persons who commit incompleted crimes shall bear penal liability therefore*

(ii) Article 20 – Complicity:

1. *Complicity is where two or more persons intentionally commit a crime.*

2. *The organizers, executors, instigators and helpers are all accomplices.*

*The executors are those who actually carry out the crimes.*

*The organizers are those who mastermind, lead and direct the execution of crimes.*

*The instigators are those who incite, induce and encourage other persons to commit crimes.*

*The helpers are those who create spiritual or material conditions for the commission of crimes.*

3. *The organized commission of a crime is a form of complicity with close collusion among persons who jointly commit the crime.*

180. Complicity is a crime and subject to the penalties outlined in Chapter V of the Penal Code. However, Articles 250 and 251 of the Penal Code, and the Penal Code in general, do not provide for an offence of criminal conspiracy as required under Article 6(1)(b)(ii) of the Palermo Convention.

181. Article 21 of the Penal Code prohibits the concealing of traces or exhibits of a crime or obstructing the detection or investigation of an offender. To the extent that property or money are traces or exhibits of a crime, this Article may have some relevance.

*Additional Element — If an act overseas which does not constitute an offence overseas, but would be a predicate offence if occurred domestically, lead to an offence of ML*

182. The authorities advised that Article 6 of the Penal Code provides that a Vietnamese national who commits an act outside Vietnam, that does not constitute an offence in that jurisdiction, can be prosecuted for the act if it constitutes an offence under the Penal Code. One example would be person who gambles outside of Vietnam and returns to Vietnam with his winnings, which he seeks to conceal. Such a person could in theory be prosecuted under *Article 248 – Gambling* and Article 251. In practice the Ministry of Justice advised that such a prosecution is very unlikely because of the difficulty of proving the predicate offence.

*Liability of Natural Persons*

183. Articles 250 and 251 apply to natural persons who commit criminal acts in Vietnam and to Vietnamese citizens, stateless persons and possibly foreigners who commit criminal acts outside of Vietnam.

*The Mental Element of the ML Offence*

184. Article 250 provides that a person must have “full knowledge” that the property which he harbours or consumes was acquired through the commission of a crime. Based on the Article 250 cases to date, evidence that can be used for determining the mental element has included suspicious circumstances or abnormal trading activities, witness statements, the time of acquisition and other unusual circumstances. There is also an onus on the person being investigated to demonstrate that he/she has undertaken some measures to verify the property has been legally sourced, although this requirement is not set out in law.

185. Article 251 does not have any express words about what “knowledge” a person must possess in relation to how money or property has been obtained through the commission of a crime. However on its plain wording, “knowledge” appears to require that a person must know that the property or money was obtained through the commission of a crime.

186. The Ministry of Justice advised that Vietnamese law does not recognize the concept of a “suspicion” and therefore a person cannot be found guilty of an offence under Article 251 if he only had a suspicion that that property or money was acquired through the commission of a crime.

187. The following articles in the Penal Code are pertinent:

*Article 9 – Intentional commissions of crimes of the Penal Code:*

*The intentional commission of a crime is commission of crime in the following circumstances:*

- 1. The offenders are aware that their acts are dangerous to society, foresee the consequences of such acts and wish such consequences to occur;*
- 2. The offenders are aware that their acts are dangerous to society, foresee the consequences that such acts may entail and do not wish, but consciously allow, such consequences to occur.*

*Article 10 – Unintentional commission of crime of the Penal Code:*

*The unintentional commission of a crime is commission of crime in the following circumstances:*

- 1. The offenders foresee that their acts may cause harmful consequences to society, but think that such consequences shall not occur or can be warded off;*
- 2. The offenders do not foresee that their acts may cause harmful consequences to the society though they must have foreseen or did foresee that such consequences.*

*Article 8 – Definition of Crime provides that a crime can be committed intentionally and unintentionally.*

*Article 64 – Evidence of the Criminal Procedure Code:*

- 1. Evidence means anything in existence taken in according with the rule prescribed by this Code, whereby Investigating Body, Procuracy and Court could determine whether a criminal act has been committed, person committed the act and other circumstances necessary for accurate handling of the case.*
- 2. Evidence shall be included;*
  - a) Material evidences;*
  - b) Testimonies given by witnesses, victim, civil plaintiff, civil defendant, persons having interests and obligations involved in the case, the arrested, the detained person, the charged person, the accused;*
  - c) Forensic examination conclusion;*
  - d) Record on investigation, adjudication and other objects, documentary evidences.*

188. Officials from the Supreme People's Procuracy, which is responsible for the prosecution of offences under the Penal Code, advised that the knowledge and intent elements of Articles 250 and 251 can be proved by objective factual evidence, which is not restricted to admissions of guilt. However no supporting material to show how a court determines that an accused had the requisite intention was provided. It does appear, however, that intention can be established through objective factual evidence.

189. It should be noted that based on the statistics provided for Article 250 convictions and other offenses, confession based convictions account for a significant percentage of total convictions.

*Liability of Legal Persons*

190. Only a natural person can be convicted of a crime under the Penal Code. This issue was considered by the National Assembly when it was looking into the application of the Penal Code and it was ultimately decided that criminal liability would not be extended to legal persons. Authorities advised that there is nothing in the Constitution of Vietnam that would prohibit the criminal liability of legal persons. Article 24 (Offences) of the AML Decree 74 provides for administrative penalties to be imposed where individuals or organizations, which includes legal persons, with responsibilities under the AML Decree 74 fails to meet those responsibilities. Penalties include:

- a. an official warning;*
- b. fines ranging from 5,000,000 dong to 30,000,000 dong; and*
- c. temporary or permanent revocations of licenses or certificates to practice*

*Sanctions for ML*

191. Clause 3 Article 8 of the 1999 Penal Code states:

*Less serious crimes are crimes which cause no great harm to society and the maximum penalty bracket for such crimes is three years of imprisonment; serious crimes are crimes which cause great harm to society and the maximum penalty bracket for such crimes is seven years of imprisonment; very serious crimes are crimes which cause very great harm to society and the maximum penalty bracket for such crimes is fifteen years of imprisonment; particularly serious crimes are crimes which cause exceptionally great harms to society and the maximum penalty bracket for such crimes shall be over fifteen years of imprisonment, life imprisonment or capital punishment.*

192. Article 250 provides for the imposition of a fine, non-custodial reform and prison terms from six months to 15 years and an additional penalty of a fine and confiscation of property. Article 251 provides for the imposition of a prison term from one to 15 years. In addition, Clause 4 of Article 251 provides for an additional penalty:

*The offenders may also be subject to the confiscation of property, a fine treble the amount of money or the value of the property, which have been legalized, to a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.*

193. The level of penalties for a conviction under Article 250 or Article 251 are proportionate when compared to other offences in the Penal Code and when compared to the penalties imposed by other countries for similar offences. However, please see comments below in respect of whether the sanctions are dissuasive and effective.

#### *Statistics*

194. The Government quoted Circular No. 01/2005 dated 1 July 2005 addressed to the Supreme People's Procuracy, the People's Supreme Court, Ministry of Police and Ministry of Defence that guides and instructs on the application of legal regulations in penal statistics and criminal statistics. According to this circular, all three competent agencies, investigation, (Minister of Public Security and Ministry of Defence) prosecution (Supreme People's Procuracy) and the judiciary (People's Supreme Court), are responsible to maintain statistics on investigations, prosecutions and convictions of all kinds of offences. The Supreme People Procuracy is responsible for summarizing all investigations, prosecutions and convictions results. Statistics have been maintained since 1 January 2006 and according to the available statistics provided by the Government, the number of cases tried under the Article 250 of the Penal Code is as follows:

**Table: Statistics on Convictions under Article 250**

<b>Year</b>	<b>Investigating cases</b>	<b>Prosecuting cases</b>	<b>Adjudication</b>	<b>Confiscation of Money, Assets (number of defendants)</b>
<b>2006</b>	<b>266</b>	<b>243</b>	<b>240</b>	<b>566 defendants</b>
<b>2007</b>	<b>228</b>	<b>256</b>	<b>260</b>	<b>616 defendants</b>



<b>2008</b>	<b>97</b>	<b>101</b>	<b>103</b>	<b>248 defendants</b>
<b>Total</b>	<b>591</b>	<b>600</b>	<b>603</b>	<b>1430</b>

195. The ME team was not provided with any details about these statistics and therefore we do not know the nature of the criminal conduct. The Ministry of Justice advised that 80% of the 603 convictions have been based on confession. In the remaining 20% of cases, convictions have been based on proving possession only (with full knowledge) and not concealment.

196. For Article 251, in 2006, defendant Phan Van Can was found guilty of “legalizing money, asset obtained by other crimes” under this Article of the Penal Code. In the case, No. 478/2006/HSST dated 27 October 2006, the Hanoi People’s Court imposed a one year suspended sentence.

197. The conviction rate for Article 251 is insignificant given the size of the financial and commercial sector including the growing securities market, which based on crime statistics provided for Article 250, would suggest significant illicit proceeds being generated. The low conviction rate reflects the challenges law enforcement agencies confront in investigating and prosecuting more complex money laundering cases compared with mere possession cases or predicate crimes. The gaps highlighted in the Penal Code also pose obstacles to money laundering investigations and prosecutions.

198. The lack of convictions under Article 251 and the lack of any detailed statistics for Article 250, highlight problems with effective implementation and assessing dissuasiveness and effectiveness respectively.

### **2.1.2 Recommendations and Comments**

199. Vietnam should consider implementing the following recommendations:

- Vietnam needs to enact comprehensive anti-money laundering laws that criminalize money laundering according to the requirements of the Vienna Convention and the Palermo Convention.
- Vietnam should amend the definition of property in the Penal Code so that it conforms to the definition of property in Article 2(d) of the Palermo Convention.
- Vietnam should seek to criminalize all of the offences contained in the definition of “Designated categories of offences”.
- Vietnam should consider making legal persons subject to the Penal Code.

### **2.1.3 Compliance with Recommendations 1 & 2**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
--	---------------	---

<b>R.1</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Vietnam does not have comprehensive anti-money laundering laws that criminalize money laundering according to all the requirements of the Vienna Convention and the Palermo Convention.</li> <li>• The definition of the word “property in the Penal Code is unclear and does not adopt the definition of property in Article 2(d) of the Palermo Convention.</li> <li>• Vietnam has not criminalized terrorist financing, piracy, insider dealing and market manipulation, the participation in an organized criminal group and racketeering which are required to be predicate offences under the FATF “Designated categories of offences”.</li> </ul>
<b>R.2</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Legal persons are not subject to criminal liability under the Penal Code.</li> </ul>

## 2.2 Criminalization of Terrorist Financing (SR.II)

### 2.2.1 Description and Analysis

#### *Legal Framework*

200. Article 84 of the Penal Code, has the heading “Terrorism” and criminalizes persons who oppose the “people’s administration” and infringe on the life of officials, public employees or citizens.

201. Vietnam acceded to the 1999 United Nations International Convention for the suppression of the Financing of Terrorism on 25 September 2002. Item 10 of Article 2 of Vietnam’s *Law on Conclusion, Accession and Implementation of Treaties* states that accession means a legal act undertaken by the National Assembly, the President or the Government whereby it express the consent of Vietnam to be bound by a multilateral treaty in a case where Vietnam has not signed the treaty. Notwithstanding this accession, Vietnam has not criminalized autonomously the financing of terrorism.

202. The Ministry of Justice advised that there is a proposed amendment to the Penal Code that would autonomously criminalize terrorist financing and we were provided with a draft of an amendment to the Penal Code that read:

#### *Article 230b – Financing of Terrorism:*

1. *Those who mobilize or aid money/property by any means to terrorist individuals/group or commit terrorist acts shall be sentenced to between five years to ten years imprisonment.*
2. *The offender shall also be deprived of a number of civic rights for between one year and five years, subject to probation, residence ban for between one year and five years,*

*confiscation of part or whole of the property.*

203. The elements of the crime of terrorist financing are set out in Article 2 of the Suppression of the Financing of Terrorism Convention which provides that a person commits an offence if that person by any means, directly or indirectly, unlawfully or willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used in order to carry out terrorist acts. The draft Article 230b does not cover all the elements of terrorist financing in that it is restricted to those who mobilize or aid with money/property. It is not clear if the proposed Article 230b covers the provision of funds with only the knowledge that they will or may be used to commit terrorist acts.

204. The meaning of the term “money/property” is not clear within the existing laws of Vietnam and it does not fulfill all the requirements of the CFT Convention (nor for that matter the Palermo Convention or the Vienna Convention) with respect to the definition of “funds” and “proceeds of crime”. Although the draft Article 230b refers to a “terrorist individual/group” it is unclear how this would work in practice because there are no specific provisions defining terrorist organizations. The draft Article would fall under Chapter XIX “CRIMES OF INFRINGEMENT UPON PUBLIC SAFETY, PUBLIC ORDER”, which suggests that the focus of the Article is restricted to the financing of domestic terrorism.

205. It is unclear whether the phrase “money/property” would cover funds or proceeds of crime.

#### **2.2.2 Recommendations and Comments**

206. The following recommendations are made to improve compliance with FATF SRII:

- Vietnam should criminalize the financing of terrorism according to the Article 2 of the CFT Convention.
- Terrorist financing should be a predicate offence.
- Terrorist financing offences should apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from where the terrorist/terrorist organization is located or the terrorist act occurred or will occur.
- Criminal liability should extend to legal persons, but making legal persons subject to criminal liability should not preclude the possibility of parallel criminal, civil or administrative proceedings in countries where more than one form of liability is available.
- Natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil and administrative sanctions for terrorist financing.
- Vietnam should enter into all of the Conventions and Protocols listed in the Annex to the Terrorist Financing Convention.

### 2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"><li>• Terrorist financing has not been criminalized in a manner that is consistent with Article 2 of the Terrorist Financing Convention.</li></ul>

## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1 Description and Analysis

#### *Legal Framework*

207. The legal provisions cited by the Government for the freezing, seizing and confiscation of money and assets obtained through the commission of crime are contained in the Penal Code, the Criminal Procedure Code, AML Decree 74 and Government Decree 64/2001. Although a broad interpretation of “property” can be made in order to include assets or funds and the proceeds from funds, there is a degree of ambiguity in these terms in Vietnamese legislation.

#### *Confiscation of Property related to ML, FT or other predicate offences*

208. The following articles in the Penal Code are relevant:

#### Article 40 – Confiscation of property

*Confiscation of property means to confiscate part or whole of the sentenced person’s property for remittance into the State’s fund. The property confiscation shall apply only to persons sentenced for serious crimes, very serious crimes or particularly serious crimes prescribed by this Code.*

*When all their property is confiscated, the sentenced persons and their families shall still be left with conditions to live.*

#### Article 41 – Confiscation of objects and money directly related to crimes

1. *The property confiscation for State funds shall apply to:*
  - a) *Tools and means used for the commission of crimes;*
  - b) *Objects or money acquired through the commission of crime or the trading or exchange of such things; and*
  - c) *Objects banned from circulation by the State.*
2. *Things and/or money illegally seized or used by offenders shall not be confiscated but returned to their lawful owners or managers.*
3. *Things and/or money of other persons, if these people are at fault in letting offenders use in them in the commission of crimes, may be confiscated for State funds.*

209. Article 40 is probably not that relevant because it is an additional penalty provision that allows the State to confiscate a convicted person's property. Arguably this Article would not apply to property that is the proceeds of crime because that would be dealt with in Article 41. For our purposes, Article 41(b), which provides that money acquired through the commission of crime can be confiscated, is relevant. Article 41 also provides for the confiscation of objects or money acquired through the trading or exchange of such things. It is unclear what the second limb of 1(b) means in practice, but it may allow for confiscation of money or property converted from the proceeds of crimes by trade or exchange. It is not clear whether this provision would allow for the confiscation of objects or money not acquired through the commission of crime or by the trading or exchange of such things, such as proceeds from an investment. It is unclear why the word "objects" is used in Article 41(1)(c) as it seems to be limited in its coverage. It is not clear if this Article could be used to confiscate property that has not been used but is intended to be used for the commission of an offence.

210. The following articles in the Criminal Procedures Code are relevant:

Article 74 – Material evidence

*Material evidence shall include anything which have been used as instrument and means for criminal purposes; things having any traces of crime; things serving as subject matter of the crime and other things or money whereby the offence and offender could be proved.*

Article 76 – Dealing with material evidences:

1. *Where the case has been suspended at stage of investigation, the dealing with material evidences shall be decided by Head, Deputy Head of Investigating Body; where the case has been suspended at stage of prosecution, the matter shall be decided by Chief Procurator, Deputy Chief Procurator of Procuracy; where the case has been suspended at stage of adjudication, the matter shall be decided by President, Vice President of Court, the Bench. The execution of decision on dealing with the material evidences must be presented in a record.*
2. *Material evidences shall be deal with in the following manners:*
  - a) *Materials evidences which are tools, means of a crime, prohibited goods shall be confiscated, put into State treasury or destroyed.*
  - b) *Material evidences which are objects, money belongs to ownership of State, organizations, individuals be appropriated by offender or be used as means of crime, shall be returned to the owners or their legal administrator; should the owner or their legal administrator are not found, those assets and money shall be declared to become the state property.*
  - c) *Material evidences which are money or properties obtained by committing crime, shall be put into state treasury.*
  - d) *Material evidences which are easy to be destroyed or difficult to preserve, shall be sold in conformity with provision of law.*
  - e) *Unvalued and useless material evidences shall be confiscated and destroyed.*
3. *In the course of investigation, prosecution and adjudication of the case, competent bodies referred to in Item 1 of this Article shall have the right to decide the return of*

*the material evidences mentioned in point b, item 2 of this Article to the owners or their legal administrator provided that such return would not adversely influence the resolving of the case.*

4. *In case there exist any disputes upon ownership to material evidences such dispute shall be settled according civil procedure.*

211. Paragraph 2(c) of Article 76 of the Criminal Procedure Code provides that material evidence that is money or properties obtained by committing crime shall be put into the state treasury.

212. Taken at its broadest of interpretation, the proceeds of crime are material evidence and therefore Articles 74 and 76 could be used to seize such proceeds. There appears to be some discrepancy between Item 2(c) of Article 76 of the Criminal Procedure Code and Article 41 of the Penal Code. Article 41 allows for the confiscation of objects and money acquired through the commission of a crime or the trading or exchange of such things, but Item 2(c) of Article 76 is restricted to money and property obtained by the commission of crime.

213. Overall the Penal Code and Criminal Procedure Code appear to allow for the seizure, confiscation and possibly freezing of the proceeds and instrumentation of crime, but there are gaps in their coverage. However, the Penal Code and the Criminal Procedure Code do not provide for confiscation of:

- a) property intended for the use in the commission of money laundering/terrorist financing offences; and
- b) property of corresponding value.

#### *Confiscation of Property Derived from Proceeds of Crime*

214. Article 41 (1)(b) of the Penal Code provides that property that can be confiscated, which inherently should involve seizing and freezing, by the State includes objects and money acquired through the commission of a crime or the trading for exchange of such things. The Government has argued that the words “or the trading for exchange of such things” allows for the confiscation of property that is derived indirectly from the proceeds of crime; however it provided no material to support this claim.

#### *Provisional Measures*

215. Material evidence as defined in Article 74 of the Criminal Procedure Code appears to be sufficiently broad to cover property, money, funds and proceeds. However it is not clear if the definition would cover things that are intended to be used for the commission of an offence.

216. Article 75 – Taking and preservation of material evidence. As noted in its heading, Article 75 of the Criminal Procedure Code provides for the taking of material evidence. This provision was obviously not drafted with a view to providing for provisional measures to freeze and seize property subject to confiscation. However, on the face of it, this Article allows for the freezing and seizing of property to the extent that it is material evidence.

217. Article 144 of the Criminal Procedure Code allows for the seizure of correspondence, telegrams and postal parcels from the post office by warrant and Article 145 allows for the seizure of

things and documents during a search. Both of these Articles could presumably be used to take provisional measures to seize property.

218. The Government issued Decree No.64/2001/ND-CP on Payment Activities via payment service-provider Organizations on 20 September 2001. The decree applies to domestic and international payment activities carried out via payment service-providing organizations on Vietnamese territory.

219. Article 9 – Blockage of accounts in Decree 64 states:

*1. Part or the whole money amount on a payment account shall be blockaded in the following cases where:*

- a) There is an agreement between the account holder and the payment services providing organization;*
- b) There is a decision or written request of a competent person according to the provisions of law;*
- c) Other cases prescribed by law.*

*The payment account blockade shall terminate when:*

- a) The account blockage duration agreed upon between the account holder and the payment service-providing organization expires;*
- b) The competent person defined by law issues a decision on or requests the blockade termination;*
- c) According to the provisions of law.*

220. No additional information was provided to the ME team about this Decree.

221. Article 11 – Temporary measures in AML Decree 74 states:

- 1. The applicable temporary measures to prevent and combat money laundering include:*
  - a) Suspending the transaction.*
  - b) Freezing the account.*
  - c) Temporarily seize or hold an asset.*
  - d) Taking into custody a person suspected to be involved in money laundering.*
  - e) Other preventative measures required by the law.*
- 2. The application of temporary measures shall be performed within the given authority in accordance with existing law without affecting the safety of the existing financial and monetary system.*
- 3. Individuals and organizations referred to in Article 6 of this Decree shall be entitled to suspend a transaction when any party involved in the transactions is in the lists referred to in point (b) of Item 1 of Article 10 of this Decree or when there is reason to believe that the transaction is related to criminal activity; At the same time, they must report promptly the transaction to the Anti-Money Laundering Information Centre or other State competent authorities and freeze the accounts as required by State competent authorities.*

4. *The relevant investigation authorities can apply the measures of freezing accounts, temporarily seizing of holding an asset; taking into custody a person suspected and other preventive measures required by the law.*

222. Article 11 of AML Decree 74 was drafted to allow the relevant authorities to take provisional measures and in this respect meets the requirements of this criterion. However, AML Decree 74 has only been applied to credit institutions.

223. Overall, Vietnam does not have an effective set of laws and measures for the provisional freezing and, seizing of assets. For the most part, the Government relies on the powers granted to the relevant legal authority authorities to investigate crime and take evidence. AML Decree 74 grants more specific powers, but has limited application.

224. Even if Decree 74 possibly allows for freezing property, the lack of such corresponding provision in criminal legislation would make it difficult to establish the mechanism for freezing property. Therefore, the effectiveness and enforceability of AML Decree 74 is questionable.

#### *Ex Parte Application for Provisional Measures*

225. There is nothing in the Penal Code, The Criminal Procedure Code, Decree 64 or AML Decree 74 that specifically allows for provisional measures to be taken on an ex parte (without notice), basis. However, the relevant seizure provisions in the Penal Code and The Criminal Procedure Code by their very nature would have be done without notice in many cases.

226. The Ministry of Justice advised that in practice, applications under AML Decree 74 would be done on an ex-parte basis, but no material was provided to support this submission and no applications have been made to date.

227. No information was provided about the application of Decree 64.

#### *Identification and Tracing of Property*

228. The Government has referred to the following provisions to claim that the relevant legal authorities have the power to identify and trace property that may be subject to confiscation:

#### The Criminal Procedure Code

##### Article 65 – Taking of Evidence

1. *Investigating Body, Procuracy and Court, in order to take evidences, have the right to summon those persons who have obtained knowledge of the case to ask them and hear their statements on the facts concerning the case, request for expert examination, conduct searches, test and other proceedings prescribed for by this Code; request institutions, organizations and individuals concerned to provide documents, objects, statements or circumstances relating to the case.*
2. *Persons participating in proceedings, institutions, organizations or individuals may present documents, objects and statements on the facts relating to the case.*



## Article 66 – Evaluation of evidence

1. *Every evidence shall be evaluated to examine its legality, reality, and concerns with the case. The definition of collected evidences shall be ensured to handle a criminal case.*
2. *Investigator, Procurator, Judge and Assessor, after thoroughly and objectively considered circumstances of the case with full spirit of responsibility, shall examine and evaluate all evidences of the case.*

## Ordinance on Organization of Criminal Investigations

### Article 3 – Tasks of the investigating agencies

*The investigating agencies shall conduct investigation of all offences, apply every measure prescribed by the Criminal Procedure Code in order to identify crimes and persons who have committed criminal acts, compile files, propose case institution; find the causes, conditions of committing crimes and request the concerned agencies and organizations to apply remedial and preventative measures.*

## AML Decree 74

### Item 1 of Article 14 – The Anti-Money Laundering Information Centre

*The Anti-Money Laundering Information Centre (AMLIC) is a unit under the State Bank of Vietnam; acting as the contact point to receive and process information, entitled to require related individuals, agencies and organizations to provide documents and information with regards to transactions referred to in Articles 9 and 10 of this Decree; disseminate documents and information in accordance with this Decree. It is an organization established to help the Governor of the State Bank of Vietnam to perform the duties stipulated in Article 15 and items 1, 4 of Article 20 of this Decree.*

229. Article 65 of the Criminal Procedure Code was obviously not drafted for the purpose of identifying and tracing property that is or may become subject to confiscation or is suspected of being the proceeds of crime. However, it appears that it does give investigating authorities some powers to do so. Article 66 is not applicable to this criterion. Article 3 of the Ordinance on Organization of Criminal Investigation does not appear to say anything other than those investigating agencies should use all of the provisions in the Criminal Procedure Code in its investigations.

230. Article 13(2) of AML Decree 74 provides that, where the Anti-Money Laundering Centre has reason to believe that there is a link between a transaction and a crime, it shall immediately inform the competent investigating authority, provide all documents and materials and cooperate closely with the authority in the investigation process and provide additional related information and documents upon request.

231. Article 14 of AML Decree 74 allows the Anti-Money Laundering Information Centre to require persons to provide information to it in respect of large value transactions (one or more

transactions in cash with a total value over 200 million dong) and suspicious transactions. However, Article 14 obligations have only been extended to credit institutions at the time of the on-site.

232. Article 21 of AML Decree 74 sets out the types and form of international cooperation which includes:

- a) signing multi-lateral and bilateral international treaties to prevent money laundering; and
- b) implementing requests for legal assistance to investigate and deal with money laundering activities.

233. Overall, while there are no designated effective set of laws allowing authorities to identify and trace property, laws do exist to allow authorities to perform these functions. It has been pointed out that Vietnam is primarily a cash economy and this makes the tracing of money a more difficult task compared to countries with more developed economies. However, at least for investigations based on a STR, AMLIC appears to have adequate tracing powers.

#### *Protection of Bona Fide Third Parties*

234. We were informed by officials from the Supreme People's Procuracy that a person whose property has been the subject of a provisional measure, such as the freezing of a bank account can appeal the decision to the investigating body responsible for the provisional measure. If the appeal is unsuccessful, the person may appeal to the Chief of the Investigating body and then to the Prosecutors office and finally the appeal level of the Prosecutors' office. This procedure is not set out in law, seems to be informal and does not appear to provide significant protection to bona fide third parties whose property is the subject of provisional measures.

235. Article 41 of the Penal Code and Article 76 of the Criminal Procedure Code provide for the return of stolen property to its owners, which is common to most jurisdictions. Article 54 of the Criminal Procedure Codes does allow for persons having an interest or obligations in a case to make claims, but this is a general clause and not specific to freezing or seizure.

#### *Power to Void Actions*

236. The Civil Code – Article 129 – Civil transactions invalid due to falsity

*When parties falsely establish a civil transaction in order to conceal another transaction, the false transaction shall be invalid, and the concealed remains valid, except in cases where it is also invalid under the provisions of this Code;*

*In cases where a false transaction is established with a view to shirking the responsibility towards a third person, such transaction shall also be invalid.*

237. Article 129 provides for the voiding of transactions, yet does not set out how in practice this is done or who would initiate an action to have a transaction declared void. Further, in order for this Article to apply, there must be another concealed transaction which often will not be the case in the laundering of property.

238. The Government cited Joint Circular No.06/1998, dated 24 October 2008 (Circular 06) and stated that it provided that:

*In case the property obtained through the commission of crime or obtained through trading, exchanging, tools and means to commit the crime are mortgaged illegally; that contract will be assigned as invalid by the court. In case the contract has not been assigned invalid yet, procedure-conducting bodies can hand over that property for the holder to exploit and utilize. However, those who have the right to exploit and utilize the property are not allowed to cause the lost, damage, put the property on sale, passage of title until the judgment, sentence of the court is valid.*

239. The Joint Circular was not provided to the ME team and the above provision is limited to property that is ‘mortgaged illegally’ and therefore not applicable to other transactions.

240. Vietnam lacks effective laws to void actions that have been done to frustrate the efforts of authorities to recover property subject to confiscation.

#### *Additional Elements*

241. Vietnam does not have any laws providing for confiscating property of organizations found to be primarily criminal in nature.

242. Although not a mandatory requirement, Vietnam does not have a civil forfeiture regime, and it does not have any laws that reverse the onus of proof to require an offender to establish that property was legally acquired.

#### *Statistics*

243. In its response to the MEQ, the Government provided statistics on the number of cases of confiscated property (below), but it failed to provide details about the quantity or value of the property confiscated. Furthermore, the statistics include property confiscated as an additional penalty under Article 40 of the Penal Code.

**Table: Confiscated Property/funds**

<b>Year</b>	<b>Cases</b>	<b>Funds need to be confiscated</b>	<b>Confiscated funds</b>	<b>Remain funds need to confiscated</b>
From June to December of 2005	9,952	124,014,409,354 VND US\$3600	63.755.405.438 VND (US\$3.8 million) US\$3600	60,259,003,871 VND (US\$3.6 million)
2006	1,3451	269,457,472,596 VND (US\$16 million) US\$29,900	68,200,918,658 VND (US\$4.1 million) US\$29,900	201,256,553,938 VND (US\$12 million)

2007	11,255	245,857,003,976 VND (US\$14.6 million) US\$26,000 7000 CNY	123,126,335,361 VND (US\$ 7.7 million) US\$26,000 7000 CNY	122,730,668,615 VND (US\$7.3 million)
From January to June of 2008	10,500	120,709,504,299 VND (US\$7.2 million)	59,423,221,483 VND (US\$3.5 million)	61,286,282,816 VND (US\$3.6 million)
Total	45,158	760,638,390,235 VND US\$45.1 million	314,505,880,1010 VND US\$18.7 million	445,532,509,240 VND US\$26.4 million

### 2.3.2 Recommendations and Comments

244. It is recommended that Vietnam should:

- Improve its existing laws to specifically provide for the freezing, seizing and confiscation of the proceeds of crime.
- Expand the investigation powers of the relevant authorities, and improve co-ordination among them, to specifically provide for identifying and tracing the proceeds of crime.
- Make specific provision in its laws for provisional measures to be done on an ex parte basis.
- Have formal laws and procedures enacted to protect innocent third parties, whose property has been frozen or seized.
- Enact laws allowing for confiscation to include instrumentalities intended for the use of money laundering and terrorist financing offences and property of corresponding value.
- Enact laws allowing for the voiding of actions, contractual or otherwise, that are being done to frustrate the confiscation of property.

### 2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is lack of specific provisions to allow the authorities to freeze, seize and take provisional measures.</li> <li>• There do not appear to be any specific laws allowing for the identifying and tracing of the proceeds of crime.</li> <li>• Vietnam has no penal laws allowing for the voiding of contracts designed to frustrate confiscation.</li> </ul>

--	--	--

## 2.4 Freezing of funds used for terrorist financing (SR.III)

### 2.4.1 Description and Analysis

#### *Legal Framework*

245. Vietnam has neither passed any laws that allow for the freezing of funds or other assets of terrorists nor established any mechanism to give effect to UNSCRs 1267 and 1373.

#### *Freezing Assets under S/Res/1267*

246. Vietnam's response to this issue is limited to administrative advice. Vietnam advised that on 31 July 2007 the Ministry of Foreign Affairs issued "official letter 2557/BNG-LPQT" to the relevant ministries and agencies which has the following contents.

*Vietnam with the position of being official member of United Nations obligated to apply the measures to implement the requirements of Committee 1267 and Resolution 1333 in 2000, Resolution 1390 in 2002, Resolution 1455 in 2003, Resolution 1526 in 2004, Resolution 1617 in 2005, Resolution 1735 in 2006 of UN Security Council include the following measures:*

- *Confiscation of the accounts, assets and other financial resources of individuals and organizations in the list.*
- *Prevent the immigrations, transits of the listed individuals into territory.*
- *Prevent the providing, trading or transferring directly or indirectly of listed individuals, organizations of nations or their citizen operated in the other territory, weapons and other material include complementary equipments, consultants, technical assistance, training relates to armed activities."*

#### *Freezing Assets under S/Res/1373*

247. Although not a mandatory requirement, Vietnam has not instituted a designation process or drafted a list of designated persons and entities whose funds are to be frozen to aid in the compliance with UN Security Council Resolution 1373. The Government states that the Ministry of Public Security has been "assigned as a standing agency of the National Steering Committee on suppressing terrorism that has the responsibility to establish a list of terrorists and terrorists group of which money, property must be frozen, sealed, confiscated." The authorities advised that there is a "black list" of criminals which includes the 1267 list, US Embassy disseminations and groups outlawed by Vietnam under Article 84 on Terrorism of the Penal Code. The team was not provided with a copy of this list nor any further details.

248. It is uncertain how Vietnam could enforce a freezing action in accordance with the UNSCRs requirements, given that terrorism financing has not been criminalized, and there has been no terrorism financing case for Vietnam's current measures to be tested and possible effectiveness demonstrated.

### *Freezing Actions Taken by Other Countries*

249. Vietnam indicated that it has cooperated with the requests of other countries, particularly the United States to have credit institutions conduct searches of individuals and organizations. Vietnam has also referred to the Law on Mutual Legal Assistance which allows Vietnam to give legal assistance to other jurisdictions, including freezing a jurisdiction. However, clause 1 (e) of Article 21 provides that Vietnam shall refuse to render legal assistance where it relates to criminal conduct that does not fall under the Penal Code i.e. dual criminality requirement. Therefore, this law would be of little assistance in giving effect to freezing actions by other countries because Vietnam has not criminalized the funding of terrorism.

### *Financial Sector*

250. Vietnam stated that in order to implement the Security Council Resolutions, the SBV issued “Guideline No. 01/TTPCRT1.m dated 4 September 2007” to the attention of “(General) Director of Vietnam’s credit institution”, which requests that credit institutions:

- 1. improve and perform customer identification in accordance with Decree 74 and Guideline 281/NHNN-TTR from the SBV on the implementation of Decree 74.*
- 2. utilize the Lists issued pursuant to special Resolutions 1267 and 1737.*
- 3. review accounts and transactions to detect the entities names in the Lists issued pursuant to Resolutions 1267 and 1737.*

251. According to Vietnam, *“to date, credit institutions have not frozen any account that related to individuals and/or organizations that are listed in Resolution 1267 and Resolution 1373 of UN Security Council and there is no case that was frozen then terminated the freeze when individuals and/or organizations are no longer on the list of UN.”* It is not clear whether this reflects the outcomes of proper search processes by credit institutions in respect of UNSCR 1267 as the SBV has not undertaken any on-site compliance inspection on this matter.

252. The SBV Guidance to financial institutions is not considered to be a legally enforceable instrument, and even if it were, it would be difficult to see how it could be implemented or enforced, if a match occurs, given the lack of criminalization of terrorism financing.

### *Delisting/unfreezing*

253. Due to its lack of a legal freezing regime, Vietnam has not yet established procedures for de-listing or unfreezing requests, including from persons inadvertently affected for access to frozen funds, and the protection of third parties. It has also not implemented best practice measures.

## **2.4.2. Recommendations and Comments**

254. Vietnam should consider implementing the following:

- In the light of its accession to CFT Convention, immediately enact laws with provisions allowing for the freezing and confiscation of terrorist assets, including provisional measures, and set up

effective procedures to implement these laws as part of the overall requirement to criminalize the financing of terrorism; and

- Implement UN Special Resolutions 1267 and 1373 by enacting the appropriate laws.
- Once implemented, Vietnam should provide clear guidance to financial instruments and other persons and entities that may hold targeting fund or other assets.

### 2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> <li>• Vietnam has no specific law to freeze and confiscate terrorist assets in accordance with UNSCRs.</li> <li>• Vietnam has not properly implemented UN Special Resolution 1267 and UN Special Resolution 1373.</li> </ul>

## 2.5. The Financial Intelligence Unit and its Functions (R.26)

### 2.5.1. Description and Analysis

### 2.5.1. Description and Analysis

255. Article 14 of AML Decree 74 provides the authority to the SBV to establish the Anti Money Laundering Information Centre (AMLIC) as Vietnam’s Financial Intelligence Unit (FIU), as follows.

*The Anti Money Laundering Information Centre (AMLIC) is a unit under the State Bank of Vietnam; acting as the contact point to receive and process information, entitled to require related individuals, agencies and organizations to provide documents and information with regards to transactions referred to in Articles 9 and 10 of this Decree; disseminate documents and information in accordance with this Decree. It is an organization established to help the Governor of the State Bank of Vietnam to perform the duties stipulated in Article 15 and items 1, 4 of Article 20 of this Decree.*

256. Although the word “analyze” is not specifically mentioned in Article 14’s definition of AMLIC, Article 13 of the same decree defines the processing of information to include analysis as the following activities:

- a- Analyze received information or reports;*
- b- Compare received information or reports with the available data and information, held by the Anti Money Laundering Information Centre;*
- c- Require any individuals or organizations to provide additional information or data relating to a report or information received*

*Establishment of FIU as National Centre*

257. Based on AML Decree 74, the Governor of the SBV issued Decision No. 1002 on 8 July 2005 to establish AMLIC. The decision positioned the Director of AMLIC at the level of Deputy Chief Inspector and under the administrative management of the Chief Inspector of the SBV.

258. On 7 March 2007, the Governor of the SBV issued a further Decision, Decision No. 476, that officially separated AMLIC's operation from the State Bank Inspectorate and made AMLIC a separate, subsidiary unit of the SBV. This decision was made because of the nature of AMLIC'S operations including its scope and external relationships with other ministries and agencies.

259. On 23 July 2007, the Governor of the SBV issued Decision No.1727 to further articulate the functions and responsibilities of AMLIC, including following functions:

*“3. To act as the main responsible unit in receiving and processing information related to preventing and combating money laundering, and shall have the right to require any agency, organisation, individual involved to provide data, files and information on the transactions prescribed in Article 9 and 10 of Decree 74;*

*4. To store and disseminate information, data and files which are related to money laundering activities to competent State authorities and coordinate closely with investigating agencies in the process of investigating the case and provide information, and data related to the case as requested;*

*5. To provide a warning or make a recommendation about issues arising from the reported transaction to any of the individuals and organisations prescribed in Article 6 of Decree 74 to the competent State authorities.”*

260. AMLIC is now headed by a director and supported by 2 deputy directors. Including the director and deputy directors, it has a total of 23 staff in three divisions: the Administrative Division; Collection and Analysis Information Division; and IT and Network Management Division. In the 2007 Annual Report of the SBV, AMLIC is listed as one of 30 operational units of the SBV, although it has its own seal as stipulated in AML Decree 74.

261. There is a current proposal submitted in November 2008 to the Governor of the SBV to further develop and expand AMLIC into a separate Department of the SBV. The name of AMLIC would change to the Anti-money Laundering and Counter-Terrorist Financing Department. It is envisaged that this Department would also be responsible for AML/CFT supervision for credit institutions.<sup>2</sup>

#### Functions

262. AMLIC plays the lead role in AML/CFT implementation in Vietnam, including national coordination and general awareness raising among other competent authorities and reporting institutions. This includes liaison with international organizations such as the APG. The before mentioned tasks have consumed significant staffing resources in the last 18 months.

---

<sup>2</sup> The Prime Minister approved the upgrading of AMLIC into a department in SBV in May 2009



263. AMLIC has no investigative role, as information on potential money laundering cases is referred to the Ministry of Public Security for action. However, it has the power under Article 11 (3) of AML Decree 74 to instruct a reporting entity to freeze an account in response to an STR.

264. In relation to its FIU function, AMLIC receives STRs from credit institutions. AMLIC receives STRs in hard copy but details are recorded electronically once received through a manual data entry approach. Upon receiving a STR, it is then stored in safe filing cabinet.

265. AMLIC does not, at present, collect Cash Threshold Reports (CTRs), due to a lack of an IT system. CTRs are required to be stored by the reporting institutions themselves. AMLIC advised that it would collect CTRs electronically as soon as the new IT system is purchased and installed. However, AMLIC can require credit institutions to provide CTRs at any time when needed.

266. In terms of STRs, since the establishment of AMLIC in July 2005, it has only received a total of 58 STRs from a total of 84 banks operating in the jurisdiction. At present, only credit institutions i.e. banks are required to provide to STR reporting. Comparing the total number of STRs with the number of reporting institutions in the country, the STR reporting ratio is very low.

267. The Director of AMLIC has issued Decision No.47 of October 2008 on the Procedure for Handling Information of STRs. Chapter 2 outlines the steps for handling STR reports by its Collection and Analysis Information Division. The steps are summarized as follows:

1. Recording, labeling and coding received STRs.
2. Verify and categorise STR
  - i. Group 1: Individuals on Ministry of Public Security criminal “blacklist”:
  - ii. Group 2: STRs relating to individuals and organizations that are suspected of involvement in fraud and other crimes
  - iii. Group 3: STRs matching the 13 suspicious transaction indicators in Article 10 of AML Decree 74.
3. Examine the format and content of the STR
  - Check existing STR data and any other information held at AMLIC.
  - List down additional information required from other organizations
  - Seek information from external agencies as required
4. Analyze and process (disseminate) STR
  - i. Group 1: All information in STRs on individuals on the Ministry of Public Security (MPS) criminal “blacklist” are referred to the Economic Crime Department in the MPS for investigation and an official letter to credit institution to temporarily freeze the customer’s account:
  - ii. Group 2: STRs relating to individuals and organizations that are suspected of criminal activities are analyzed and a determination made whether transactions relate to criminal activities or not. If affirmative, information is disseminated to MPS and an official letter sent to credit institution to temporarily freeze the customer’s account
  - iii. Group 3: STRs matching the 13 suspicious transaction indicators in Article 10 of AML Decree 74 are analyzed to determine whether further action is required. This could include further information from credit institution or ask the later to monitor developments.

268. There is scope in the STR procedures for dealing with STRs not fitting the above three categories. These cases are assessed and analyzed and a recommendation made to AMLIC management on actions, if any, to be taken.

269. AMLIC's STR analysis process is predominately manual. The lack of integration of CTR and cross-border declaration reports in AMLIC's information database limits the value and timeliness of such information early in the analysis process. Due to the manual process, any analysis undertaken will be resource intensive and put constraints on disseminating any urgent matters to investigating authorities. This will become a problem as AMLIC's database of reports grows.

270. Overall, the key trigger for further action is if AMLIC or its analyst believes the STR is linked to criminal activities. Based on this principle, there is a prioritization in the STR analysis process on known criminals (category 1) and on fraudulent activities (category 2). The rationale for category 1 is self evident, and for category 2, given that crime involving fraud is the major enterprise crime in Vietnam, the priority given is understandable, as long as it does not preclude other predicate crime groups.

#### *Guidelines to Financial Institutions on Reporting STR*

271. The SBV issued Guideline No. 281 on 30 June 2006 in relation to AML Decree 74. Section 2 on reporting outlines the procedures for submitting CTRs and STRs, and attaches standard reporting forms, including a detailed STR reporting form No.4. The STR form includes essential information required for analysis.

272. AMLIC has not undertaken any action in terms of issuing any additional guidelines to address the low level of STR reporting, which at the time of the on-site was only 22 in total. Another SBV Document No.66 of 27 November 2008 provided further guidance on STR reporting but it was not issued to address the low level of reporting. It listed additional STR indicators, particularly in relation to international transactions. The total number of STRs reported at the end of 2008 was 58 (within six weeks of the on-site).

273. In addition to Guideline No. 281, in 2007 and 2008, the SBV held 17 training courses on AML activities for a total of 1,000 staff from credit institutions and securities companies. This included their reporting obligations and reporting procedures.

274. At this time, other ministries and agencies are yet to issue guidelines for institutions under their supervision regarding the need to implement measures on preventing and combating money laundering and to report transactions as required in AML Decree 74. The SBV has, however, submitted to the Prime Minister a plan to implement such measures.

#### *Access to Information on Timely Basis by FIU*

275. AMLIC has powers under AML Decree 74 to:

- request any individual, agency or organisation to provide additional information or data relating to the report received (Point C, Clause 1, Article 13).

- *require any agency, organisation or individual involved to provide data, files and information on the transaction prescribed in Article 9, 10 of Decree 74 and provide data and information in accordance with this Decree (Clause 1, Article 14);*
- *to receive from the Ministry of Public Security the results of investigation of money laundering cases (Clause 3, Article 16); and exchange essential information and data on new illegal methods being used to launder money domestically as well as internationally (Clause 4, Article 16);*
- *be promptly provided complete information by Ministerial Inspectors (Clause 2, Article 18)*

276. It would seem therefore that AMLIC can access information as required in its analysis process. AMLIC has indicated that it has sought additional information from the MPS on four occasions and once from the Immigration Department. The information sought and provided was on the status of foreign organizations and individuals based in Vietnam. It is not clear how the additional information affected the analysis process, in terms of the criminality of the conduct related to the STR, and whether it affected the dissemination decision.

277. AMLIC also receives regular updates of the criminal “blacklist” from the MPS. Nevertheless, given that AMLIC has not to date sought information from other relevant agencies such as Customs or sectoral ministries, and the information sought has been basic, it is not clear whether their responses would be as timely for more complex requests. It is also unclear whether open sourced information is utilised and whether other sources of information including information from other agencies would enhance the analytical process undertaken by AMLIC.

#### *Additional Information from Reporting Parties*

278. As stipulated in AML Decree 74, AMLIC has the right to request any individual, agency or organisation to provide additional information or data relating to the report received. AMLIC has stated that it often require credit institutions to provide additional information. AMLIC has required the banks to provide additional information for STRs on 30 occasions; 11 times in 2006-2007 and 19 times in 2008. This figure was based at the time of the on-site. No updated figures were provided in respect of the additional STRs submitted within the 8 week period after the on-site.

#### *Dissemination of Information*

279. The legal authority for AMLIC to disseminate is outlined in Article 13 (2) in AML Decree 74 which states:

*2. When the Anti-Money Laundering Information Centre has grounds for confirming that a transaction mentioned in information or report received could be linked to criminal activity, the Centre shall immediately notify the competent investigative authority and transfer the whole of the file to such authority, and at the same time co-operate closely with such authority in its investigation of the case and provide any information and data on the case to the investigative authority upon request.*

280. The profile that AMLIC provides to investigation authorities in accordance with Article 13(2) of AML Decree is not the actual STR received. AMLIC disseminates the information to the investigation authorities in a separate written report. The report includes basic information, details of

the customer and the customer's transactions, and AMLIC's reasons why it believes the transactions are linked to criminal activities. Copies of related documents, such as passports, identity cards, statements of transactions etc are attached to AMLIC's written report.

281. Based on statistics provided for the period 2006 to 2008 AMLIC disseminated a total of 19 reports to the MPS based on 58 STRs received. There was no indication from AMLIC that they had received feedback from MPS regarding the value of the reports disseminated. The MPS confirmed that no formal feedback was provided.

282. AMLIC is slowly developing its relationship with the MPS and other investigative bodies. AMLIC worked with the investigation teams of MPS four to five times in 2008. It has an MOU with the Interpol office in Vietnam and is in the process of drafting an MOU with the MPS Economic Crimes Department.

283. As a SBV unit, its staff are drawn predominately from within the SBV, which traditionally has not worked with law enforcement on a daily basis. However, some staff, particularly its analysis staff, are recruited from MPS, Ministry of Defence and Ministry of Justice.

#### *Operational Independence*

284. AMLIC is a unit within the State Bank of Vietnam. It is subject to the rules and procedures of the SBV. It is responsible to the Governor of the SBV through one of the Deputy Governors. In this context, the SBV Governor has significant influence over AMLIC's operations. As stated in Article 14 of AML Decree 74, *"The functions, specific responsibilities, powers, organizational structure and working arrangements of the Anti Money Laundering Information Centre shall be determined by the Governor of the State Bank of Vietnam."* According to SBV Governor's Decision No. 1727, the director of AMLIC has the authority to disseminate STR-related information.

285. Furthermore, AMLIC currently does not have its own separate budget to carry out its functions properly. The final decision on staff recruitment and budget expenditure rests with the SBV Governor. The AMLIC Director can decide on accepting TA&T missions, staff recruitment and domestic and international travel. However, because it is based in the SBV, internal staff movements and international travel require the endorsement of either the deputy governor or governor.

#### *Protection of Information Held by FIU*

286. Clause 4, Article 12 of AML Decree 74 states, *"Information about transactions which have been reported pursuant to this Decree shall be preserved in accordance with the regime on confidentiality and shall only be provided to competent State authorities in accordance with the law."*

287. Clause 24, Article 5 – Decision No. 45 of 17/12/2007 on secrecy of documents, information and/or documents states, *"Information, data and files related to transactions that are reported to Anti Money Laundering Information Centre by individuals, organisations according to the provisions on preventing and combating money laundering."*

288. According to the Article 14(2) of AML Decree 74, information related to STRs is stored as confidential documents and only provided to competent authorities. There are no formalized

arrangements in place in terms of which agencies can access AMLIC information and the conditions under which such information can be used.

289. AMLIC also issued the Procedure on handling suspicious transactions on 7 October 2008 with strict provisions in order to ensure the safety and secrecy of reported data and information. This includes clear procedures for staff access to STRs and the requirement for all STRs to be stored confidentially. It is however unclear whether similar procedures are in place regarding investigating agencies' handling of AMLIC's reports which contain STR information, particularly in relation to possible further dissemination of STR information to third party agencies. There are general requirements on confidentiality of state information but not specific requirement in relation to STR information.

290. STR reports are stored in a safe filing cabinet in the Information collection and analysis section of AMLIC. Information is entered into a desktop based information recording system. It is unclear how the database in which the information is stored is protected. There is an audit trail of all staff handling an STR through an assignment form that is attached to an STR.

291. AMLIC is located in four rooms, one for each section, and next to each other in the SBV building. Only AMLIC officials are based in these rooms. There is no extra security associated with these rooms – beyond the normal security encountered on entry to the SBV building.<sup>3</sup>

#### *Publication of Annual Reports*

292. Before March 2007, the operation of AMLIC was included within the reports of the State Bank Inspectorate. AMLIC reports are now submitted as separate reports to the Governor, as it is now a separate SBV unit. In 2007 AMLIC also consulted the Governor in submitting a report on the results of anti-money laundering operations to the Government. However, AMLIC has not made any reports available to a wider audience so far.

#### *Membership of Egmont Group*

293. The SBV and AMLIC have formally considered applying for membership in the Egmont Group. This issue has been raised during AMLIC meetings, as well as in meetings between AMLIC and international organisations.

294. AMLIC advised that the FIUs of Chinese Taipei and France would support AMLIC in applying for membership of the Egmont Group. In May 2008, Vietnam provided a status report on AMLIC to Chinese Taipei.

295. Vietnam is currently an observer at Egmont. Its application is at the Egmont Outreach Working Group stage.

#### *Egmont Principles of Exchange of Information Among FIUs*

---

<sup>3</sup> AMLIC has relocated to a new building with additional floor space

296. Vietnam has examined the Egmont Group Statement of Purpose and its Principle for Information Exchange between FIUs. AMLIC has taken into account both documents and are working to ensure the FIU's functions and practices reflect the Egmont principles.

297. According to Vietnam's laws, information exchange with foreign FIUs shall be implemented in spite of the lack of a signed Memorandum of Understanding (MOU). Vietnam is in the progress of drafting procedures as well as an MOU pro-forma to sign with other FIUs especially those that are members of APG. AMLIC is currently considering signing MOUs with the FIUs of Thailand and Malaysia.

#### *Adequacy of Resources to FIU*

298. AMLIC has one Director, two Deputy Directors and 20 staff that are appointed into three different divisions:

1. Administrative Division; 8 staff
2. Collection and Analysis Information Division 8 staff
3. IT and Network Management Division 4 staff

299. AMLIC has sufficient staff for its FIU functions, particularly in light of the low number of STRs received. However, given the FIU is also the lead agency for AML/CFT implementation, and that it has a compliance role in STR reporting, these other objectives have reduced the resources available for FIU work. If STR numbers increase significantly and CTRs are lodged with AMLIC in the near future, the current staffing profile would be insufficient to process and analyze the additional reports received.

300. AMLIC does not have an IT system in place for the collection, analysis and the dissemination of cases to investigative authorities. It does use its IT resources to record STRs received, however this is not an analytical system but purely a recording system. The lack of a central database serves as an impediment in the overall functions of AMLIC especially in analysis, given that CTRs from credit institutions cannot be collected since there is no system and database in place.

#### *Integrity of FIU Authorities*

301. Staff recruited to work at AMLIC are subject to requirements additional to the normal requirements for government officials, including at the SBV. According to SBV Governor's Decision No. 235 dated 17/7/2008 to enforce the Regulation on Working routine of AMLIC:

*“Cadres, staff members that work for AMLIC must strictly implement Party's policies; State's laws and standards; instructions and regulations of the State Bank of Vietnam and AMLIC; shall have to sign in the commitment to ensure the confidentiality of information and be responsible for their violations to AMLIC's Director, to the Governor of the State Bank of Vietnam and pursuant to the law.*

*Cadres and staff members that work for AMLIC must strictly implement provisions on secret-keeping regulations.”*

302. Accordingly, all AMLIC staff have to sign a commitment letter to ensure the confidentiality of information as requested by AMLIC's Director.

*Training for FIU Staff*

303. According to AMLIC, as at August 2008, 90% of AMLIC staff had attended basic training courses on preventing and combating money laundering provided by international organisations, such as the ADB, UNODC and IMF. Other courses attended include the following:

- Board of Directors of AMLIC attended programs on State Management and Laws;
- Foreign language, computer skills and other professional knowledge;
- Collecting and analyzing information as well as collecting and analyzing transactions;
- APG Assessor Training Workshop;
- Workshops for specialised law enforcement and court staff as: Financial Investigation Workshop, Forensic Accounting Workshop (inventory and evaluate property).

304. It should be noted that language training is very important, in terms of the ability of AMLIC to participate effectively in international cooperation, including accessing information globally available, but mostly in English, of AML/CFT implementation practices and approaches.

305. There has no discernable training on terrorism financing given its lack of criminalization.

306. AMLIC recognizes that there is an urgent need for additional training on FIU functions.

*Statistics*

307. Without a central database to analyze STRs received from reporting institutions, AMLIC is limited in its ability to collate timely statistical information. Whilst the number of STRs remains low, a manual process for collating statistics is manageable, however once the reporting numbers increase, it is essential that AMLIC have the IT capability to undertake this requirement.

**Table – Statistics on STRs**

<b>Number of STRs Received by AMLIC (Data Pertains to Credit/Banking Institutions Only)</b>				
<b>Reporting Institutions</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Total</b>
<b>State-owned Banks</b>	<b>3</b>	<b>7</b>	<b>8</b>	<b>18</b>
<b>Joint - stock Banks</b>	<b>0</b>	<b>3</b>	<b>28</b>	<b>31</b>
<b>Joint-venture Banks</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Foreign Banks</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>8</b>
<b>Others</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Total</b>	<b>4</b>	<b>11</b>	<b>43</b>	<b>58</b>

**The number of CTRs:** The number of CTRs maintained at banks is approximately 14 million transactions (from 1/8/2006 to 1/8/2008 with the estimated number of 500,000 transactions per month)

**Table: STR Dissemination**

	Year 2006	Year 2007	2008	Total
<b>Forwarded for further investigation</b>	1	4	14	19
<b>Analyzed, not detected, stored</b>	3	7	0	10
<b>Being analyzed</b>	0	0	29	29
<b>Total</b>	4	11	43	58

308. The STR figure for the last two and a half years is unsatisfactorily low, given the number of designated reporting entities and the number of entities in the financial sector.

309. AMLIC has not signed an MOU with a foreign FIU, however, it has provided information to several FIUs upon request. It is unclear whether AMLIC placed specific conditions upon the release of information to other FIUs. AMLIC has not made any requests for information from foreign FIUs.

#### **Effectiveness**

310. AMLIC has been established since July 2005 as Vietnam's FIU. It has devoted considerable resources to non-FIU functions and to outreach and awareness activities with other government agencies and reporting entities. It has also established a range of measures to give effect to AML Decree 74. Despite these efforts, thus far, AMLIC has only received a total of 58 STRs and disseminated 19 to the MPS. Given the size of the economy, predicate crime statistics and the number of designated and yet to be designated reporting institutions, these are very low figures.

311. There are possible reasons for this unsatisfactory performance. Firstly, AMLIC has devoted significant staffing resources to non-core FIU functions. Secondly, AMLIC has attributed this to a lack of an IT system in place for the collection, analysis and the dissemination of cases to law enforcement authorities. The lack of a system does serve as an impediment to the overall functions of AMLIC, especially in analysis. However, even with an operating IT system, AMLIC would still face the problem of the lack of STRs, although its database might be populated with CTR reports.

312. It is clear that the unsatisfactory performance of AMLIC is due in part to the failure to provide effective guidance or undertake follow-up actions to increase STR reporting among credit institutions, and to provide STR guidance, in cooperation with relevant supervisory agencies, to other financial and DNFBP sectors as obligated under AML Decree 74. The issuance of such guidance is



essential for the financial intelligence gathering role of AMLIC, as it provides the lifeblood for its analysis and dissemination functions.

### 2.5.2. Recommendations and Comments

313. Vietnam should consider implementing the following recommendations:

- Develop a strategic implementation plan for AMLIC, setting out future goals and objectives and resource requirements, regardless of whether it remains a unit or expands into a department within the SBV.
- Enhance the operational independence of AMLIC within the SBV.
- Install an IT system as soon as possible to collect CTRs and other information including cross border information to enhance the analysis process and ensure that timely statistics can be collated. This IT system could commence with AMLIC using its existing information holdings i.e. a basic integrated database using STRs, CTRs, cross-border information and criminal and terrorist lists.
- Work closely with the compliance officers of credit institutions in order to provide them with further guidance to enhance both the volume and quality of STRs.
- Provide STR reporting guidelines to other (non-bank) reporting entities stipulated in AML Decree 74.
- Increase awareness amongst MPS and other investigating agency staff regarding the value of financial transactions information.
- Provide more training to the personnel of AMLIC, MPS and credit institutions to enable them to conduct their duties properly.

### 2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
<b>R.26</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No guidance provided to other STR reporting entities mentioned in AML Decree 74 apart from credit institutions.</li> <li>• AMLIC lacks sufficient operational independence.</li> <li>• No reports have been published yet.</li> <li>• AMLIC lacks sufficient human and technological resources to carry its functions.</li> <li>• Lack of effective implementation</li> </ul>

## **2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28)**

### **2.6.1. Description and Analysis**

314. The Penal Code 1999 and Criminal Procedure Code 2003 are the main laws of Vietnam governing the conduct of criminal investigations, including money laundering and terrorism. The Criminal Procedure Code No 19/2003 issued by the National Congress on 10 December 2003 prescribes the order and procedures of instituting, investigating, prosecuting and adjudicating criminal cases and executing criminal judgments. The Ordinance on Organisation of Criminal Investigations No 23/2004 issued on 25 August 2004 further defines the scope, tasks and powers of investigating bodies.

315. AML Decree 74 and Prime Ministerial Directive 25/2007 on Preventing and Combating Terrorism outline the respective responsibilities of competent authorities in relation to combating money laundering and terrorism respectively; although the later is more focused on terrorism rather than its financing.

316. Under the Criminal Procedure Code, criminal investigations are primarily the responsibility of the MPS, with the exception of matters concerning military personnel and judicial officials. However the SPP under Vietnam's Criminal Procedure Code is authorized to approve and oversight all formal MPS investigations respectively. The roles of the SPP are not inconsistent with practices in other civil law jurisdictions.

### **Recommendation 27 (Designated law enforcement authorities)**

#### *Designation of Authorities ML/FT Investigations*

317. **Ministry of Public Security (MPS):** According to Article 16 (3) of AML Decree 74, the MPS is the lead agency responsible for investigating money laundering, stating that the responsibilities of the MPS include, *"To organize teams to investigate money laundering related crime; to provide guidance to other agencies in conducting preliminary investigations into money laundering related crime in accordance with the criminal law and this Decree.* In addition, Article 16 (5) of the same Decree also prescribes the responsibilities of MPS , *"To provide training to officers involved in the work of prevention and combating of money laundering related crime".*

318. The two key MPS Departments are the Economics Crimes Investigation Department (C-15) which undertakes money laundering investigations and the Anti-Terrorism Department. Other major departments of the MPS include the Security Department, Drug Crime Department, Legal Department, Interpol Division, Immigration Office, and Division of Suppressing Violent Crimes.

319. Prime Ministerial Directive 25/2007 on Preventing and Combating Terrorism assigns the MPS as the lead agency in preventing and combating terrorism. However, the Directive is more a policy statement rather than outlining any procedures for investigations, beyond the requirement for coordination in any counter terrorism measures.

320. As stated earlier in this report, terrorist financing in Vietnam has not been criminalized in accordance with Article 2 of the Terrorism Financing Convention. The MPS has the authority to

conduct investigation of terrorist offences under Article 84 of the Penal Code. The MPS informed the ME team during the on-site that there is a special unit named A42 for preventing and combating the financing of terrorist acts, although authorities did clarify that this was in respect of the categories outlined in Article 84 on Terrorism in the Penal Code, and after a terrorist act has been perpetrated. No detailed information has been provided in respect of Unit A42.

321. MPS stated that not only the Economics Crimes Investigation Department but all police officers of the MPS in other units, for instance, Drug Crime Department, can investigate money laundering and terrorism cases, including its financing.

322. There is a limit on the MPS' jurisdiction over money laundering and terrorism investigations. Article 110 states, "*Investigating Bodies of the people's police shall investigate all kind of crimes, except those fall within jurisdiction of the Investigating Bodies of armed forces and those come to jurisdiction of the Investigating Bodies under Supreme People's Procuracy.*" The latter pertains to any criminal case involving judicial officials.

323. **The Supreme People's Procuracy:** The SPP, as an independent agency reporting directly to the National Assembly, plays an important role in money laundering and potential terrorist financing investigations. In addition to its role as a prosecutor, the SPP has a supervisory role in investigations, particularly in ensuring compliance with the Criminal Procedure Code and the Ordinance on Criminal Investigations.

324. The SPP has dedicated units for various crimes, similar to the MPS. The Department of Economic Matters deals with money laundering and Department of Terrorism for any potential terrorist financing concerns.

325. Under Articles 104 and 109 of the Criminal Procedure Code, the MPS and other investigating bodies have to seek approval from the SPP before exercising their full investigative powers i.e. decision to institute or not institute formal criminal investigation. If documents submitted by the MPS are insufficient to make a decision, SPP has the authority to request additional information from concerned agencies, summon people to provide information or ask the investigative bodies to make further preliminary investigations before deciding whether to authorize the MPS to commence formal criminal investigation.

326. The SPP also has an ongoing role during the criminal investigation process under Article 112 and 113 of the same Ordinance. This is in terms of oversighting the process and not actually participating in the investigation. Both Articles provide the SPP with the powers of prosecution in the investigating period and powers in supervising the investigations. These include requesting the heads of the Investigating Bodies to replace investigators; and proposing to the concerned agencies, organizations and units to apply measures to prevent crimes and law violations.

327. **Ministry of Defence:** As stipulated in Article 110, the Department of Defense's investigating bodies are responsible for any criminal investigation, including money laundering or terrorism cases, involving military personnel or in designated military zones and which fall under the jurisdiction of military courts.

328. **The General Department of Customs:** Customs can undertake some investigations but not serious crimes such as include money laundering or terrorism. Such cases are transferred to the MPS. Customs advised the ME team that it has assigned the Smuggling Investigation Department as the contact point in preventing and combating money laundering at the central and provincial levels in respect of illegal cross border activities. However, given the lack of dedicated resources in that unit dealing with money laundering and terrorism cases, the Smuggling Investigation Department does not seem to produce concrete results with respect to money laundering.

329. **Anti Money Laundering Information Centre (AMLIC):** The AMLIC is not an investigative body and cannot investigate any criminal offense. AMLIC can only assist with information and coordinate with other investigative bodies regarding criminal cases.

*Ability to Postpone / Waive Arrest of Suspects or Seizure of Property*

330. There is no specific provision in law that would allow or prevent investigating bodies to postpone or waive the arrest of suspected persons, and/or postpone or waive the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. Authorities advised that, in practice, a wide range of measures have been used in order to obtain or gather necessarily information or when investigating serious cases. Vietnam has not, however, provided supporting evidence or statistics to support this statement, either for money laundering or predicate crime investigations.

***Additional elements***

*Special Investigative Techniques*

331. According to article 34(2)(b) and 36(2)(c) of the Criminal Procedure Code, head of investigating bodies have authorities to apply, change or cancel deterrent measures however the Criminal Procedure Code or the Ordinance on Criminal Investigation is silent on the use of special investigative techniques such as undercover or controlled delivery. There is a reference in Article 35 (1-f) to “to conduct other investigating activities” but there is no written clarification of what “other investigating activities” might include. The rest of Article 35 and also Articles 140 - 145 permit investigative bodies to conduct body searches; searches of residences, working places and premises; correspondence, telegraphs, postal parcels; and to seize documents and objects related to the cases. In practice, the MPS and other investigative bodies do apply undercover operations and controlled delivery in investigating serious criminal cases. This is subject to the approval and oversight process outlined in the Criminal Procedures Code and related Ordinance.

332. The authorities have not provided statistics on the extent to which special investigation techniques have been used for predicate crime and money laundering investigations and convictions. The authorities did not provide the ME team with any information on whether special investigation techniques were used in relation to investigations leading to convictions for terrorism offences under Article 84.

*Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations*

333. The MPS and SPP do not have permanent financial investigating teams in their agencies to focus on the investigation, seizure, freezing and confiscation of the proceeds of crime in relation to money laundering and financing of terrorism. Financial investigation staff are drawn, as required, from the MPS's Economic Crimes Investigation Department, the SPP's relevant departments and other competent authorities, including the State Bank of Vietnam

334. According to Article 60 of the Criminal Procedure Code, the investigative bodies have the authority to work jointly with other specialized investigation group. Investigative bodies such as the MPS Economic Crimes Investigation Department can invite financial experts and other experts to join in the investigation process. There are two kinds of experts: (a) the "Examiner" who has recognized qualifications in a specialized area of investigation who can be summoned automatically, and (b) the "Coordinator" who has extensive knowledge in a specific area. However there are no statistics available on the number of examiners and coordinators used in financial investigations.

335. For international cooperation in criminal proceedings, Article 340 of the Criminal Procedure Code prescribes principles for international cooperation in criminal proceedings, including on the basis of reciprocity, but there is no specific reference to special investigation techniques or joint investigations between Vietnamese and foreign law enforcement agencies.

#### *Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities*

336. According to Vietnamese law, the MPS is tasked to maintain criminal statistics, prepare summaries, review the typologies and measures offenders used to commit crimes, and publicize the information to other relevant agencies. MPS collects all crime statistics, but since 2006 AMLIC has coordinated with the MPS to study the statistics and developed money laundering typologies.

337. MPS advised the ME team that it has been conducting ML/TF awareness raising and information sharing activities, for example, providing trends or typologies to its local police officers and other agencies.

### **Recommendation 28 (Investigative powers)**

#### *Ability to Compel Production of and Searches for Documents and Information*

338. The Criminal Procedure Code and the Ordinance on Criminal Investigations provide the MPS and other investigating bodies with significant powers of investigation. Under the Code, once the SPP has approved the opening of a formal criminal investigation, investigative bodies are able to compel the production of, search, and obtain bank account records, financial transaction records, customer identification records, and other records maintained by credit institutions and other entities or persons. However, in the case of preliminary investigation prior to SPP approval, the MPS and other investigative bodies' access to banking transactions and account holder records are obtained through the State Bank of Vietnam.

339. Chapter 12 of the Criminal Procedure Code provides investigative bodies with search and seizure of property. Article 140 permits investigative bodies to search and seize if there exist grounds to believe that instruments, relevant documents, objects or things relating to the case are situated on the person, dwelling, places or other premises. These pertain to committing an offense or obtained

from committing an offence. Articles 141 and 144 authorize the head or deputy of investigating bodies to issue search and seizure warrants respectively, but which must be ratified by equivalent level officials at the SPP before being executed. Appropriate level SPP and Court officials are also authorized to issue such warrants. Article 144 deals with seizure of documents, and empowers the head or deputy head of investigating bodies to issue warrants but subject to the SPP ratification. Article 149 includes prohibitions and penalties for undertaking illegal search and seizure.

340. Article 79 of the Criminal Procedure Code prescribes grounds for application of deterrent measures in terms of arrest, custody, temporary detention, ban from travel outside one's residence, guaranty, and deposit of money or valuable property as bail. It allows investigative bodies to apply these deterrent measures when there are grounds proving that the accused or defendants would cause difficulties in the investigation, prosecution or adjudication, or they would continue committing offenses.

341. Other relevant provisions include AML Decree 74 (11) (4) which prescribes that: *"Competent investigative authorities shall be entitled to apply the measures of freezing accounts, sealing or seizure of assets, temporary detention of an offender and other preventative measures in accordance with law"*. The application of temporary measures can be performed within the given authority in accordance with existing provisions of the Criminal Procedure Code and other laws.

342. In addition to the powers under the Criminal Procedure Code, clause 9 of Article 14 of the Law on People's Security Force, 2005 stipulates that people security force have the power: *"To request agencies, organizations and/or individuals to coordinate in activities or supply information related to national security, social order and safety"*.

#### *Power to Take Witnesses' Statement*

343. In general, the MPS, SPP, Customs and other investigative bodies including the Ministry of Defence have powers to summon and obtain witnesses' statements for the purpose of assisting in their investigations. According to the Criminal Procedure Code, investigators have powers to take witnesses' statements for use in investigation as stipulated in the Articles 35 (1-b), 37 and Chapter 11 in the Criminal Procedures Code, particularly in Chapter 11:

- 1. Statements of witnesses shall be taken at the places of investigation or at their residences or working places.*
- 2. If a case involves many witnesses, the statements of each witness must be taken separately and the witnesses shall not be let contact one another in the course of taking statements.*
- 3. Before taking statements from witnesses, investigators must explain to them their rights and obligations. This must be recorded in the minutes.*
- 4. Before inquiring into the contents of the cases, investigators should verify the relationships between the witnesses and the accused, victims and other details related to the witnesses' personal identity. Before asking questions, investigators should request witnesses to relate or write what they know about the cases. Raising questions of suggestive nature shall not be allowed.*
- 5. When taking statements of witnesses aged under 16 years, their parents, other lawful representatives or their teachers must be invited to attend.*

## *Resources*

344. **Ministry of Public Security:** The MPS has the following investigating agencies:

- a) The investigating police agency of the Ministry of Public Security;
- b) The investigating security agency of the Ministry of Public Security.

345. The Police and the Security are in different General Departments. They have separate investigative bodies at central and provincial levels: the police investigative bodies are within the Police General Department and the security investigative bodies are within the Security General Department.

346. There are about 300 staff within the central level of MPS' Economic Crimes Investigation Department. The authority states that this department has about 6,000 staff over the country.

347. **Supreme People's Procuracy:** The Supreme People's Procuracy has the following investigating agencies:

- a) The investigating agency of the Supreme People's Procuracy;
- b) The investigating agencies of the Central Military Procuracy.

348. SPP structure comprises three function levels, i.e. supreme level, provincial level and district level with 11,000 staff (7,000 prosecutors and 4,000 state employees) across Vietnam. There are numbers of departments in SPP, dealing in the following areas:

- Economic, environment (including money laundering)
- Security cases
- Anti-Corruption cases
- Social order
- Drug cases
- Criminal judgment
- Custody, detained, manage and educate the persons sentenced to imprisonment
- Civil cases
- Investigation
- Complaints and denunciations
- Institution of Procuracy
- Personnel Department
- Department of judgment executing
- Planning and Finance
- Administrative, economic and labor cases

349. The SPP's Department handling economic criminal cases also specializes in money laundering matters. The SPP's security department deals with terrorism, including terrorist financing matters. The staffing profile is as follows:

Supreme-level:

- Economic Matters (including ML) - 26 staff (10 senior prosecutors)
- Security cases (including terrorism and TF) – 17 staff (7 senior prosecutors)

- Social order - 23 staff (10 senior prosecutors)
  - Anti- corruption - 21 staff (13 senior prosecutors)
- Provincial-level - 63 divisions with 7-10 officers dealing with financial investigations  
 District-level - 2-3 specialized in financial investigations in each division

350. **Ministry of Defense:** The People's Army has the following investigating bodies:

- a) The criminal investigation agency; the criminal investigation agencies of military zones and the equivalent; the regional criminal investigation agencies; and
- b) The investigating security agency; the investigating security agencies of military zones and the equivalent.

351. The Vietnamese law enforcement agencies have demonstrated their capacity in relatively straightforward asset seizures and confiscations, and in basic money laundering investigations and prosecutions under Article 250 of the Penal Code. However, there are capacity constraints in investigating more complex money laundering and terrorism offenses, particularly given the increasing size and complexity of Vietnam's financial sector.

#### *Integrity of Competent Authorities*

352. The Law Against Corruption of 2005 is focused on potential abuse by government officials. Article 13 lists 13 corrupt acts and Section 3 outlines code of conduct requirements, including prohibited conduct and acts. Chapter 3 of the Ordinance on Public Employees of 1988 contains prohibitions against corruption, conflict of interest and abuse of official position.

353. According to Articles 31 and 32 of the 2004 Ordinance on Criminal Investigation, there is an investigator selection council for recruitment of investigators at every level of the MPS, MoD and SPP, i.e., for senior investigators, intermediate investigators and elementary investigators. In addition to selecting staff, the Councils have the authority to " 2. *To examine cases where investigators can be removed from office or dismissed under the provisions in Article 34 of this Ordinance so that the council chairmen shall propose the Minister of Public Security, the Defense Minister, the chairman of the SPP to remove from office or dismiss investigators.*"

354. Article 30 of the Ordinance on Criminal Investigations also prescribes the Criteria of investigators as follows:

- "1. Vietnamese citizens who are loyal to the Fatherland and the Constitution of the Socialist Republic of Vietnam, have good virtues, are non-corrupted and honest, have security university, policy university or law university degree, investigating operation certificates, have the practical work duration prescribed by this Ordinance, have good health to ensure the performance of assigned tasks can be appointed to be investigators.*  
*In cases where due to operation demands, persons having university degrees in other disciplines, satisfying the above criteria and possessing investigating operation certificates may also be appointed to be investigators.*
- 2. The investigators are classified into three grades, being elementary investigators, intermediate investigators and senior investigators"*



355. Article 33 of the Ordinance on Criminal Investigation prohibits the following acts:

1. *Things which State officials and employees, or people's armed force officers and combatants must not do as provided for by law;*
2. *Providing consultancy to the accused, defendants, involved parties or other procedure participants, thus making the settlement of cases contrary to law provisions;*
3. *Illegally interfering in the settlement of cases or abusing their influence to exert impacts on persons responsible for the settlement of the cases.*
4. *Bringing case files or documents in case files out of the offices if not for the assigned tasks or without the consents of the competent persons;*
5. *Receiving defendants, the accused, involved parties or other procedure participants in the cases which they have competence to settle, outside the prescribed places.*

356. Vietnam is a developing country (based on the World Bank's definition of countries with low or middle levels of Gross National Product per capita) and the salaries of low and middle ranking officials are low relative to the cost of living, particularly with inflation running at double digits. While the majority of law enforcement officials still perform their duties faithfully, despite limited financial remuneration, a small percentage of law enforcement officials have engaged in corrupt practices either soliciting or accepting bribes willingly, or at worst engaged proactively in criminal undertakings.

357. There have been some high profile cases involving the death sentence for corrupt law enforcement officials. Since the beginning of 2007, at least 33 law enforcement officials have been sentenced to death, including 24 for drug trafficking, according to figures compiled by several news outlets. Four have been executed. There was one high profile execution of the former head of the anti-smuggling investigation squad in 2006.

#### *Training for Competent Authorities*

358. Most MPS financial specialists are recruited from: (i) graduates of the Police Academy who undertake further training in areas related to financial investigation, (ii) graduates in finance, economics or banking; (iii) graduates who attend the Police Academy for six months to one year. It is uncertain that the MPS has adequate numbers of trained financial investigators as they did not provide detailed statistics on staff who have undertaken relevant training.

359. Training is provided for law enforcement officers under the UNDOC Project titled, "Enhance the capacity of legal and law enforcement authorities on prevention and combating money laundering".

360. The European Community has provided the SPP with US\$1 million to conduct training for its staff from 2006 to June 2009. To date, there have been eight training courses arranged and over 600 prosecutors nationwide have been trained as follows:

- criminal procedure training courses for district-level prosecutors;
- 2 economic crime training courses for provincial-level prosecutors;

- 1 cyber crime training courses for supreme-level prosecutors; and
- 1 organized crime training courses for supreme-level prosecutors.

361. SPP also carries out professional seminars. However, the SPP has not arranged adequate AML/CFT training for its staff.

362. Article 34 of Law on People's Public Security force, 2005, prescribes policies on training and fostering of People's Public Security officers, non-commissioned officers and soldiers as follows:

*"1. People's Public Security officers, non-commissioned officers and soldiers shall be provided with political, professional and legal training and fostering and other necessary knowledge suitable to their assigned tasks; encouraged and facilitated by the State to develop their talents to serve the People's Public Security Forces.*

*2. The State shall adopt policies on training and fostering People's Public Security officers, non-commissioned officers and soldiers who are ethnic minority people"*

363. Relevant government officials have attended the following internationally sponsored training courses:

- two ADB sponsored workshops on assets confiscation, financial investigation organized for law enforcement officers, prosecutors and judges in 2007;
- Train-the-Trainer workshops for law enforcement officers under the UNODC Project referred to above;
- Financial investigation workshops every year at the International Law Enforcement Academy in Bangkok, sponsored by Thailand and the United States; and
- other internationally planned sponsored training (e.g. United States, Australia, Thailand, Malaysia, UNODC, WB) focused on supervisors, prosecutors, and judges on overseeing and supervising financial transactions, as well as investigating and prosecuting money laundering and terrorist financing activities.

364. Despite these efforts, most Vietnamese officers in investigative agencies are not fully aware of ML/TF threats and vulnerabilities. Further training is required on AML/CFT, forensic accounting, financial investigation techniques, typologies, asset forfeiture and recovery, and other types of financial crimes.

#### *Additional Element - Special Training for Judges*

365. There has not been any specialized training for judges of the People's Supreme Court, although judges have attended training courses conducted for officials specializing in economic crimes and security concerns. Under the UNODC project, the Ministry of Public Security has organised many "Train the trainer" workshops for staff to train law enforcement staff, judges and prosecutors.

366. Supreme Court staff have attended training courses conducted by the SBV, MPS and SPP. In addition, prosecutors and 45 judges have been trained regarding money laundering but not terrorist financing.

### *Statistics*

367. Authorities involved in AML/CFT implementation have provided limited statistics for money laundering investigations, especially detailed and itemized statistics for cases under Articles 250 and 251 of the Penal Code.

### *Effectiveness*

368. The investigation bodies have adequate legal powers for gathering evidence and investigating money laundering. They have limited, if any, powers in respect of terrorist financing as the latter has not been criminalized as an autonomous offence.

369. The authorities have not provided detailed statistics to demonstrate effective implementation. It can be inferred however that money laundering investigations have generally been limited because there has only been one conviction for money laundering under Article 251, which is the more complex money laundering offence. There are 603 convictions under Article 250 which is the possession offence, but without any detailed statistics or information, it is difficult to assess effectiveness.

370. There is a lack of awareness of money laundering and terrorist financing threats and vulnerabilities, and the nexus between enterprise crime statistics and proceeds generated for money laundering. There is a tendency to either focus on the predicate crime or the simple money laundering offence under Article 250.

## **2.6.2. Recommendations and Comments**

371. Vietnam should consider the following recommendations to improve money laundering and terrorist financing (once criminalized) investigations in Vietnam:

- Provide additional resources to money laundering and terrorist financing investigations in parallel with underlying predicate offense investigations.
- Amend the relevant laws to explicitly allow competent authorities to: postpone or waive arrest of suspected persons and the seizure of money for the purpose of identification and evidence gathering in respect of terrorism financing; and the use of special investigation techniques e.g. controlled delivery or technical or interception device for surveillance.
- AMLIC, the MPS and other investigating bodies should work collaboratively to develop money laundering typologies, and to improve methods for sharing trends and typologies amongst other relevant agencies.
- Maintain up-to-date, consolidated and disaggregated statistics regarding money laundering, terrorist financing, predicate offence investigations and the seizure and confiscation of assets.
- Increase awareness of money laundering and terrorism financing threats and vulnerabilities for staff in investigative bodies, the SPP and AMLIC.
- Enhance the investigative bodies' capacity in financial investigation techniques.
- Provide more specific training to prosecutors and judges across the country on AML/CFT and related financial crimes.

## **2.6.3. Compliance with Recommendations 27 & 28**

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
--	--------	--

<b>R.27</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no specific provision allowing competent authorities to postpone or waive action in respect of terrorism financing.</li> <li>• No dedicated team on terrorism financing.</li> <li>• Lack of statistics to demonstrate that measures are effectively implemented.</li> <li>• Legal measures appear fairly comprehensive but there is little evidence as to how these measures work in practice.</li> </ul>
<b>R.28</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Lack of statistics to demonstrate use of available powers.</li> <li>• Powers limited in respect of terrorist financing.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of trained staff in financial investigations</li> <li>• Lack of dedicated resources for TF.</li> </ul>

## **2.7. Cross Border Declaration or Disclosure (SR.IX)**

### **2.7.1. Description and Analysis**

372. There is no single law addressing the physical cross border transportation of currency or bearer negotiable instruments. There are however a number of laws and regulations addressing some but not all of the requirements of SR.IX:

- Penal Code 1999;
- SBV Governor's Decision No. 92 of 2000 on physical carrying of foreign currency and Vietnamese dong;
- Ordinance on Foreign Exchange of 2005;
- Decree 160 of 2006 Detailing the Implementation of the Ordinance on Foreign Exchange;
- SBV Governor's Decision No. 921 of 2005 on physical carrying of foreign currency and Vietnamese dong;
- Law on Customs 2001;
- Law on Amendment to Customs 2005.

373. The focus of Vietnam's laws is on currency control and illicit cross border transportation, rather than addressing specifically money laundering or terrorist financing prevention and interdiction. There is also a focus on currency, including gold and precious stones, but not bearer negotiable instruments. The illegal cross border transportation of currency (and gold and precious metals) is criminalized in the Penal Code. The Foreign Exchange Ordinance 2005 and Decree 160 of 2006 outline further extensive provisions for the use of foreign exchange in the country, but only Article 9 of both the Ordinance and Decree cover cross border transportation of currency. However, the SBV is authorized under both legislations to set the threshold amount, which it has so set at US\$ 7,000 or other foreign currency that have equivalent amount of VND 15 million in Vietnamese dongs and promulgated in Decision 921. The enforcement of these requirements in respect of physical transportation across the border is undertaken by Customs under the Law on Customs.

### *Institutional Framework*

374. There are 153 ports of entry throughout the country. The three main agencies involved in implementing the relevant laws and regulations are the General Department of Vietnam Customs in the Ministry of Finance, the MPS and the Ministry of Defence (MoD), including its rangers and border guards.

*Mechanisms to Monitor Cross-border Physical Transportation of Currency*

375. As stipulated in SBV Decision No. 921/2005 dated 27 June 2005, Vietnam has a declaration system that requires incoming and outgoing passengers, both residents and non residents, to truthfully declare physical cross-border movements of currency above US\$ 7,000 or other foreign currency that have equivalent amount of VND 15 million in Vietnamese dong.

376. There is no clear definition of currency in the laws mentioned. However, the Ordinance on Foreign Exchange Control in Article 4 (10) refers to, “*Cash in foreign currency shall include paper notes and coins*”. Furthermore the Decree on the Implementation of the Foreign Exchange Ordinance in Article 3 (11) states that, “*Foreign currency cash includes bank notes and coins.*”

377. There is no requirement for a person to make a declaration at custom border gates or to complete or sign the customs form if they carry foreign currency or Vietnamese dong in cash under the prescribed threshold. The requirement only applies if the cross-border transportation of currency exceeds the said threshold amount. Departing passengers must present a license from the SBV together with the customs declaration card in order to take money out of Vietnam if the threshold is exceeded. However, since 2005, the SBV has granted credit institutions the power to issue the mentioned license.

378. There is no public signage or warnings for passengers regarding their declaration obligations. This is only stated in the customs declaration form which is attached to the arrival-departure declaration form which must be submitted to immigration and customs officials. The Customs declaration form includes several questions regarding foreign and Vietnamese currency threshold declaration requirements for passengers. There is no indication of penalties or sanctions for declaration or failure to declare i.e. Customs officers will collect the form only where a passenger declare that he or she carries currencies exceeding the limit.

379. The current declaration system does not include bearer negotiable instruments. The Law on Customs include in the definition of “goods” to cover foreign currencies and Vietnamese currency but not bearer negotiable instruments. The Decree on Foreign Exchange does include it under the definition of “foreign currency payment instrument”, but the requirement for threshold declaration is specific to currency and not foreign currency payment instruments.

380. Customs advised the ME team that individuals are not allowed to send money through the postal system or by courier. This is stated in Article 18 of the Ordinance on Post and Telecommunication of 25 May 2002. Article 18 prohibits Vietnam dong or foreign currency from being enclosed with letter, postal package or postal parcel. Customs advised that the post office will not receive a postal package if they identify that there is money inside the package and that the contents will be confiscated in accordance with the Law on Customs and the Decree No.142/2004/ND-CP of 2004. However, there is no guidance informing people of this prohibition and no clear requirement for declaration.

#### *Request Information on Origin and Use of Currency*

381. Customs officers have the authority under Articles 32, 65 and 66 of the Law on Customs to deal with breaches of the law, including acts of smuggling or illegal physical transportation of goods across borders. The ME team was advised that this also empowers customs officials, based on random checking, suspicion or intelligence, to check a carrier when there is false declaration, or if there are grounds to believe the person is involved in money laundering or other crimes. Customs is able to stop the carrier and seek further information including checking the details of the country they came from, record of entry and exit, administrative violation record and criminal record. This is the case even if the carrier can produce the relevant SBC license (as delegated to the banks) for carrying currency beyond the threshold amount.

382. Customs' interdiction powers are also outlined in further detail in the Ordinance of Administrative Violations in Articles 34 and 43-47.

#### *Restraint of Currency*

383. Customs advised they have the authority under Article 66 and in the Law on Customs and Article 144 and 145 of Criminal Procedure Code to stop or restrain money and/or other goods when there is a false declaration/disclosure, and when there are grounds to believe there are criminal activities, including money laundering. However, it is not specifically stated anywhere in either law that Customs has this authority in respect of money laundering, although Article 11 in AML Decree 74 concerning temporarily holding an asset may provide this power.

384. There are clear powers in respect of administrative violations. This is provided for in Article 46 of Ordinance on Handling of Administrative Violations 2002, in respect of border guards, ranger officers, and customs officials. There is specific reference in Article 46 to seizing currencies both foreign and Vietnam dong and precious metals and stones, but there is no specific provision for bearer negotiable instruments.

385. These officials have the authority to restrain currency for 24 hours but they must obtain superior approval within this timeframe otherwise the restrained currency must be returned. If consent is given, Customs can maintain the seized assets for evidentiary purposes. If Customs determines that there are grounds to believe that there is money laundering or other serious crimes, the case is required to be referred to the MPS for further investigation as stipulated in the Criminal Procedure Code 2003.

386. The authorities have provided some statistics to demonstrate that they have used their powers to stop or restrain currency when there have been false declarations. However there is no comprehensive statistics to show the use of their power to stop or restrain currency with potential money laundering activities.

#### *Retention of Information of Currency and Identification Data*

387. Customs collect the arrival or departure customs declaration form from those who are required to declare that they have in excess of US\$7,000 or Vietnam Dong 15,000,000.

388. The information of individuals, representative persons of organizations that conduct cross-border transportation of currency is stored in an information storage system by Customs. This storage system contains untruthful declaration reports, threshold declarations and also on individuals interdicted by Customs, rangers or border guards. This information system allows users to access names of persons, identification details and violations.

#### *Access of Information to FIU*

389. There is no system in place for Customs to provide all suspicious cross border incidents automatically to AMLIC, nor can AMLIC directly access the Customs database. This information is however available for AMLIC to use for its analysis upon request and for investigative bodies and the SPP.

390. With the information available only upon request, AMLIC and other investigating agencies would be unaware whether Customs has relevant information in their data systems.

391. Under Clause 3, Article 12 of AML Decree 74, it stipulates that:

*“3. If other individuals, agencies and organizations discover suspicious transactions then they may make a denunciation, provide information or send a notification in writing or in any other legally acceptable means to the Anti-Money Laundering Information Centre or to the competent State authorities. When any State competent authority receives a denunciation or information of the above-mentioned type, it shall be responsible to process the information in accordance with law and immediately notify the Anti-Money Laundering Information Centre.”*

392. Customs stated that they usually provide information regarding cross-border currency to AMLIC on a regular basis. Customs did not however provide statistics or information to the ME team regarding the number of false declaration cases that Customs had sent to AMLIC for further analysis. AMLIC stated that they have received only one suspicious case from Customs regarding concealed money without making a declaration.

#### *Domestic Cooperation*

393. There is an established coordination mechanism among law enforcement authorities, Customs, border army and coast guard, to implement the Law on Customs and Ordinance and Decree on Foreign Exchange, but not all the requirements under SRIX are specifically addressed.

394. Customs has signed a coordinating regulation or MOUs with the Ministry of Public Security, and Border guard of the Ministry of Defence to prevent and combat smuggling and illicit transfer of commodities across borders.

395. The Customs and AMLIC are in the process of building a modern information technology system that will assist in the collection and processing of information. AMLIC is also working on the signing of MOUs with immigration authorities, Customs and other competent authorities. To date, the information is being exchanged via official letters, telephone, email, facsimile, meeting, etc when cases occur.

### *International Cooperation*

396. The amended Article 5a of the Law on Customs states that “*Vietnam Customs shall, in accordance with its functions, in accordance with law and within the scope of the authority delegated to it, be responsible:*

- 1. To exercise the rights, discharge the obligations and represent the interests of the Socialist Republic of Vietnam at the World Customs Organization.*
- 2. To negotiate and sign bilateral international agreements with foreign Customs and to organize implementation of such agreements.*
- 3. To organize the use and exchange of information and to co-operate professionally with Customs of other countries and with relevant international organizations.”*

397. Vietnam Customs is still able to cooperate and share information with foreign counterparts on the basis of reciprocity.

398. Customs has maintained good cooperation with foreign counterparts and is a member of the World Custom Organisation. Vietnam Customs is also active in the Regional Intelligence Liaison Office (RILO) for Asia and the Pacific and has signed an administrative support treaty in customs with Israel.

399. Vietnam has concluded three agreements on management of its border areas, namely the Vietnam - Cambodia Agreement on Border Regime in 1983, Vietnam - Laos Agreement on National Border Regime in 1990 (amended and supplemented by Protocol in 1997) and Vietnam - China Interim Agreement on management of border issues in 1991. Based on these agreements, relevant agencies of Vietnam have worked closely with their counterparts of Cambodia, Laos and China to strengthen security in border areas with a view to preventing the entry into Vietnamese territory of criminals and terrorist suspects, as well as to detect and combat the forging and use of fraudulent travel documents and counterfeit passports for the purpose of committing illegal acts.

### *Sanctions for Making False Declarations / Disclosures*

400. Decree 138/2004/NĐ-CP on Handling Administrative Violation in Customs states:

- *Article 19 of this Decree provides for fining administrative violations on provisions of custom declaration on the amount of foreign exchange, gold carried by persons that coming in or going out of the country (fine with administrative violation that carry foreign exchange, gold against the provision on custom declaration from 500,000VND to 700,000VND depending on the violate exhibits).*
- *Article 20 stated about fining administrative violations on provisions of custom declaration on the amount of Vietnamese dong carried by persons that coming in or going out of the country (fine with administrative violation that carry Vietnamese dong against the provision on custom declaration from 200,000VND to 20,000,000VND depending on the violate exhibits)*

401. There are clear criminal sanctions applicable to persons who “illegally transport goods, money through borders” under Articles 153 and 154 of the Penal Code:



- *Administrative sanctions: fine, non-custodial reform, termed imprisonment from 3 months to 15 years*
- *Additional sanctions: fines from 5 million VND to 10 million VND, ban from holding certain posts, ban from practicing certain occupations or doing certain jobs from 1 year to 5 years.*
- *Furthermore, the persons' goods, money used in committing the offense shall be confiscated. If the persons are foreign citizens, they shall be expelled (main sanction or additional sanctions)*

402. Vietnam advised that this Decree was amended in 2007, with a new Decree 97 issued to increase the maximum fine to 70 million VND for failure to declare and 30 million VND for illegal physical cross border transportation. However, a copy of the new Decree 97 was not provided to the team.

403. Vietnam's Courts have adjudicated on several cases of "illegal transporting goods, money through borders" under Article 154 of the 1999 Penal Code. However, criminal sanctions cannot be applied against legal persons.

*Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF*

404. There are no specific provisions in Vietnam's laws to sanction cross-border transportation of currency for purposes of money laundering or terrorist financing. If there is a case of physical cross-border related to money laundering or terrorist financing, Customs will transfer the case to MPS for further investigation. However, to date there has been no actual case identified and transferred to the MPS.

405. As indicated, there are criminal and administrative sanctions imposed on illegal cross-border transportation of goods and/or currency under the Penal code and the Law on Customs.

*Confiscation of Currency Related to ML/FT*

406. There is no specific provision for Customs officers to seize and confiscate currencies when related to money laundering and terrorism financing. However, there are provisions under the Article 41 of the Penal Code; Articles 74, 75, 145 and 147 of the Criminal Procedure Code; and Article 11 of AML Decree 74 which permits the MPS and other investigating bodies, to seize and confiscate goods and property, including currency.

407. However, Vietnam has not demonstrated that there is an effective system in place as it has not provided detailed statistics of any cross-border transportation seizure or confiscation of property related to money laundering or terrorist financing. Customs did advise that in 2007, a total of US\$220,000 and other foreign currencies were confiscated for illegal physical cross-border transportation.

*Confiscation of Currency Pursuant to UN SCRs*

408. Terrorism financing is not criminalized in Vietnam and there is no designated process in respect of UNSCR 1373. AMLIC has sent updated lists of UNSCR 1267 to Customs on a regular basis.

*Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones*

409. There is significant coverage of gold under the Ordinance and Decree on Foreign Exchange, as gold is deemed to be a foreign exchange instrument. Also, Articles 153 and 154 specifically include illegal smuggling and cross border transportation of gold and precious stones as subject to penal penalties.

410. When necessary, Customs will contact the foreign customs authorities or competent authorities of jurisdictions from which property originated and/or where such property has been transported in order to coordinate to identify the source, destination and purpose of the movement of such items. This is done via the RILO Office or Interpol. However, no statistics have been provided by Vietnam on this matter

*Safeguards for Proper Use of Information*

411. According to Vietnam, Article 46 in the Law Electronic transactions No. 51/2005/QH11, dated 09/12/2005 states that:

- 1. Agencies, organizations and individuals shall have the right to select security measures in accordance with the provisions of the law when conducting e-transactions.*
- 2. Agencies, organizations and individuals must not use, provide or disclose information on private and personal affairs or information of other agencies, organizations and/or individuals which is accessible to them or under their control in e-transactions without the latter's consents, unless otherwise provided for by law.*

412. Customs state that all declaration information, cross- border and false declaration, is stored in the server of the General Department of Customs. Only Customs officers who have delegated responsibilities are able to access information in the Customs storage system. The customs information is available for other agencies upon requests and subject to confidentiality provisions concerning information of the state. Customs has some written agreements in place governing the dissemination of Customs information to other investigating bodies and competent authorities.

*Additional Element—Implementation of SR.IX Best Practices:*

413. Vietnam has applied some of the measures in the Best Practices Paper for SR. IX such as: profiling, declaration system, use of intelligence and random searches, and exploring other best practices including enhanced IT systems.

*Additional Element—Computerization of Database*

414. Customs does not provide all declarations automatically to AMLIC for use and AMLIC has not approached Customs to access the database held by Customs.

415. AMLIC is discussing with Customs to sign an agreement on exchanging information between the two agencies in respect of money laundering and terrorist financing.

*Recommendation 30.1*

416. Customs is responsible for all matters regarding physical cross-border of currencies and goods, activities of import and export, entry, exit and transit, tax policy for import, export goods with examination and supervision of the implementation of tax laws on import and export goods.

417. There are about 8000 customs officers nationwide and there are 33 Customs Departments in provinces and cities covering the 153 ports of entry over the country. However, at present, knowledge of money laundering and terrorism financing threats and vulnerabilities in Customs is limited, and dedicated staffing resources is ad hoc.

*Recommendation 30.2*

418. Article 7 –of Law on Customs 2001 states that :

*“Vietnam Customs shall be built up as a force which is irreproachable, strong, professionally qualified and equipped and shall master modern technology and conduct activities efficiently and effectively.”*

*According to that, staffs that conduct duties on custom controlling shall be intensive trained with professional skills on custom controlling. Contact point person on preventing and combating money laundering at Investigating Department Against Smuggle must graduate from Law University or Police and/or Public Securities Institute.*

419. Article 79 (2) of the Law on Customs include penalties for misconduct by customs officials, including where appropriate, disciplinary action, compensation payments and prosecution for criminal liability.

420. Customs has issued 10 regulations which customs officers must respect:

For the enterprises and entry passengers, must:

1. Be polite in communication.
2. Be dedicated and equal on duty.
3. Be prompt and accurate in working.
4. Understand and share the difficulties.
5. Consider the enterprises and entry and exit passengers as partners.

For oneself

6. Have a thorough grasp of the laws, and be proficient in profession.
7. Obey the laws and rules of work.
8. Dress neatly and politely.
9. Don't accept any illegal benefits.
10. Uphold the tradition and honor of the industry.

*Recommendation 30.2*

421. With the support from international organizations, the SBV has undertaken a number of training workshops on anti money laundering and combating terrorist financing, which included participants from Customs.

422. At present, Customs is a member of the National Project VNMS65 on “Enhance capacities of legal authorities and law enforcement authorities in preventing and combating money laundering” sponsored by UNODC.

*Recommendation 32*

423. According to the statistics provided, in 2007, Customs offices detected over 9,305 smuggled and illegal cross-border transportation of goods including 1,120 cases of illegal cross-border movement of gold, precious metals or precious stones.

424. In 2007, Customs confiscated more than 300 million VND of goods (equivalent to more than US\$15 million) together with more than US\$220,000 and other foreign currencies.

425. Customs provided statistics on sanctions for illegal cross-border transportation of goods and /or currencies as shown in the table below

**Table on Cross Border Interdictions**

	Receipt (number of case– accused, defendant)	Execution (number of case– defendants)	Relapse Profile for further investigation	Remain (number of case – defendant s)	Principal penalties							Additional penalties		
					Amount of money	Suspend sentence or non-	Suspended judgments	Imprisonment under 3 years	Imprisonment from 3 to 7 years	Imprisonment from 7 to 10 years	Expulsion	Fine	Co n fis cate	Other additional penalties
<b>2006</b>	29-50	18-49		1-1			15	15	9			1	1	
<b>2007</b>	29-65	28-62	1-3		2	3	12	28	16		1			
<b>As of 8/2008</b>	50-76	42-66		8-10	4		21	27	12	2		8	4	2

426. However, no disaggregated statistics were provided and no statistics on whether any of these cases related to money laundering or terrorism.

**2.7.2. Recommendations and Comments**

427. Vietnam should consider implementing the following recommendations to meet the requirements of SRIX:

- Amend relevant laws and regulations to extend the declaration requirement to specifically include physical cross-border transportation of bearer negotiable instruments as defined by FATF and required under SRIX.
- Review preventive measures at the airport by keeping all inbound and outbound passenger records from the arrival and departure card, as well as customs declaration information for both declared and non-declared persons, for a designated time to provide useful information to competent authorities, if needed, when conducting investigations.

- Redesign the declaration form to include information on declaration obligations and penalties for false declaration and increase public awareness regarding these obligations and penalties.
- Provide clearly in law, customs officers' authority to stop or restrain currency or bearer negotiable instruments where there is a suspicion of money laundering and terrorism financing.
- Amend relevant legislations or regulations to allow for effective, proportionate and dissuasive sanctions for false declaration and for carrying out physical cross border transportation of currencies and bearer negotiable instruments that are related to money laundering and terrorism financing.
- Provide AMLIC and other investigative authorities with the ability to access Customs information in a timely basis.
- Ensure authorities accessing Customs information are subject to strict safeguards particularly in regards to any possible dissemination of Customs information to third parties.
- Develop a system to maintain up to date consolidated and disaggregated statistics regarding ML/TF or Illegal cross-border transportation of goods and/or currencies.
- Customs and other competent authorities such as border guard should receive more training on AML/CFT.

### 2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
<b>SR.IX</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Declaration system does not cover bearer negotiable instruments.</li> <li>• Powers to stop or restrain currency and bearer negotiable instruments are not clearly articulated in law.</li> <li>• Sanctions are not effective, proportionate and dissuasive and are not clearly specified in law in relation to ML/TF.</li> <li>• Customs does not have methods in place for analyzing or identifying their collected cross-border information in terms of suspicious cases related to ML/TF in order to notify AMLIC.</li> <li>• The authorities cannot demonstrate that there is an effective system in place due to a lack of statistics provided.</li> <li>• Effectiveness impeded by lack of ML/TF dedicated or specialized staff and comprehensive statistics.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Knowledge of money laundering and terrorism financing threats and vulnerabilities in Customs is limited, and dedicated staffing resources is ad hoc.</li> </ul>

### 3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS

#### *Laws, Regulations and Other Enforceable Means*

428. The National Assembly enacts laws and ordinances. The Prime Minister issues decrees or decisions in Vietnam. Government ministries are authorized to issue decisions. Ordinances, decrees and decisions cannot impose penal penalties, only laws passed by the National Assembly can. However, ordinances, decrees and decisions can impose administrative penalties. In terms of hierarchy, ordinances can be considered as subsidiary legislation, decrees as regulations, and decisions as other legally enforceable means. Circulars and guidelines do not normally contain sanction provisions and therefore cannot be considered other legally enforceable means, although in Vietnam they contain a certain level of persuasive force in giving implementation effect to the various categories of legal instruments.

429. The two key documents in relation to preventative measures on money laundering are AML Decree 74 and SBV Guideline 281 on AML. This Decree was passed on 7 June 2005 and contains the following basic preventative measures:

*Article 7: General Prevention Measures relating to procedures and internal control*

*Article 8: Customer Identification and record storage*

*Article 9: Mandatory reporting of large value transactions*

*Article 10: Suspicious Transactions*

*Article 24: Violations*

430. These preventative measures apply to the following range of designated financial institutions, as specified in Article 6, as follows:

*a- Entities which are established and operate in accordance with stipulations of the Law on Credit Institutions;*

*b- Brokers, money investors, or institutions offering payment services in the territory of Vietnam;*

*c- Entities which involve in issuing, listing, transaction, trading, deposit, clearing securities;*

*d- Individuals and organizations which trade, sell and purchase foreign exchange, gold and silver, precious stones;*

*e- Insurance companies, insurance brokers and institutions relating to pension and welfare, social and economic programs; and*

*f- Organizations located in the territory of Vietnam representing or acting on behalf of foreign financial institution.*

431. Article 24 (a) – (c) outlines the offences or sanctions available. The monetary sanctions referred to in the Decree are generally considered not to be dissuasive, proportionate or effective in supporting the objectives of the Decree. The monetary sanctions, ranging from US\$300 to US\$1,780 approximately, are applicable for failure to retain files and documents, reporting obligations and tipping off violations that are referred to in Decree 74, with the latter subjected to the higher fines. Sub-section (d) of Article 24, Clause 1, refers to additional penalties that may be applied including possible revocation of a license or certificate to practice and/or the confiscation of means and instruments used in the violations.

432. The Ordinance on Administrative Sanctions, which can also be invoked for any violations of any ordinances or decrees, is cross-referenced in AML Decree 74.

433. It is however difficult to assess whether or not these sanctions would ever be imposed as there has been neither sanctions levied against AML Decree 74 to date, nor has there been any supervision activity implemented to support the Decree's objectives.

434. Currently, it is only the State Bank of Vietnam (SBV), the lead agency for the purposes of the Decree that has issued any AML direction by way of Guideline No 281 dated 30 June 2006 covering credit institutions.

435. The Guideline No 281, however, holds no sanctions or other enforceable means and essentially repeats the requirements contained in AML Decree 74.

436. There are other relevant regulations and enforceable means issued by Vietnam, both prior to and subsequent to AML Decree 74 which, while not issued specifically for AML purposes, do impact on customer identification, record keeping requirements and information access concerns, as follows:

- a) *Decree No 35, 2007 Electronic Banking*
- b) *Decree 70/2000 on Keeping Secret, Archiving, and Providing Information Related to the Customers' Deposit Money and Properties*
- c) *SBV Decision 376/2003/ Storing electronic documents*
- d) *SBV Decision No. 1284,, 2002 Opening and use of Deposit Accounts at State Bank of Vietnam and Credit Institutions*
- e) *SBV Decision 20/2007 on Bankcard Operations*
- f) *SBV Decision 30/2006 on Supply and Use of Checks*

437. There are also other laws, ordinances and decrees that address regulatory and supervisory powers of competent authorities in the financial sector, as follows:

- a) *Law on Credit institutions*
- b) *Law on State Bank of Vietnam and amendment*
- c) *Law on Inspection.*
- d) *Ordinance on Handling of Administrative Violations*
- e) *Law on E-Transactions*
- f) *Law on Securities Sector*
- g) *Decree 64/2001 Payment Activities by Payment Providing Organisations*
- h) *Ordinance on Foreign Exchange*
- i) *Decree 16/2006 Detailing the Implementation of Foreign Exchange Ordinance*
- j) *SBV Circular 03/2008 Guiding the Provision of Foreign Exchange Services by Credit Institutions*

## **Scope**

438. The requirements in AML Decree 74, both in scope and depth, fall significantly short of the preventative measures required under the FATF Recommendations. For example, there is no requirement for enhanced or ongoing due diligence and is specific to money laundering. There is no mention of Terrorist Financing in the AML Decree.

439. The definition of “financial institutions” in Article 3 (2) of AML Decree 74 essentially mirrors that of the FATF, except it has excluded trading in interest rates, index instruments and commodities as they do not currently exist as financial instruments in Vietnam. However, the list of designated financial institutions subject to the Decree, as outlined in Article 6 (1), are defined slightly differently but in essence captures the FATF defined financial institutions given the situation in Vietnam. For example, “Credit Institutions” (which includes financial leasing) is listed in Article 6 (1) in lieu of acceptance of accepting deposits and lending.

### **Implementation of the preventive measures**

440. It is stated in Article 26 of AML Decree 74 that the Decree shall be effective on 1 August 2005. There are no other conditions in the Decree upon which implementation is dependent. There are general statements in Articles 17 and 27 to the effect that, Ministries, Ministerial level agencies and Government Agencies are responsible to instruct, guide and inspect units under their administration in the implementation of this Decree. However, Vietnam has advised that covered or designated institutions or sectors are not expected or required to implement obligations contained in AML Decree 74 until after the issuance of appropriate “guidance” by responsible sectoral ministries. In other words, the AML Decree does not take effect until such time guidance has been issued.

441. The SBV has given effect or implemented the Decree’s obligations through SBV Guideline 281 for credit institutions. The SBV Guideline covers banking and non- banking credit institutions. However, only the Banking sector has commenced implementation of AML Decree 74 requirements despite a number of other “credit institutions” being defined in Article 12 of the Law on Credit Institutions.

442. Furthermore, while authorized non- bank money exchange bureaus and money remitters are under the ambit of the SBV, SBV Guideline 281 only covers credit institutions and does not extend to non-bank financial institutions providing money changing and remittance services, including under any agency arrangement.

443. Additionally, no other Ministry has issued guidance or implemented the AML Decree 74 obligations in their sectors. Consequently at present, the AML Decree 74 is not regarded as in effect in other designated financial sub-sectors such as securities and insurance.

444. An inter-ministry committee is stated to be in the process of being formed under the SBV and headed by the Deputy Prime Minister to extend the application of the AML Decree 74 to the other specified sectors. Generally, however, the assessment team observed little knowledge of AML Decree 74, outside of the SBV, and its associated responsibilities among other ministries and agencies. On some occasions other ministries appeared unaware of the Decree 74 committee formation until prompted by SBV representatives during on site discussions.

445. The overall implementation within the banking credit institutions sector is difficult to assess fully due to no formal supervision activity and requires far more engagement from the SBV. This engagement may require a targeted technical assistance capacity building program to facilitate a faster and more effective implementation of any AML regime.



### **3.1. Risk of money laundering or terrorist financing**

446. Vietnam has not adopted any risk based approach as outlined in the FATF standards to any AML/CTF requirements but rather treats all circumstances in the same manner. Vietnam has undertaken a very prescriptive approach to regulation and supervision. On site discussions indicated that unless something was clearly defined in documentation or legislation then that function would or could not be performed. Additionally, entities or sectors will not apply any obligations without direct guidance provided by the responsible Ministry.

### **3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

#### **3.2.1 Description and Analysis**

#### **Recommendations 5**

##### *Prohibition of Anonymous Accounts*

447. Vietnam does not have specific legislation that states it is illegal to operate an anonymous account or a numbered account. There are however SBV-issued requirements in relation to customer identification. SBV Decision No 1284/2002 dated 21 November 2002 requires the full name of the account holder to be provided. Furthermore, the CDD obligations under AML Decree 74 will assist in restricting any exposure to the establishment of an anonymous account. It will, however, be beneficial to the jurisdiction to be specific in its legislation on this requirement and apply appropriate sanctions should this occur.

448. Financial institutions indicated that prior to the AML Decree 74, anonymous or numbered accounts did not exist in Vietnam. These financial institutions also stated that anonymous accounts did not exist in any form prior to the introduction Decision No 1284/2002. However, without any onsite AML inspection by the SBV, these statements cannot be verified.

449. Safe deposit boxes or similar products are stated not to exist in Vietnam; however, one major financial institution stated they were considering their implementation as an option in their short term strategy.

##### *When CDD is required*

450. Articles 8 and 9 of the AML Decree 74 prescribe certain circumstances when customer identification shall be conducted.

451. These articles cover a number of core requirements of the CDD requirements but are deficient in the following circumstances:

- The threshold requirement for savings account cash transactions of VND 500 million (approximately US\$ 29,674) exceeds the applicable designated thresholds where CDD is required.
- The *De Minimus* thresholds for occasional customers conducting a wire transfer are not considered in Decree 74, with existing limits in excess of these requirements.

- The CDD requirements when there is suspicion is limited to money laundering and does not cover suspected terrorist financing.
- There is also a general lack of guidance as to how an entity would establish any doubts about the veracity or adequacy of previously obtained customer identification data. Article 8(1) does not require CDD to be undertaken in cases where the financial institution has doubts about the adequacy of previously obtained identification data. It only requires CDD of customers only if the financial institution considers it “appropriate” and has not provided guidance on circumstances that would be considered appropriate.

*Identification measures and verification sources*

452. AML Decree 74 at Clause 3, Article 8, prescribes the contents of customer identification information as follows:

1. *Date on which an account is opened or a transaction is performed; (b) Full name of the individual or representative of the agency or organization requesting the transaction; number of passport, identification card or of other identification papers; residential address or registered residential address; (c) Trading name both in full and in abbreviated form, number of business registration, number of tax registration, and address of headquarters of the organization or owner requesting the transaction or delegating a third party [to request] the transaction; (d) Trading names, addresses, and numbers of business registration or other business licenses of the individuals and organizations involved in the transaction, particularly of any party delegated [to request] the transaction and of the beneficiary of the transaction; (dd) Form, purpose and value of the transaction.*

453. Clause 4, Article 8, AML Decree 74 stipulates the means of conducting customer identification to determine the authenticity of the information in the following ways:

- a. By researching or collecting information from other organizations which had or have a relationship with the customer and then comparing such information with the information provided by the customer;*

454. The reference in Clause 3 in Article 8 requires only the “collection” of certain customer details and documents. It does not explicitly require that financial institutions (after collecting a customer’s identification data) verify a customer’s identity using reliable, independent source documents, data or information. Clause 4 requires financial institution to undertake some verification measures but only if the financial institution becomes “suspicious”.

455. Opening of accounts from outside of Vietnam is stated to be performed by identification documentation being notarized by appropriate Vietnamese consular staff.

456. There is no centralized identification system in Vietnam for natural persons, except for passports and drivers’ licenses. However, the identification card is given significant weight in the country.

457. In Vietnam, the identification card is the primary means of identification and not the passport. The identification card includes ID No, photo, full name, place originated (supported by the family record book, which is registered by local commune authority), date of birth, place of residence, nationality, special marks, fingerprints of left and right thumbs, and signature and the

stamp of the local police authority. This is most reliable identification document in Vietnam because financial institutions can check with the local police authority.

458. Vietnamese laws offer limited protection for those without an official identity card. They provide certain rights to individuals. For example, it would be difficult to obtain legal employment, a business license, attend schooling, join official organizations, and travel without one. It was difficult for the evaluation team to assess the reliability of the identification card for CDD purposes, however the financial institutions interviewed during the on site visit did not express any concern over the acceptance of it as an identification source. On balance, however, the reliability of identity cards as a source of verification may be considered as inadequate, as it is not legally mandatory to update address information in relation to this document.

459. The identification requirements applied to legal persons and legal arrangements requires some improvement to align with the “General Guide to Account Opening and Customer Identification” issued by the Basel Committee’s working group on Cross Border Banking. Some of the major deficiencies are a lack of requirement addressing corporate entity documentation and the obligation to look behind any institution to identify those who have control over the business and the company’s or partnership’s assets.

460. The lack of a centralized and publicly accessible database of enterprises registered with the Ministry of Planning and Investment further hampers the ability of financial institutions to undertake basic verification of incorporated customers. It is noted that the MPI, with international technical assistance, is developing and making available on its website a list of all enterprises, including companies, partnerships and sole traders registered under the Law on Enterprise. The list would include details of owners and senior management.

#### *Identification of Legal Persons or Other Arrangements*

461. Regulations on opening and use of deposit accounts at the SBV and at Credit Institutions were issued under the Decision No. 1284/2002 on 21 November 2002. This Decision prescribes various requirements as to the content of account opening dossiers. Amongst these requirements are registered names of an organisation, specimen signatories and required identification.

462. There is however no explicit requirement for financial institutions to verify, for customers that are legal persons or legal arrangements, that any person purporting to act on behalf of the customer is so authorised, or to identify and verify the identity of that person.

463. Additionally, there is no requirement to verify the legal status of the legal person or legal arrangements. AML Decree 74 does refer to business names, business license numbers and registered tax numbers but not to proof of incorporation or similar evidence of establishment or existence, nor is there direct reference to the identification of the directors of legal person, although some of these directors may be identified if they were signatories to an account.

464. The concept of a trust and trustees is not one that is currently legally recognised in Vietnam (see section 5.2 of this report).

#### *Identification of Beneficial Owners*

465. Clause 3 Article 8 of AML Decree 74 prescribes that financial institutions are required to identify such matters as business names, addresses, business registration numbers or other business licenses of the individuals and organizations involved in the transaction, particularly of any party delegated [to request] the transaction and of the beneficiary of the transaction.

466. Generally, the concept of a “beneficial owner” is not one that Vietnam is familiar with, and as such its legislation is very broad and not necessarily targeted at the beneficial owner or the natural person who is the controlling mind behind any legal person.

467. In Vietnam’s legislation, there are no special requirements that the financial institutions have to verify customers and obtain information to determine whether the customer is acting on behalf of another person. In addition, if it is determined that a customer is acting on behalf of another person, there is no explicit requirement for financial institutions to take reasonable measures to identify the third person. Article 8(s) of AML Decree 74 states there is a requirement to obtain the full name of the individual or representative of the organisation or agency applying for the transaction. This person must be legally authorised to conduct the transaction, essentially a signatory on the account.

468. Vietnam’s regulations only require the financial institutions to obtain information of the representatives of transactions. If a customer is acting on these authorisations, then financial institutions should only require representative(s) to provide more information if there is any suspicion that the customer identification information provided by the customer is incorrect or when necessary

469. There are no requirements or other enforceable means in Vietnam to take reasonable measures to understand the ownership and control structure of any legal person, and to determine the natural persons who are the operating minds behind various legal persons. However, as outlined in section 5.1 of this report, Vietnam would still face significant practical limitations in accessing information on beneficial ownership of legal persons, even if it had such requirements. This would limit the effectiveness of implementation of this requirement.

#### *Information on Purpose and Nature of Business Relationship*

470. Article 8(3)(e) of AML Decree No. 74 prescribes that the content of customer identification must include: “*form, purpose and value of the transaction*”. The FATF standards require financial institutions to obtain information on the purpose and intended nature of the business relationship rather than of individual transactions. Discussions with private sector banks indicated that they would obtain this information during the account opening process, although changes to a person’s activities would be difficult to detect after the initial interview unless that person(s) sought another product such as a loan.

#### *Ongoing Due Diligence on Business Relationship*

471. There is no legislative or other enforceable means that require financial institutions to perform ongoing due diligence, including for higher risk categories of customer, business relationships or transactions. Financial institutions are not required as part of their due diligence measures to scrutinize their customers’ transactions, during the course of the business relationship, to

ensure that the transactions are consistent with the institution's knowledge of the customer, their business, risk profile and where necessary, source of funds.

472. Article 8(2) of AML Decree 74 states that "*The purpose of this Article is to ensure that customer identification information is reliable and up to date*". Article 8(2) does not however clearly require that financial institutions keep their CDD documents and data up to date and relevant by undertaking reviews of existing records especially for high risk customers noting that Vietnam has not adopted any risk based approach in their AML regime.

473. Discussions held with various entities, both private and public, during the on-site visit indicated that the identity card used as a prime document for customer identification carries no obligation to maintain up to date information on this document e.g. address details. This potential deficiency may present difficulties for financial institutions in maintaining and receiving up to date customer identification information. The SBV has provided no additional guidance as to its expectations in relation to Article 8(2).

#### *Risk*

474. There is no legislation or other enforceable means that requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. Guideline 281, section 3.2.(c) does require credit institutions to implement a form of system to detect suspicious activity, but this guideline is very broad with no actual guidance, is not enforceable and carries no sanctions. The absence of any AML supervision by SBV makes an assessment of successful implementation of any system implementation by the credit institutions difficult to determine. Discussions held during the on site component of the evaluation also supported a lack of implementation apart from foreign banks operating under their global AML policies and procedures.

475. There is no legislation or guideline that provides for financial institutions to apply any reduced CDD in the identification of their customers.

476. The application of CDD is consistent across all customer types. According to AML Decree 74, CDD measures are applied for all financial institutions with no difference among foreign organizations and individuals or indigenous entities and persons.

477. The Vietnamese financial institutions do not have any mechanism to apply CDD measures to customers resident in another country.

478. As mentioned above, there is no risk based legislation in place that would allow reduced or enhanced CDD, including where there is suspicion of money laundering or specific high risk scenarios.

479. Article 8(d) of AML Decree 74 requires customer identification when a transaction has the suspicious features designated in the Decree. The Decree is however silent on the extent of this identification and whether or not financial institutions may well simply rely on existing identification, given the Decree's "tipping off" provision noted in Article 12 clause 2.

#### *Timing of Verification of Identity*

480. AML Decree 74 does not specify the timing of verification of customers' identities. Flexibility in delaying the verification process is also not provided for. The issue of timing of verification also has to be considered in the context of the failure to require verification measures.

481. As noted above, the concept of the "beneficial owner" of a business relationship is not fully understood or articulated by Vietnam's regulatory and financial institutions and laws respectively. The prime focus of existing legislation is on the individual or signatories to an account rather than the actual owner or controlling mind behind the account.

#### *Timing of Verification of Identity—Treatment of Exceptional Circumstances*

482. Vietnamese law does not permit financial institutions to perform transactions without supporting documentation that allows proper customer identification. When being required to provide services by customers, Financial institutions have to identify customers in accordance with AML Decree 74 before providing any access to an account.

#### *Failure to Complete CDD before commencing the Business Relationship*

483. AML Decree 74, Article 8 requires a customer (being an individual or an organisation) to be identified when opening an account for the first time. AML Decree 74 is however silent on the measures to be taken if a financial institution is not able to satisfactorily complete CDD for a customer. Discussions with financial institutions indicated that accounts would not in practice be opened and/or operated on before full identification was obtained. This cannot be confirmed in view of the non existent supervision/monitoring for AML compliance in Vietnam.

484. This approach was also stated to be the case prior to the issuance of Decree 74.

485. AML Decree 74 also notes at Article 10 clause (a), the need to lodge a suspicious transaction report where inadequacies in customer identification are detected. It is unclear from the lack of any comprehensive statistical information provided as to any suspicious matters arising from this obligation.

#### *Failure to Complete CDD*

486. Vietnam does not have specific legislation that requires financial institutions to terminate business relationships when unable to undertake required CDD measures. It is, however, unlikely that for the average person a business relationship would be commenced without adequate identification information being obtained.

#### *Existing Customers*

487. There is no specific requirement or other enforceable means requiring financial institutions to apply CDD requirements to existing customers on the basis of materiality or risk, or to conduct due diligence on such existing relationships at appropriate times.

488. AML Decree 74 does contain a very broad reference to customer identification requirements in relation to Article 8(c) and (d) clauses (c) and (d). Article 8(c) refers to a transaction having suspicious features referred to in Article 10 of the Decree and Article 8(d) states ,*"any transaction where, having regard to the nature and scope of the transaction, the individual or*

*organisation referred to in Article 6 which details the individual and organisation responsible for money laundering, considers it appropriate”.*

489. These requirements are very broad, generic statements with no supporting guidance or supervision activity to assist in the implementation or interpretation of the requirements. The assessment team considers that specific legislation is required to ensure that reporting entities meet the ongoing CDD requirement to existing customers as defined by FATF.

#### *Existing Anonymous-account Customers*

490. According to the regulations stipulated in Clause 2, Articles 2 to 6 of SBV Decision No. 1284/2002 of 21 November 2002, on opening and use of deposit accounts at the SBV and Credit Institutions, the procedures for opening a deposit account require proof of identification e.g. name, address and presentation of ID card. Therefore, the opening of an anonymous accounts or numbered account prior to AML Decree 74 is prohibited.

491. SBV inspectorate supervision activity does not include the assessment of any KYC/CDD obligations. This lack of supervisory engagement allows for a potential window of abuse of anonymous or numbered accounts, although discussions with private sector banking officials would indicate that such an occurrence is unlikely.

#### **Recommendation 6**

492. Vietnam has not addressed this Recommendation and there are no legislative or other enforceable obligations that address PEP requirements. Generally, discussions revealed that the concept of ‘politically exposed persons’ is not well understood and there is no specific official document which prescribes or defines the concept of a politically exposed persons (PEPs).

493. Vietnam has provisions on domestic persons that may take advantage of administrative positions under the Law on Corruption dated 29 November 2005, although this law is not translated into any enhanced or ongoing due diligence of a person in this position in relation to any AML/CTF obligations under AML Decree 74.

494. While Vietnam signed the UN Convention against Corruption on 10 December 2003, this treaty has not been ratified or implemented.

#### **Recommendation 7**

495. Vietnam does not have any specific provisions that prescribe the responsibilities and obligations of financial institutions in relation to the assessment of their respondent's banks operations, reputation and quality of supervision, including any AML/CTF breaches. Nor does Vietnam imposes any legal obligations on its financial institutions requiring the assessment of Vietnam’s respondent bank’s AML/CTF controls, and requiring senior management approval before establishing new relationships or documentation of the respective AML/CTF responsibilities.

#### **Recommendation 8**

496. AML Decree 74 is silent on any potential abuse of new technologies, any non face- to-face business relationships/transactions and any additional CDD. AML Decree 74 does not specifically

require financial institutions to have policies in place to prevent the misuse of technological developments in money laundering and terrorist financing.

497. Current Vietnam's Law on E – Transactions focuses primarily on the safety of the transactions rather than any potential abuse of new technologies or non face- to- face transactions.

498. Over recent years, for instance, the introduction of automatic teller machines has increased substantially to a current number of around 6000 to 7000. according to a large local financial institution.

499. Discussions with large banks credit institutions during the on site visit indicated that, while internet banking is only just emerging and provides limited functionality such as account balances, these institutions are aware of the various marketing and efficiency opportunities this delivery method will provide to their business models in the future.

500. While the increase in both ATM and internet usage would appear to coincide with the government directive that all of its employees in the major capital cities have their salaries paid into bank accounts, the number of ATMs clearly would facilitate a decrease in face to face transactions. The potential AML/CFT risks arising from this have not been considered by Vietnam to date and may well provide opportunities for organised criminal activity in the future if not addressed.

501. SBV Decision 20/2007 Promulgating the Regulation on issuance, payment, use of bank cards and provision of bank card operation support services covers prepaid cards including bearer prepaid card and non-bearer prepaid card. However, while Article 3 also deals with the provision of card limits, including for prepaid cards, in terms of ATM cash withdrawals and loading of prepaid cards, bearer prepaid cards are excluded. Article 30 also prohibits assigning cards by their holders to other persons, except for non- bearer prepaid cards, although this prohibition would be difficult to supervise or police.

### **Effectiveness**

502. The lack of implementation of AML Decree 74 is of major concern, given the length of time since the passing of the Decree. While an initial approach concentrating on the Banking sector among credit institutions has merits given the size of this sector, the Decree's obligations have not subsequently been extended to other financial sectors, and implementation in non- bank credit institutions has not commenced. The overall implementation within the banking sector is also difficult to fully assess due to the lack of supervision activity.

503. Vietnam should develop a basic implementation strategy addressing the core AML principles that will allow it to, firstly, achieve a sound implementation of the AML Decree 74 objectives in the banking sector, and, secondly, to allow this approach then to be used in expanding implementation of the AML Decree 74 into the other financial sectors.

### **3.2.2. Recommendations and Comments**

504. SBV should produce a one, three and five year strategic plan detailing their road to full implementation of AML Decree 74, as amended, in all sectors, staggering the implementation across



the affected sectors to allow for achievable implementation of the Decree's objectives. The prime emphasis should be the core FATF recommendations and higher risk areas.

505. Vietnam should concentrate on using the banking institutions sector as a "model" sub sector, to allow SBV to develop adequate supervision skills that can then easily be transferred to other sectors covered by AML Decree 74.

506. SBV should consider engaging with the peak industry bodies such as the Bankers Association to provide more education to their regulated entities on a regular basis, in relation to the new concepts introduced in AML Decree 74. Additionally, this strategy could be used for any other FATF requirements that have not been addressed in current legislation, but that should be implemented in any revised AML/CFT amendments.

507. SBV should encourage the Vietnam Bankers Association and International Bankers Working Group in Vietnam to form a joint AML body that could engage with the SBV in expanding the AML/CFT regime in Vietnam, specifically the understanding of the core concepts and processes involved in such a regime. This initiative could involve seeking assistance from the various major international banks located in Vietnam, and drawing on that to provide global expertise to develop key training modules and concepts of an effective AML program.

508. Vietnam should produce tailored, detailed and enforceable guidelines for each sector, as it implements AML Decree 74 obligations in each sector, rather than rely on the one generic and high level guideline.

509. Vietnam should amend AML Decree 74 or pass specific legislation to:

- prohibit the existence (opening or maintenance) of numbered or anonymous accounts ;
- impose the applicable designated thresholds where CDD is required;
- expand the identification documentation requirements for a natural person beyond the identity card;
- extend identification requirements to cover any safe custody or deposit boxes given this product's pending introduction to the Vietnam market;
- introduce a requirement to verify customers identity using reliable, independent source documents (whether permanent or occasional);
- include expanded guidance covering how financial institutions should identify the veracity or adequacy of any previously obtained customer identification;
- include a requirement to identify the beneficial owner or operating mind of a legal person or arrangement;
- introduce on-going due diligence requirements;
- introduce risk based CDD measures including enhanced due diligence for higher risk customers and the capacity to apply reduced CDD for lower risk customers;
- specify the timing for verification of customers;
- introduce the requirement to terminate any account, already activated, where relevant CDD requirements are unable to be met; and

- introduce CDD requirements for existing customers on the basis of materiality and risk.

510. SBV should consider expanding existing guidance in relation to the obligation of maintaining up to date CDD information, particularly in relation to the use of an identity card as a prime document where the prime document carries no obligation to maintain up to date information such as address.

511. Vietnam should introduce specific legislation requiring special attention to be provided to PEPs that address the individual components of FATF Recommendation 6.

512. Vietnam should consider incorporating their surveillance of persons holding prominent public functions in Vietnam (i.e. domestic PEPs) into their AML/CFT regime.

513. Vietnam should introduce legislation that addresses the following requirements of FATF Recommendation 7 on cross – border Correspondent Banking relationships

- requirement to obtain information on respondent institution (c. 7.1);
- assessment of AML/CFT controls in respondent institution (c. 7.2);
- approval of establishing correspondent relationships (c. 7.3);
- documentation of AML/CFT responsibilities for each institution (c. 7.4);
- payable-through accounts (c. 7.5).

514. Vietnam should introduce obligations that require financial institutions to have policies in place or to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

515. Vietnam should also require its financial institutions to have policies and procedures in place to address any specific risks associated with non -face- to- face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and when conducting ongoing CDD.

516. Vietnam should carefully consider and address any AML/CFT risks arising from the introduction of internet banking and ATM proliferation, together with any other similar trends that emerge as Vietnam’s financial system develops and matures.

517. Vietnam should consider the implications of mobile phone usage and any AML exposure this new technology may provide. A number of other South East Asian jurisdictions have witnessed the growth in this threat and Vietnam is encouraged to contact those jurisdictions to build their own knowledge of this new technological change.

### 3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Lack of CDD implementation - Decree 74 has only been partially implemented within the credit institutions sector namely the banking</li> </ul>

		<p>sector.</p> <ul style="list-style-type: none"> <li>• Financial institutions are not explicitly prohibited by law from opening or maintaining anonymous accounts or accounts in obviously fictitious names.</li> <li>• Article 8(1) does not require financial institutions to conduct CDD in circumstances required by c5.2(b); 5.2(c) ; 5.2(e)</li> <li>• The applicable threshold requirement for savings account cash transactions exceeds the applicable FATF designated threshold where CDD is required.</li> <li>• The designated threshold for occasional customers is above the FATF benchmark in relation to SRVII requirements.</li> <li>• There is no explicit requirement for financial institutions to verify a customer's identity to using reliable, independent source documents, data or information.</li> <li>• The requirements on identifying customers who are legal persons are not consistent with the standards.</li> <li>• The concept of beneficial owners is not understood in Vietnam and as such not reflected in any legislation.</li> <li>• No requirement for financial institutions to identify any person said to be acting on behalf of another person is so authorized.</li> <li>• No requirement to verify the identity of any person acting on behalf of another person.</li> <li>• No legislative or other enforceable means requiring financial institutions to conduct ongoing due diligence of a business relationship</li> <li>• No legislative or other enforceable means to require enhanced due diligence for higher risk categories of customer business relationship or transaction</li> <li>• No ongoing due diligence obligations within Vietnamese legislation</li> <li>• No specific requirement to ensure CDD is kept up to date.</li> <li>• No legislation requiring the termination of a business relationship where certain criteria have not been applied.</li> <li>• No specific legislative requirement for financial institutions to apply CDD requirements on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.</li> <li>• Sanctions of Decree 74 are not dissuasive, proportionate or effective.</li> <li>• No AML inspections conducted to gauge any effectiveness of implementation of Decree 74.</li> </ul>
<b>R.6</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no legislative obligations or other enforceable means covering any obligations in relation to PEPs.</li> </ul>

<b>R.7</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no legislative obligations or other enforceable means for reporting entities to undertake enhanced CDD in relation to correspondent banking obligations or relationships.</li> </ul>
<b>R.8</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no specific legislation or guidance in relation to the misuse of technological developments for money laundering or terrorist financing, or addressing any specific risks associated with non face-to-face transactions.</li> </ul>

### **3.3. Third Parties and Introduced Business (R.9)**

#### **3.3.1. Description and Analysis**

518. Vietnam's law does not have specific provisions which would allow financial institutions to rely upon a third party in the process of implementing CDD. As prescribed in AML Decree 74, financial institutions shall be responsible for the identification information of customers, and SBV Decision No 1284/2002 dated 21 November 2002 requires the same for credit institutions.

519. In practice, all identification obligations are conducted face-to-face by the credit institutions involved in the account opening process. The assessment team found no evidence that any financial institutions would rely upon any introducer or third party in the CDD process. The larger credit institutions have either or both securities and insurance arms within their corporate structure, but CDD obligations are still required to be conducted by the bank even if a client is referred by one of its arms. Even agents working for insurance companies must provide copies of identification details of new customers to their insurance companies.

#### **3.3.2. Recommendations and Comments**

#### **3.3.3. Compliance with Recommendation 9**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.9</b>	<b>N/A</b>	

### **3.4. Financial Institution Secrecy or Confidentiality (R.4)**

#### **3.4.1. Description and Analysis**

520. *Access to information for competent authorities.* All financial services related laws, ordinances and decrees contain confidentiality provisions prohibiting the disclosure of customer information by persons who acquire such information in the course of their business. These provisions are, for the most part, overridden with respect to any requests submitted by relevant competent authorities within the scope of such laws, although some laws and practices restrict initial access by the SBV to information in the banking sector.

521. Article 14(1) of AML Decree 74 allows AMLIC access to individuals, agencies and organisations to provide documents and information with regard to Articles 9 and 10 of the Decree. Decree 74 has only been introduced within the Credit Institutions sector to date.

522. The Law on Credit Institution, article 104, clause 2 contains a specific statement “*except for cases where it is so requested by competent State bodies under the provisions of law*”, credit institutions should be entitled to reject requests by organizations and individuals for the provision of information.

523. Article 57 of the Securities Law, which deals with confidentiality, allows “*provision of information at the request of competent state authorities*” when outlining situations where exceptions to Article 57 confidentiality requirements are permitted.

524. Article 5 (b) of Decree 70/ 2000 on Keeping Secret and Archiving Customer Information, allow financial institutions to provide customer account information, “*at the written requests of State bodies in the course of inspection, investigation, prosecution, court trial or judgment execution which falls under their competence, as prescribed by law.*” In this case, the documents requesting the provision of information related to the customers’ deposit money and properties must be signed by the relevant competent persons as defined in Article 5 of Decree 70.

525. Article 24 of Decree 60/2001 on Payment through Service Providers, states that “*service-providing organizations being banks and other organizations permitted to provide payment services are obliged to supply to the State Bank information related to payment activities at such organizations when the State Bank so requests.*”

526. Article 48 (3) (a) in Decree 160 of 2006 on Detailing the implementation of the Ordinance on foreign exchange states that, “*Organizations and individuals involved in foreign exchange activities are obliged to supply information and data at the request of the State Bank of Vietnam or licensed credit institutions according to the time limits provided by current legal documents on foreign exchange activities.*”

527. Legislation combating terrorist financing has not yet been promulgated and it is unclear as to whether there may be any impediments to access such information for CFT purposes.

528. Discussions with other non- banking financial institution sectors reveal that there does not appear to be any financial institution secrecy law that would inhibit the implementation of the FATF recommendations.

529. Article 17 clause 3 of the Law on Credit Institutions specifically refers to the confidentiality of customer information except specifically provided by law. Discussions with the Bankers Association, representing the indigenous Vietnamese banks, indicated that competent authorities would be allowed access to this information upon written application. Generally, the association thought this request for information would be progressed through the SBV.

530. Other Government Ministries’ statements supported this general approach, that any requested access to information would be provided, but that the request would generally be from the SBV.

531. A commercial bank stated that MPS will come directly to the bank for access to information in relation to deposits that relate to an enquiry already actioned through SBV.

532. ***Sharing of information between competent authorities.*** During the onsite visit, it became apparent that there is an understood practice for accessing and sharing information between the MPS and the SBV. Discussions with MPS and SBV indicate that, while MPS believes it has the power to go directly to the source of information, it would seek that information for the credit institutions sector via the SBV unless the SPP had approved an official investigation, as opposed to preliminary enquiries. There does not however appear to be any established practice of information sharing amongst supervisory authorities in Vietnam i.e. between the SBC, SSC and the DoF's Insurance Department. However, all three supervisory agencies have MOUs with foreign counterparts to share information, particularly in the case of the SBV. As demonstrated by the level of international engagement, there does not appear to be any legal impediments for information sharing for supervisory purposes.

533. ***Sharing of information between financial institutions.*** Article 6 of Decree 70/ 2000 on Keeping Secret and Archiving Customer Information allow financial institutions to provide each other with information related to the customers' deposit money and properties.

534. There is no restriction in the Vietnamese laws that prohibit information contained in wire transfers to be provided between financial institutions in the normal course of business. Discussions with financial institutions during the on site visit indicate that international wire transfers intended for other reporting entities are processed containing the complete details of the payment instruction. Vietnam's domestic payment system is stated to have been built to allow for complete information to be provided in these situations. The passing on of such information however is at the choice of each individual financial institution.

535. The legislation is, however, silent on any restrictions in relation to correspondent banking and third party transactions, although third party or introduced transactions are currently not conducted in Vietnam.

#### **3.4.2. Recommendations and Comments**

536. It is important that the regulatory and law enforcement authorities should be able to acquire customer information in the normal course of their duties, and to share such information with domestic and foreign counterparts, subject to conditions of confidentiality.

537. Vietnam should:

- Ensure that there is no inhibition to financial institution information when any terrorist financing legislation is implemented; and
- Consider stating specifically that there should be no barriers to the sharing of information in relation to R7, 9 and SRVII recommendations.

### 3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"><li>• No clear provisions for terrorist financing.</li></ul>

## 3.5. Record keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1. Description and Analysis

538. Article 9(1) of SBV Decision 376 of 2003 concerning the Regulation on maintaining, storing electronic documents states as follows:

*“a. Electronic documents related directly to record-keeping in institutions that provide payment services: such documents shall be stored up to 20 (twenty) years from the end of accounting year or when completing capital accounting payment of institutions that provide payment services;*

*b. Electronic documents that are only used for managing, operating and controlling, cross-checking in capital payment activities of institutions that provide payment services, and use indirectly in record-keeping: such documents shall be stored up to 5 (five) years from the end of accounting year or when completing capital accounting payment of institutions that provide payment services;”*

539. Article 40 – Accounting Law: Accounting records must be archived according to the following time limits:

*At least five years, for accounting records used for the accounting units’ management and administration work, including accounting vouchers not directly used for making entries in accounting books and financial statements;*

*At least ten years, for accounting vouchers directly used for making entries in accounting books and financial statements, accounting books and annual financial statements, unless otherwise provided for by law;*

*Perpetual archival, for accounting documents of historical value and of important economic, security or defense significance.*

540. Discussion with the State Securities Commission stated there was a fifteen year obligation to store all documentation within the securities sector.

541. AML Decree 74, Article 8 (5) on Storage of identification information states:

*In addition to maintaining and preserving information in accordance with the existing regulations, individuals or organisations referred to in Article 6 of this Decree shall maintain for at least 5 years after the date of account transaction closure identification information relating to the transactions referred to in Item 1 of this Article.*

542. In summary, while the AML Decree 74 record keeping obligations have not been implemented past the credit institutions sector, there is sufficient evidence to suggest a rigid approach applies to various record retention obligations, some of which extend beyond the FATF requirements. For example, the Regulation on maintaining, storing electronic documents that are used for capital accounting and liquidating of institutions that provide payment services requires a twenty year storage period.

543. The team's understanding as to the retention of records was confirmed by discussion with various financial institutions during the on site visit.

544. The sanctions noted in AML Decree 74 against any record keeping failures range from approximately US\$300 to US\$900. These sanctions are not considered to be dissuasive, proportionate or effective. To date there has been no application of these sanctions and discussions with the SBV inspectorate indicate that they have neither conducted any AML related assessments, nor assessed any record keeping obligations in the course of their normal supervisory activity.

#### *Record-Keeping & Reconstruction of Transaction Records*

545. Article 8(5) of AML Decree 74 relates solely to the retention of customer identification records following the closure of an account. While AML Decree 74 is not specific as to the retention of transaction records for any specified time period, other legislation and regulation e.g. Law on Accounting and SBV Decision 376 would partially meet transaction record retention requirements.

#### *Record-Keeping for Identification Data*

546. Currently, Vietnam's law only has record keeping provisions which cover customer identification but not all specific transactions.

547. AML Decree 74 is silent in relation to retention of account files and business correspondence following the termination of an account or business relationship.

#### *Availability of Records to Competent Authorities*

548. Currently, Vietnam does not have any specific legislation regarding availability of records "on a timely basis" nor the retention of business correspondence. SBV was unable to produce any statistical data in relation to this issue.

549. Prime Minister's Decision 44 of 21 March 2002, Article 5, requires payment service providing organizations to, "have the responsibilities to provide full information, electronic documents and procedures in using equipments that support the investigation, research and understanding documents when there is a requirement relating to investigations and examinations by the competent authorities". The timeframe stipulated will depend on the circumstances. For examination, the timeframe could be 24 hours. For AMLIC 2-3 days, or 24 hours. MPS normally requires information immediately on submission of request, although in practice time would be allowed for financial institutions.

#### *Obtain Originator Information for Wire Transfers*



550. Vietnam does not have any specific legislation requiring full originator information to be maintained, nor does Vietnam require the originator of any wire transfer over the required limits to be verified.

551. Vietnam does, however, have a Decree 35/2007 that prescribes the content of electronic documents that include some components of full customer information. However, there are no specific provisions in relation to originator information in respect of wire transfers, and the actions required under SRVII.

*Inclusion of Originator Information in Cross-Border Wire Transfers*

552. There is no legislative requirement or other enforceable means that require financial institutions to include the full originator information in cross border wire transfers. It is, however, likely that entities effecting wire transfers will be required by other jurisdictions with sound AML legislation to include such information or payment instructions may be returned or held up pending the provision of the complete payer information.

*Inclusion of Originator Information in Domestic Wire Transfers*

553. There is no legislative requirement or other enforceable means that require financial institutions to include the full originator information in domestic wire transfers or to have that information readily available within three business days. For any domestic transfer relating to a cross border wire transfer, financial institutions who were visited as part of the on site program, stated that they would include the complete message should they be paying the funds to another domestic bank. The domestic payment system is stated to cater for this functionality. The decision to include such information however rests with the financial institution receiving the payment instruction for the overseas counterparty.

*Maintenance of Originator Information*

554. There are no obligations requiring the beneficiary institution to apply risk based procedures to identify and assess any incoming wire transfers missing complete originator information for any suspicious behavior. Additionally, there is no obligation to require the beneficiary institution to consider restricting or terminating a correspondent banking relationship where SRVII requirements are not met. Discussions during the onsite component of the assessment revealed that providing suitable information was contained in the payment instruction to “pay away” the funds then the payment was effected.

555. Authorities stated that the Law on E - Transactions relates to the recording of originator information; however Vietnam was unable to provide specific evidence of this statement and a review of this law by the team could not identify any articles that would meet the requirements or intent of SRVII. The prime objective of the law on E - Transactions appears to be the safety of the transactions rather than any reference to SRVII obligations.

556. The SBV Inspectorate states they do not inspect any obligations under the E Transaction Law although this may be planned for the future. Accordingly there have been no sanctions applied against this aspect of the Law on “E – Transactions”.

### *Monitoring of Implementation of SR VII*

557. The SBV inspectorate stated they do not assess any wire transfer record keeping requirements as part of their supervisory activity.

### *Sanctions*

558. There is no specific legislation addressing these requirements.

### **3.5.2. Recommendations and Comments**

559. Vietnam should expand record keeping obligations under AML Decree 74 to cover all requirements of FATF Recommendation 10, while taking into consideration any complementary legislation.

560. Vietnam should expand the coverage of Recommendation 10 to all institutions covered by the law.

561. Vietnam should issue specific legislation to address all aspects of the SRVII requirements.

562. Vietnam should consider the role of any interposing institution (the institution receiving the payment instruction from overseas) in the payment chain when preparing its legislation, as it will be that institution which will maintain any correspondent banking relationship with the sending institution.

563. Vietnam should consider amending AML Decree 74 to include a clear timeframe for reporting entities to provide information to competent authorities upon request.

### **3.5.3. Compliance with Recommendation 10 and Special Recommendation VII**

	Rating	Summary of factors underlying rating
<b>R.10</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• AML Decree 74 has not been implemented outside of credit institutions.</li><li>• Requirements covering the retention of transaction records are not comprehensive.</li><li>• No requirement to retain business correspondence or account files.</li><li>• No timeframe articulated to produce records.</li></ul>
<b>SR.VII</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• No specific requirement to ensure complete originator information is included in outgoing wire transfers.</li><li>• There is no requirement for the originator's account number or unique reference number if no account number exists to be included in an outgoing payment instruction.</li><li>• Identification requirements for the occasional customer are above the de minimus thresholds, and are only applied to cash related threshold</li></ul>

		<p>reporting transactions.</p> <ul style="list-style-type: none"> <li>• No legislative requirement or other enforceable means that require full originator information to accompany or be made available within the required timeframe for domestic transfers.</li> <li>• No specific requirements for financial institutions in the payment chain to ensure that all originator information accompanies a wire transfer.</li> <li>• No obligation for the beneficiary financial institution to assess incoming wire transfers that are missing complete originator information for any AML/CTF risk exposure. (Currently there is no CTF legislation).</li> <li>• There are no measures in place to effectively monitor the compliance of financial institutions with rules and regulations implementing SRVII.</li> <li>• The lack of legislation or other enforceable means does not allow any monitoring of compliance or appropriate sanctions to be applied against the various obligations under SRVII.</li> </ul>
--	--	---

### *Unusual and Suspicious Transactions*

## **3.6. Monitoring of Transactions and Relationships (R.11 & 21)**

### **3.6.1. Description and Analysis**

#### **Recommendation 11**

564. Article 10 of AML Decree 74 set out thirteen general features of a suspicious transaction. These criteria include, inter alia, the identification and monitoring of large value or unusual patterns of transactions when they are not consistent with the nature and size of the customer's business operations.

565. As noted previously, the AML Decree has not been implemented in any sector other than the banking credit institutions sector, and in that sector only limited to the banking sector.

566. Additionally, AML Decree 74 does not require the retention of any written findings in examining large and unusual transactions, the background, origin and purpose of such transactions. The existing legislation refers only to retention of CDD/KYC information and of actual STRs.

567. SBV Guideline 281, issued by the SBV on 30 June 2006, delegates the responsibility to credit institutions to design their own evaluation of their reporting/monitoring systems. The SBV should be taking a strong lead, rather than merely delegating this obligation, and should support the various credit institutions in implementing this Recommendation. In order to do so, however, SBV

will first need to fully understand the scope and intent of this Recommendation, specifically what unusual transactions and large transactions may occur in Vietnam.

568. Some foreign banks operating under their global AML/CTF policies, procedures and systems stated that they did run transaction monitoring systems, however these were driven by the global AML/CTF approach of the parent company rather than any Vietnam legislative requirement or obligation.

## **Recommendation 21**

569. Vietnam has not set up any system to alert financial institutions to countries and territories that do not implement or implement inadequately the FATF Recommendations. All customers conducting accounts or transactions with the credit institutions (the extent to which AML Decree 74 has been implemented to date) are viewed equally, with no requirement to examine as far as possible transactions that relate to business relationships with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF recommendations. That is, financial institutions are not required to implement any risk assessment for countries that may have an increased exposure to any AML/CFT risk.

570. Discussions with government ministries and the private sector indicated that there was little understanding of this concept, apart from one of the largest local financial institutions which has US Patriot Act obligations. These obligations require a sound understanding of jurisdictional risk as this risk forms part of their international operations.

571. Article 10 of AML Decree 74 sets out 13 scenarios, some of which refer to foreign countries, however, the decree is silent on the various obligations imposed by Recommendation 21. Generally, discussions held during the on site component of this assessment indicate that unless there is a specific provision at law then that matter will not be considered in any compliance systems.

572. There is no specific legislative requirement or other enforceable means that allows Vietnam to apply counter-measures to countries not sufficiently applying FATF Recommendations.

### **3.6.2. Recommendations and Comments**

573. SBV should develop more comprehensive material to assist their supervisory constituency in understanding the new concepts in AML Decree 74 and how these concepts can be translated and integrated into existing processes and procedures.

574. Vietnam should amend AML Decree 74 to include a specific and stand alone requirement for designated entities to pay special attention or to monitor unusual large or complex transactions or series of such transactions, which have no apparent economic or visible lawful purpose. It is one concept that requires development in Vietnam together with special attention for those high risk countries.

575. Vietnam should introduce a legislative requirement to retain documentation relating to any investigation involving large or unusual transactions for a period of five years.

576. Vietnam should introduce specific legislations addressing all components of Recommendation 21.

### 3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
<b>R.11</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• AML Decree 74 has only been implemented in the banking sector.</li> <li>• No specific requirement to retain the details of any investigation and analysis of any unusual or large transactions.</li> </ul>
<b>R.21</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no system or guidance in place to alert any sector in relation to countries or territories that do not adequately apply the FATF standards.</li> <li>• Vietnam has no legislative requirement to apply counter measures where the FATF standards are not considered to be adequate.</li> </ul>

## 3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1. Description and Analysis

#### Recommendation 13 and SRIV

577. Suspicious transaction reporting (STR) obligations are specified in AML Decree 74 and were introduced in 2006. However, at present only credit institutions are subject to STR reporting requirements as promulgated in SBV Guideline 281 pursuant to Articles 3, 6, 10 and 12 of AML Decree 74 on STR reporting. Other non-bank financial institutions such as money changers, remittance agents, insurance, securities etc are not subject to STR reporting obligations.

#### *Requirement to Make STRs on ML and TF to FIU*

578. The definition of “suspicious transaction” in Article 3 of AML Decree 74 is as follows:

*“7 - "Suspicious transactions" shall mean any transaction having unordinary (unusual) or money laundering related features; being warned by the State competent authority or identified in accordance with this Decree.”*

579. This definition, in itself, does not include reference to all proceeds of a criminal activity or of all predicate offences as required under this criterion. It does however refer to “money laundering” a term which is defined in Article 3 (1) of the Decree as follows:

*“1- Money laundering” shall mean the act of an individual or organization who tries to legalize money and assets obtained from criminal activity through the following specific acts :*  
*- Engaging, directly or indirectly, in a transaction that involves money or*

*assets obtained from criminal activity;*

*- Acquiring, receiving, possessing, moving, transferring, assigning, carrying, using, removing from and bringing into Vietnam money or assets obtained from criminal activity;*

*- Investing in a project, work, contributing money to an enterprise or otherwise trying to conceal, disguise or impede the establishment of the true nature, origin, or location, movement process, or ownership of money or assets obtained from criminal activity*

580. Overall, the money laundering definition does refer to “money and assets” obtained from criminal activity, subject to the gaps highlighted in Recommendations 1 on this matter. Consequently, the definition of suspicious transactions includes proceeds of crime, with some scope deficiencies.

581. The requirement to submit STRs and the list of designated entities is specified in Article 12 and Article 6 respectively of AML Decree 74. These Articles state:

*Article 12*

*1- Individuals and organisations referred to in Article 6 of this Decree shall report all transactions referred to in Article 9 and 10 of this Decree to the Anti Money Laundering Information Centre...:*

*Article 6*

*1- Financial Institutions responsible for undertaking measures of prevention and anti-money laundering in accordance with this Decree*

582. Article 10 refers to 13 indicators for suspicious transactions. There is no statement in Article 10 that these 13 indicators are not meant to be exhaustive, and that they should be used as indicators only of suspicious transactions. This potential problem is however rectified in Section 3.2 of Guideline 281 issued by the SBV on 30 June 2006

*3.2. Transactions with suspicious features:*

*a. Features of a transaction being deemed to be suspicious stipulated in the Clause 1, Article 10 of Decree No 74, financial institutions shall depend on the actual circumstances and these indicators to identify the suspicious features of a transaction.*

583. The trigger for submitting an STR, in terms of when a financial institution “suspects or has responsible grounds to suspect” is not explicitly covered in the above articles. However, Article 11 (3) of AML Decree 74 dealing with suspending a transaction refers to, “*when there is reason to believe that the transaction is related to criminal activity*”. This forms the basis in the Section 3.2 of Guideline 281 which states, “*Transaction is considered be suspicious when there are reasonable grounds to suspect*”.

584. There is also a parallel requirement in Article 19 of the Law on Credit Institutions which requires credit/banking institutions to notify competent state authorities when they detect money of illicit origin:

*2. In cases where sums of money with illicit signs are detected, credit institutions and other organizations involved in banking activities shall immediately notify the competent State agencies thereof.*

585. This provision only relates to credit institutions and relates to the reporting of criminal activities to the MPS or SBV, and not STR reporting.

*STRs Related to Terrorism and its Financing*

586. Under the 1999 Penal Code of Vietnam, terrorist financing is not yet considered a criminal offence. There is no explicit provision under AML Decree 74 which covers the obligation of STR reporting where there are reasonable grounds to suspect funds are related to terrorism or financing of terrorism. By its very definition, the scope of Article 3 (1) in AML Decree 74 does not include terrorist financing as it is limited to criminal proceeds, and terrorist financing may be provided from funds that derive from perfectly legitimate sources. Thus, at the time of the onsite visit, no STRs were received relating to terrorism financing.

*Attempted Transactions*

587. There is no explicit provision under AML Decree 74 requiring individuals or financial institutions to make an STR in instances related to any attempted or uncompleted transactions that are suspicious in nature.

*Tax Matters*

588. Under Article 161 of the Penal Code of Vietnam, tax evasion is among those considered as a criminal offense. As such, tax-related offenses, particularly tax evasion, are considered a predicate offense for money laundering and subject to the STR reporting provisions of AML Decree 74,

589. However, no STR has been reported relating to tax matters. This might be because the level of awareness on this issue is very low due to lack of supplemental guidelines or education on this subject matter.

*Additional Element - Reporting of All Criminal Acts*

590. As stated earlier, Article 19 of the Law on Credit Institutions requires credit/banking institutions to notify competent state authorities when they detect money of illicit origin. This would capture all illicit proceeds but it is specific to credit institutions only.

**Recommendation 32 – Statistics Pertaining to STRs**

<b>Number of STRs Received by AMLIC (Data Pertains to Credit/Banking Institutions Only)</b>				
<b>Reporting Institutions</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Total</b>
<b>State-owned Banks</b>	<b>3</b>	<b>7</b>	<b>8</b>	<b>18</b>
<b>Joint - stock Banks</b>	<b>0</b>	<b>3</b>	<b>28</b>	<b>31</b>
<b>Joint-venture Banks</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Foreign Banks</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>8</b>
<b>Others</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>

<b>Total</b>	<b>4</b>	<b>11</b>	<b>43</b>	<b>58</b>
--------------	----------	-----------	-----------	-----------

### **Analysis of Effectiveness (Recommendation 13)**

591. The STR reporting obligation has only been implemented for the credit institutions sector. The STR system has not yet been implemented in other financial sectors, including the securities and insurance sectors.

592. In practice, unless a specific guideline has been issued, neither competent authorities nor reporting entities believe that there is an obligation to meet the requirements of a law or decree, including the AML Decree 74. During the on-site meetings with credit institutions, as well as with securities and insurance companies, the lack of supervisory and STR guidelines relating to AML Decree 74 and STR reporting obligations respectively was stated as the reason for the lack of compliance or implementation.

593. However, even for credit institutions (essentially the banking sector), the total STR figure of 58 from the date of effect of Guideline 281 in June 2006 to November 2008, is unsatisfactorily low given the size of the financial sector i.e. 109 credit institutions not including small scale cooperatives. There have been no reports from privately owned Vietnamese banks and only eight STR reports from foreign banks. This is a significant compliance problem.

594. The SBV has not issued any additional guidance or applied sanctions for failure to comply with STR obligations, even within the credit institution sector where the STR reporting obligation has commenced.

### **Recommendation 14**

#### *Protection for Making STRs*

595. The protection from civil, criminal or disciplinary proceedings for making STRs is provided in Article 12(4) of AML Decree 74:

*"4.... The individuals, agencies and organizations which discharge their obligation to make reports or to provide information about the transactions referred to in clause 1 of this article shall be deemed not to have breached the provisions of the law on confidentiality of deposited money and assets of customers or other provisions on preserving confidentiality of information for customers".*

#### *Prohibition Against Tipping-Off*

596. Article 12(2) of AML Decree 74 stipulates, "2. *The individuals and organizations prescribed in Article 6 of this Decree shall not notify the parties involved in a transaction of the fact of the report, of the contents of that report or of the information that was provided*"

597. Article 24(2) of AML Decree 74 provides for administrative penalties if organizations or individuals inform the related parties about the content of the report or that a report has been made. However, the financial penalties are not dissuasive; the maximum fine is thirty million dong, which is only US\$1,780. However, Article 24 allows for additional penalties such as temporary or permanent



revocation of a license or certificate of practice or confiscation of means and instruments used in the violations in accordance with the provisions of the Ordinance on Administrative Sanctions.

598. The entitlement afforded to credit institutions in Article 11 (3) of AML Decree 74 to suspend a transaction (and report immediately to AMLIC or investigation authorities of MPS) where individuals or organizations are on the MPS' warning list or there is reason to believe that it is related to criminal activity, might, if not managed properly, lead to inadvertent tipping off.

*Additional Element—Confidentiality of Reporting Staff*

599. There is no explicit reference in AML Decree 74 requiring that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU. There are only general reference to confidentiality requirements as articulated in the first sentence of Article 12 (4), that, “ *Information related to the reported transactions under this Decree shall be treated as confidential and provided only to the relevant authorities in accordance with this law.*” As stated already, Article 24 provides for penalties for any breach of AML Decree 74.

600. Further, during the team's discussion with the AMLIC, they stated confidentiality of information are maintained pursuant to the Regulation on operations of AMLIC stating that: “*Officers, staffs working at AMLIC must strictly follow the Party's guidelines, state's legal policies, regulations on operations of State Bank of Vietnam and AMLIC; sign the commitment on preserving confidentiality of information; are responsible in accordance with the law, AMLIC Director about their fault*”.

601. Finally, AMLIC does not provide the actual STR report to the MPS. AMLIC findings are provided in a separate report with the essential intelligence information. This provides a certain level of protection for financial institutions' reporting staff.

**Analysis of Effectiveness (Recommendation 14)**

602. There is little awareness of the practical concerns associated with maintaining confidentiality once information has been disseminated to competent State authorities. The term “in accordance with law” is not duly clarified. Without such clear guidance and clarification from the AMLIC to other competent authorities, and tangible assurance by AMLIC to reporting entities, the confidentiality of STRs, and even the continuation of such reporting, might be undermined.

603. Additionally, AMLIC has no formal arrangements in place to reinforce the manner in which such information is stored and maintained. The assessment team considers that written arrangements between all affected agencies would assist in achieving the required level of confidentiality.

**Recommendation 19**

604. Article 9 of AML Decree 74 provides the mandatory reporting of CTRs as follows:

*“Article 9: Mandatory reporting of large value transactions*

1. *One or more cash transactions conducted by an individual or organization in a single day with a total value of 200,000,000 dong (two hundred million dong) or more, or transactions in foreign currency or gold with the equivalent value, unless otherwise provided for by law. Note: equivalent to USD 11,765*
2. *In the case of savings accounts transactions, the total value of one or more cash transactions conducted by an individual or organization in a single day shall be 500,000,000 dong (five hundred million dong) or more, or transactions in foreign currency or gold with the equivalent value. Note: equivalent to USD 29,412*

605. According to AMLIC, there are about 18 million CTRs held by credit institutions on their own premises. AMLIC does not maintain any CTRs. At present there is no IT system for the CTRs to be submitted to the AMLIC by reporting entities. However, SBV instructed credit institutions under SBV Guideline 281 to establish and maintain CTRs in their institutions and make them available for reporting to SBV upon its request. SBV is planning to develop and roll-out an IT system to receive CTRs with assistance from international organizations. A time frame for the delivery of this system was not provided to the evaluation team.

606. At present, only credit institutions are maintaining information on CTRs. Other financial sectors such as the securities and insurance sectors have not implemented CTR reporting.

607. In our discussion with some large credit/banking institutions in Vietnam, they revealed that they have computerized-systems for capturing any transactions above the threshold for purposes of CTR reporting. These files are available to AMLIC whenever requested. It was unclear to the assessment team whether SBV had ever sought access to any CTR files held by any of the credit institutions.

608. Clause 4 of Article 12 of AML Decree 74 provides that any information on transactions reported pursuant to AML Decree 74, such as those relating to CTRs, shall be preserved in accordance with the regime on confidentiality.

### **Analysis of Effectiveness (Recommendation 19)**

609. AMLIC does not maintain the CTR reports, which effectively reduces the benefit of CTR reporting. Moreover, beyond credit/banking institutions, the CTR reporting system has not yet been implemented in any other sector. This lack of CTR reporting outside of the credit institution sector was confirmed during our on-site visits and discussions.

### **Recommendation 25**

610. In accordance with Article 13 (1-d) and Article 15(6) of Decree AML 74, AMLIC has the responsibility respectively to:

*Make a recommendation or provide warnings to individuals and organizations referred in Article 6 of this Decree and relevant State competent authorities on issues arising from reported transactions.*

*Provide training to senior staff in State Bank units and in financial institutions on data analysis, data processing and detection of money laundering.*

611. In practice, AMLIC feedback has been limited to the confirmation for receipt of STRs. There has been no further written feedback in terms of statistics, quality of reporting or more importantly, the unsatisfactory level of STR reporting nor has there been any updating of any previously issued guidelines and associated typologies. There has been some oral feedback provided during training courses for financial institutions.

### **3.7.2. Recommendations and Comments**

#### **Recommendation 13**

612. Vietnam authorities should strengthen the STR reporting regime by undertaking the following:

- Amend AML Decree 74 or issue appropriate regulation to mandate STR reporting on any attempted transactions related to money laundering or other illegal or criminal activity.
- Apply warnings and sanctions to reporting entities for non-compliance with STR reporting obligations.
- Conduct comprehensive and rigorous outreach programs to increase the level of STR reporting initially among credit institutions, and then across all financial sectors.
- Issue updated guidelines and typologies, and conduct ongoing workshops, to provide useful feedback to reporting entities both specifically and also on a generic level.
- Issue STR reporting guidelines to other financial sectors beyond credit institutions.
- Vietnam should consider allowing for the electronic submission of STRs to AMLIC using secure facsimile particularly for urgent STR reports, or providing a “hotline” in respect of urgent STR reports.

#### **Recommendation 14**

- Vietnam should consider amending AML Decree 74 to provide clear “safe harbour provisions” for those who report in good faith or in the regular performance of duties, or exonerating them from criminal or civil proceedings.
- Include an explicit reference in AML Decree 74 requiring that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU.
- Vietnam should consider amending AML Decree 74 to expand on the confidentiality requirements of reports received, including the manner in which such information is stored and maintained, and the parameters in which such information can be used by third parties.
- As a deterrent factor, Vietnamese authorities should continue awareness raising to emphasize among reporting entities that appropriate penalties shall be applied for those who intentionally violate “breach of confidentiality” or the “tipping-off” provision under existing laws of Vietnam.

### Recommendation 19

- Vietnam should hasten the development of an IT system relating to the electronic submission of CTRs to AMLIC and that such development be done in consultation with reporting entities to provide for a more complete and potentially “cleaner” delivery of this information.

### Recommendation 25

- Pro-actively issue additional STR guidelines, such as the adoption of known international best practices (ex. Basel Paper, FATF and APG updates on ML typologies), as well as typologies from local cases as guidance in identifying suspicious transactions.
- Issue periodic regulatory advisories to reporting entities relating to certain types of illegal activities or fraud schemes perpetuated abroad or in Vietnam so that appropriate STR may be submitted when any illegal transactions is uncovered.
- AMLIC should provide periodic feedback to reporting entities related to STRs and CTRs, as well as other related statistical information.

### Special Recommendation IV

- Subject to the criminalization of terrorist financing, Vietnam should amend AML Decree 74 or issue a regulation mandating STR reporting on terrorism financing.

### 3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
<b>R.13</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The AML decree has not been supplemented by comprehensive sectoral guidelines that would help reporting entities identify possible red flags and suspicious transactions, or other forms of illegal activities or fraud schemes.</li><li>• No explicit provision in the AML Decree to report attempted transactions.</li><li>• Lack of effective implementation as total STR figure is very low.</li><li>• STR obligation not yet implemented in other financial sectors.</li></ul>
<b>R.14</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• AML Decree does not contain explicit provision that no administrative, criminal or civil proceedings shall lie against any individual or organization that makes a cash or suspicious transaction report in good faith or in regular performance of duties.</li><li>• Inadequate guidance on tipping-off provision.</li><li>• Potential inadvertent tipping off because of requirement in AML Decree 74 to suspend transactions if linked to known criminal list.</li></ul>
<b>R.19</b>	<b>C</b>	<ul style="list-style-type: none"><li>• The Recommendation is fully-observed.</li></ul>
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• Lack of any feedback to reporting entities related to STRs, CTRs and other related statistical information.</li><li>• Lack of detailed and comprehensive guidelines related to STR, currency transaction reporting and other AML compliance issues.</li><li>• Lack of any updated documentation apart from an initial guideline.</li></ul>
<b>SR.IV</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• Terrorist financing not explicitly considered a criminal offense under the</li></ul>

		<p>Penal Code of Vietnam; hence, reporting requirement for STR not a legal obligation.</p> <ul style="list-style-type: none"> <li>No explicit provision in the AML Decree to report a STR on any attempted transaction relating to terrorist financing.</li> </ul>
--	--	--

## INTERNAL CONTROL AND OTHER MEASURES

### 3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)

#### 3.8.1 Description and Analysis

613. Article 7 of AML Decree 74 and SBV Guideline 281 pertain to internal controls, compliance and audit requirements. However, implementation of AML Decree 74 requirements is limited to credit institutions supervised by the SBV, and the requirements are very basic and not augmented by detailed guidelines. Furthermore, no guidelines have been issued by other supervisory authorities, including for the insurance and securities sectors, to implement the requirements of the decree.

#### *Establish and Maintain Internal Controls to Prevent ML and TF*

614. Article 7(1)(a) of AML Decree 74 requires financial institutions to “*Establish procedures for internal controls and audit in line with existing laws to efficiently prevent and combat money laundering;*”

615. In addition, Section 1.1 of SBV Guideline 281 requires credit/banking institutions to establish internal procedures as follows:

#### **“1. General preventive measures:**

*Credit institutions shall be responsible for implementing general preventive measures as follows:*

##### *1.1. Establishment of internal procedures on preventing and combating money laundering:*

- a. Internal procedures on preventing and combating money laundering shall be established in written forms and shall be circulated to all divisions and individuals that are responsible for preventing and combating money laundering within the organization, including branches, offices, affiliated companies, subsidiary companies or to persons who are employed to work for credit institutions in the field related to monetary, financial transactions for a certain of time.*
- b. The contents of internal procedures must ensure the following elements:*
  - To be consistent with the law and regulations and guidelines of State competent authorities in a certain period of time.*
  - Prescribe clearly the responsibilities of preventing and combating money laundering of all related divisions and individuals within their units.*

- *Include the regulation on opening an account, customer due diligence and know your customer process (categorized by each kind of customers), regulation on types of transactions which need to report; written, storage information principals, methodology to communicate with customer who has suspicious transaction, training program for staff on awareness and providing information for Anti Money Laundering Information Centre, internal procedure on controlling, inspecting, auditing to ensure the effectiveness and compliance with provisions of the law of anti money laundering measures.”*

616. Further, Article 7(1)(b) of AML Decree 74 requires financial institutions “(b) *To assign staff with the responsibility of implementing policies, plans and procedures for the prevention and combating of money laundering;*”

617. Section 1.2 of SBV Guideline 281 requires that one member of the Board of Director shall be the responsible AML officer who shall oversee AML activities of credit institutions whose name shall be registered with the AMLIC. There is no explicit requirement for a person at management level to be designated as a “Compliance Officer” as required by the FATF standards. It has been the practice for domestic credit institutions to assign one member of the Board of Directors to be responsible for overseeing AML activities, and one or several staff as responsible AML officer (s), for operational concerns.

#### *Independent Audit of Internal Controls to Prevent ML and TF*

618. Section 4 of the Law on Credit Institutions, provides under Articles 41, 42 and 43 thereof, an Internal Inspection and Auditing System as part of the executive apparatus. The “Internal Audit Department” of the credit institutions is tasked to inspect the observance of law and internal regulations; directly inspect operations in all domains at their respective transaction offices, branches, representative offices and attached companies and to audit their operations. In practice, the results of internal audits are reported to the general director, managing board and the control board.

619. Onsite meetings with various financial institutions revealed that internal audits have not yet been conducted to determine compliance with internal AML policies and requirements under AML Decree 74. The evaluation team was informed that AML audit is a relatively new field where the financial institutions still lack technical expertise.

#### *Ongoing Employee Training on AML/CFT Matters*

620. Article 7(1)(e) of AML Decree 74 requires financial institutions to “(e) *To train staff in order to increase their responsibilities in the prevention and combating of money laundering;*” Also, under Clause 1.1 (a) of SBV Guideline 281, credit institutions are required to implement awareness raising of AML internal procedures.

621. In credit/banking institutions, there are basic AML training activities. Internal training appears not to be an ongoing concern but conducted on an ad hoc basis and externally driven. Most training programs are sponsored by SBV and other international organizations. However, it is worth noting is that one branch of a foreign bank in Vietnam has a comprehensive AML training program for its staff because it is required by its home country supervisor.

### *Employee Screening Procedures*

622. There are procedures for the recruitment of qualified employees, which include employee screening and qualification standards such as education, experience and integrity. Hiring of employees is the sole prerogative of the financial institutions, and those with criminal records or with undesirable qualities (e.g. poor reference from local People's Committee) are generally not recruited.

### *Additional Element—Independence of Compliance Officer*

623. The main person responsible for preventing and combating money laundering in a credit institution is a member of the Board of Directors (BOD). Operational officers dealing with AML/CFT matters are subject to the reporting line established in a bank. It was clearly stated in one bank visited by the assessment team, that all STR reports must be submitted to the responsible BOD person before filing with AMLIC.

### **Effectiveness (Recommendation 15)**

624. There is no implementation of AML Decree 74 in financial sectors beyond credit institutions. For the latter, internal controls, compliance and audit relating to AML/CFT are not effectively implemented because of limited technical expertise and a lack of supplemental guidance from supervisory authorities. The internal manuals developed by domestic credit institutions in Vietnam are simply repetitions of the provisions of AML Decree 74 or SBV Guideline 281, and neither is sufficiently comprehensive in detail and scope. Moreover, there has been no independent audit or review by the SBV nor has there been any substantive internal audit by the credit institutions themselves of their internal procedures and documentations.

### **Recommendation 22**

625. There is scope under current laws to approve the operation of offices or branches of financial institutions to be established in foreign jurisdictions. For example, if a credit institution licensed in Vietnam wants to establish a branch off-shore, the former will need to obtain the permission of the SBV, after obtaining the permission of the country where they want to set up a new branch.

626. This Recommendation is “Not Applicable” since the authorities have advised there are in fact no Vietnamese credit institutions, insurance securities or other financial companies operating outside of Vietnam at present, either as branches or majority owned subsidiaries. However, at least two Vietnamese banks have had their applications to open branches to operate in Cambodia approved recently by the National Bank of Cambodia, although operations have yet to commence. Vietnam also has a Laos-Vietnam Joint Venture Bank and a Laos-Vietnam Insurance Joint Venture in Lao PDR.

627. Vietnam will need to consider how AML Decree 74 obligations in respect of CDD and other measures are to be extended to the Vietnamese branches that will open in Cambodia in the future.

### **3.8.2. Recommendations and Comments**

#### **Recommendation 15**

- Supervisory authorities should issue appropriate guidance to implement AML Decree 74 obligations in their financial sectors.
- Supervisory authorities in Vietnam should consider developing a “model internal control and audit procedures operating manual”, that is comprehensive and detailed in scope, which can be used as a starting point by financial institutions to develop their own AML internal control and audit procedures manual or AML compliance manual.
- Supervisory authorities should consider issuing a regulation mandating that internal and external audits should include periodic audit test and transaction sampling to determine compliance with existing AML Decree and regulations.
- Vietnam authorities should ensure that financial institutions undertake an aggressive AML training program by requiring financial institutions to design an annual AML training program which shall be subject to monitoring by supervisory authorities, particularly during AML inspections

## **Recommendation 22**

628. This Recommendation is considered “Not Applicable” since Vietnam currently has no domestic financial institutions operating overseas or outside of Vietnam during the period of the on-site and immediately afterwards.

629. However, Vietnam should consider amending its laws to extend its current AML Decree 74 obligations, as appropriate, to branches of Vietnamese banks that will open in Cambodia and potentially elsewhere in the future.

### **3.8.3. Compliance with Recommendations 15 & 22**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.15</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Obligation limited to credit institutions.</li> <li>• No comprehensive internal control and audit procedures developed by domestic financial institutions relating to AML.</li> <li>• Internal and external audit programs of financial and non-financial institutions do not yet include audit test to determine compliance with existing AML laws/regulations.</li> <li>• Ongoing employee training programs for credit institutions limited only to basic AML training and only limited number of staff have been trained.</li> </ul>
<b>R.22</b>	<b>NA</b>	<ul style="list-style-type: none"> <li>• Vietnam currently has no domestic financial institutions operating overseas or outside of Vietnam during the period of the on-site or immediately after.</li> </ul>



### **3.9. Shell Banks (R.18)**

#### **3.9.1. Description and Analysis**

630. The SBV is the competent authority for licensing financial institutions according to the Law on Credit Institutions and other regulations.

##### *Prohibition of Establishment Shell Banks*

631. There is no definition of shell banks in Vietnam and legislation does not specifically prohibit the establishment or continued operation of a shell bank. However, under Article 22 of the Law of Credit Institutions, which relates to banking operations, there are specific criteria necessary for the granting of a banking license requiring an actual banking operation within Vietnam. Additionally, the SBV advises that all banking operations are visited on at least a yearly basis for a prudential inspection by the SBV inspectorate. This inspection process involves an on site component that clearly establishes the actual existence of an entity in Vietnam.

632. Additionally, all financial institutions established in Vietnam require various criteria to be met before a license is granted, amongst these obligations is the approval of the location of the credit institution's head office (Article 22 and 23 of the Law on Credit Institutions refers). Other criteria are matters such as business plans, capitalization and assessment of the management ability of key management personnel.

##### *Prohibition of Correspondent Banking with Shell Banks*

633. No legislative requirement exists that prohibits financial institutions operating within Vietnam boundaries to conduct correspondent banking relationships with a shell bank.

##### *Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks*

634. No legislative requirement exists that prohibits financial institutions operating within Vietnam boundaries to conduct correspondent banking relationships with a respondent bank who deals with a shell bank.

#### **3.9.2. Recommendations and Comments**

635. Discussions with SBV personnel and in particular AMLIC staff indicated a very basic understanding of the concepts of shell and correspondent banking, with the exception of the exchange control experts. SBV and exchange control in particular are focusing on money flows out of the country rather than correspondent and shell banking activity internationally.

636. Vietnam should consider introducing specific legislation prohibiting the establishment or continued operations of shell banks in Vietnam.

637. Vietnam should also consider introducing legislative requirements:

- Restricting financial institutions operation in Vietnam from entering into or continuing correspondent banking relationships with a Shell Bank; and

- Requiring financial institutions operating in Vietnam to satisfy themselves that their respondent banks in a foreign country do not allow their accounts to be accessed by a Shell Bank.

### 3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
<b>R.18</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No legislative requirement restricting financial institutions from entering into or continue correspondent banking relationships with Shell banks.</li> <li>• No legislative requirement requiring financial institutions to satisfy themselves that their respondent banks are not dealing with Shell Banks.</li> </ul>

#### *Regulation, supervision, guidance, monitoring and sanctions*

### 3.10. The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25)

#### 3.10.1. Description and Analysis

##### *Authorities/SROs Roles and Duties & Structure and Resources - R.23, 30*

#### **Recommendation 23 (Supervisory authorities)**

##### *Designated supervisory authorities and application of AML/CFT measures*

##### *Regulation and Supervision of Financial Institutions*

638. The respective primary legislation of the three financial sector supervisors (the SBV, the SSC and the MoF) and AML Decree 74 provide the legal framework for the designation of supervisory authorities for both prudential and AML supervision.

639. Vietnam has adopted a non-integrated approach in implementing the supervisory requirements of AML Decree 74. Under this model, the sectoral supervisor is also responsible for AML supervision, namely the SBV for credit/banking institutions, the State Securities Commission for securities companies and the Ministry of Finance for insurance companies. Additionally, those engaged in money changing or remittance businesses are also subject to supervision by the SBV.

#### **Supervisory Framework for financial Institutions**

##### Credit Institutions/Banking Sector

640. The SBV is the sole regulatory and supervisory authority for the credit/banking and other financial institutions pursuant to the Law on State Bank of Vietnam and the Law on Credit Institutions. The SBV's responsibilities include supervising the granting of licenses for the

establishment and operation of credit institutions, and the fit and proper test requirement in Section 1 (Articles 21-26) and Article 40 of the Law on Credit Institutions.

#### SBV's On-site Supervision of Credit/Banking Institutions

641. Article 117 of the Law on Credit Institutions states that credit institutions and other organisations involved in banking activities shall be subject to inspection by the Bank Inspectorate of SBV. Periodic, specialized on-site inspections are conducted on the following basis:

- a) Once every 1-2 years for large-scale institutions such as state-owned credit institutions, joint-stock credit institutions, foreign credit institutions and joint-venture banks. In practice, higher-risk credit institutions are given priority for specialized inspections.
- b) For smaller-scale institutions, inspections may be more frequent and longer than large-scale institutions.
- c) SBV also conducts an unexpected/surprise inspections where it detects immediate problems.
- d) Duration of any specialized onsite inspections shall be no more than 30 days from the declaration date of inspection decision until the end-date of the inspection at the inspected agency. However, specialized inspections may be extended but such shall not exceed 30 days.

642. Vietnam's Law on Inspection also provides that:

- a) The Governor of SBV shall approve the annual inspection programs and plans submitted by the SBV's Chief Inspectorate.
- b) The Director of the provincial SBV shall approve the annual inspection programs and plans submitted by the Chief Inspectorate of the provincial branch.
- c) SBV's Chief Inspectorate and the Branch's Chief Inspectorate shall issue the inspection decisions and establish inspection group in order to implement inspection decision or assign inspectors with their tasks.
- d) When necessary, the Governor of the SBV or the Director of SBV branch shall issue the inspection decision and establish inspection group.
- e) Generally, an inspection dossier comprises of the following:
  - Inspection decision; written record on inspection made by the inspection team or inspectors; reports and explanations of inspected subjects; inspection result report.
  - Inspection conclusions.
  - Documents on the handling or handling proposals.
  - Other documents related to the inspection.
- f) The responsibilities of on-site inspection group:
  - To elaborate inspection plans and programs annually and unexpected inspection of inspected subjects.
  - To prepare work related to pre-inspecting activities.
  - To build up the inspection conclusions.
  - To propose Chief Inspectorate or competent persons in handling violations of inspected subjects.
  - To base on information provided by the off-site supervising division and other related information to analyse, supervise units under their administration; propose handling methodology with violated units, unusual activities, managing those units.

#### SBV's Off-site Supervision

643. Off-site supervision is conducted by SBV in accordance with Decision 398 dated 9 November 1999, which covers regulation of off-site supervision of credit institutions operating in Vietnam. According to Decision 398, off-site supervision is indirect supervision that involves consolidating and analyzing reports.

644. SBV has not adopted a risk-based approach to supervision. But in practice, inspection activities always focus on higher-risk credit institutions. However, to fully implement a risk-based approach to supervision, the Banking Inspectorate, with the support of international consultants, is drafting an Inspectorate Handbook on a risk-based approach to supervision which is targeted to be implemented within the next two years.

645. SBV prepares monthly reports covering the results of off-site supervision. If any serious problems exist, particularly detection of a serious violation or risk that may have a damaging effect on banking activities, the Banking Inspectorate will conduct an on-site visit to examine the operation of the credit institution and recommend appropriate corrective measures or impose administrative sanctions.

#### Securities Sector

646. The State Securities Commission (SSC) of Vietnam is administratively under the Ministry of Finance. SSC is charged with regulating and supervising activities in securities and securities market. The SSC also carries out the inspection, examination and supervision of organizations and individuals participating in the securities market and imposes sanctions for violations of regulations of securities and securities market, as stipulated under applicable laws.

647. The rights and duties of SSC are provided for under Article 9 of the Securities Law, and includes the following:

- To grant, extend and revoke licenses, certificates relating to the activities regarding securities and the securities market; to approve changes relating to activities regarding securities and the securities market;
- To manage and supervise the operations of Stock Exchanges, Securities Trading Centres, Securities Depository Centres and auxiliary organisations; to temporarily suspend the trading and depository activities of the Stock Exchange, the Securities Trading Centre and the Securities Depository Centre in case where there are signs of violation of the investor's legitimate rights and interests; and
- To inspect, supervise and deal with administrative violations and settle claims and denunciations in activities of securities and the securities market.

648. Article 108 of the Securities Law provides for the creation of the Securities Inspectorate consisting of the Chief Inspector, Deputy Chief Inspectors and Inspectors. The Securities Inspectorate is subject to direction by the Ministry of Finance Inspectorate with respect to professional inspection operations in accordance with the laws and regulations on inspection and the provisions of the Securities Law.

649. Under Article 110 of the Securities Law, inspections are conducted on the basis of the schedule and plan approved by the Chairman of the SSC. Ad hoc inspections are conducted when

there are signs of any breach of the laws and regulations on securities and the securities market by organisations and individuals investing and operating in the securities market; where necessary to settle complaints and denunciations or when requested by the Chairman of the SSC.

650. Under Article 113 of the Securities Law, the time limit for conducting an inspection shall be thirty days from the date of announcement of the inspection decision to the completion of the inspection at the place of inspection. However, when necessary, the person who issued the original inspection decision may extend an inspection but only once. The extension shall not exceed the time limit of the original inspection as set out in Clause 1 of Article 113.

#### Insurance Sector

651. The Law on Insurance Business 2000, Government Decree No 45, 2007 and Government Decree No. 118, 2003 provide the legal framework in this sector.

652. Pursuant to Article 121 of the Law on Insurance Business, the Government shall uniformly exercise State administration of insurance business and the Minister of Finance shall be responsible before the Government to carry out State administration of the insurance business. The specific responsibilities of the MoF are provided for under Article 39 of Decree 45 of 2007 with regard to state administration of insurance business, including licensing and inspection. These include the establishment and operation of insurers and insurance brokers, and issuing and withdrawing licenses for the establishment of representative offices of foreign insurers and foreign insurance brokers in Vietnam.

653. In regards to inspections of insurance business operations, Article 122 of the Law on Insurance Business provides for inspection powers.

#### Money Changers/Remittance Dealers

654. The SBV is responsible for the money changing and remittance sector, both for bank and non-bank providers. The comments above and below in respect of the SBV in relation to credit institutions are applicable to money changers and remittance dealers. The additional feature is that the supervision on payment activities also resides jointly with Payment and Settlement System Department and Foreign Exchange Department of SBV.

#### *Designation of Competent Authority*

#### AML/CFT Regulatory/ Supervisory Framework

655. Articles 17 and 18 of AML Decree 74 have specific provisions for relevant ministries and their inspectorates, including applying sanctions as appropriate and reporting to other competent authorities including AMLIC and the SBV.

656. The SBV has not adopted any procedure covering specialized inspection for AML/CFT, and no specialized AML/CFT inspections have been undertaken. There has been no implementation in the other sectors subject to the supervision of the Ministry of Finance and the State Securities Commission.

## *Structure and resources of supervisory authorities*

### **Recommendation 30**

#### *Adequacy of Resources for Competent Authorities*

##### Credit/Banking Sector

657. Organizationally, the Banking Inspectorate is part of the SBV's Department that is primarily responsible for conducting prudential credit/banking inspections and offsite supervision. The department conducts banking supervision and advises the SBV Governor on implementing the powers and responsibilities of supervision in the areas subject to the management of SBV. Banking inspections are structured from centrally-run (head office) to provinces. Banking inspectorates within the SBV consist of 758 inspectors nationwide. This includes one ministerial chief inspector, four ministerial vice chief inspectors, 63 chief inspectors in provincial and city branches and the remaining 689 are banking inspectors. Banking inspectorate is structured in central and provincial levels; at the central level, the head office of the Banking Inspectorate have different divisions in charge of different types of the credit institutions: foreign banks, state-owned banks, joint-stock commercial banks, etc and others divisions like administration.

658. The SBV is undergoing reorganization pursuant to Decree No. 96 dated 26 August 2008. Under this Decree, a Financial Supervision Agency shall be created which shall be responsible for undertaking banking inspections. The Governor of SBV is yet to submit to the Prime Minister of Vietnam the specific functions, tasks, powers and organizational structure of the Financial Supervision Agency.

##### Securities Sector

659. Decision No. 63, dated 10 May 2007, provides the functions, duties, powers and organizational structure of the State Securities Commission under the Ministry of Finance. Article 3 thereof provides the organizational structure of SSC, which includes a Supervision and Enforcement Department. The Commission has 200 staff including 20 inspectors.

##### Insurance Sector

660. The Finance Inspectorates under the MoF consists of 200 inspectors. However this total includes inspectors from the finance inspectorates, and inspectors of the General Tax Department, inspectors of General Customs, and inspectors of the State Securities Commission. In the provinces and centrally-run cities, there are finance inspectorates which are under their respective Finance Department, who in turn conduct specialized inspection of insurance companies under their respective areas.

661. The Insurance Department in the MoF is a member of the International Association of Insurance Supervisor (IAIS). The team noted the insurance interlocutors that met with the ME team demonstrated a sound understanding of the insurance sector, and the Department looked relatively very well resourced.

#### *Integrity of Competent Authorities*

662. Competent authorities, such as the SBV, SSC and MoF, maintain qualified staff and high importance is assigned to staff integrity. The recruitment of staff is based on internal recruitment policies which are generally consistent with the requirements provided for under the 1998 Ordinance on Public Employees. Potential appointees must possess good moral qualities, meet the professional criteria and pass recruitment examinations.

663. In addition, Inspectors' standards are prescribed under Decision No. 818 of 1993 by the Minister – Head of the Department on organising Government's Public employees – as follows: Inspectors must strictly abide by the Party's lines and policies and the State's policies and laws and apply them in inspecting activities; understand principles, policies, rules in managing economy, culture, social, State management; have good knowledge in professional skills; have good command of socio-economic situation; have a thorough grasp of inspecting internal procedure and gather mass to implement their duties; have abilities in analysing, consolidating, evaluating the management operations in lower level; graduate from universities and higher; participate in training course on inspecting skills; participate in expert's grade training course in State administrative management; have middle class political level and above; have at least level A on a particular foreign language; understand professional book.

#### *Training for Competent Authorities*

664. In Vietnam, training of personnel of the competent authorities is generally undertaken by respective government agencies under their respective budgets. Relevant staff of government agencies are provided with opportunities to attend international trainings, seminars and meetings in order to keep them abreast with recent changes and developments relating to AML/CFT issues. As such, these government agencies are held responsible in the formation and training of regulatory personnel and respective professional experts in the field of AML/CFT.

665. However, there is limited budget for AML/CFT training. Since Vietnam has just implemented AML/CFT measures, there are many difficulties encountered in the training of inspectors and supervisors. Vietnam is heavily reliant on technical assistance provided by international organizations, such as the World Bank, IMF, ADB, UNODC, etc., in providing training courses for relevant ministries and agencies relating to AML/CFT.

#### **Analysis of Effectiveness (Recommendation 30)**

666. There have been no resources to date allocated for on-site supervision in respect of compliance with AML Decree 74. There has also been no decision by individual supervisors on whether to integrate AML inspection with broader prudential on-site inspections, although the SBV is considering a proposal to centralize AML inspection as part of an expanded AMLIC department.

667. At present, there is ongoing capacity-building which needs to be continued and enhanced for competent authorities to effectively carry-out their respective mandates as supervisory agencies. AML training appears to be inadequate and financial institutions are fully reliant on supervisory authorities in the conduct of AML training, except perhaps for branches of foreign or joint venture banks.

#### ***Authorities Powers and Sanctions – R.29 & 17***

## Recommendation 29 (Supervisory powers)

### *Power for Supervisors to Monitor AML/CFT Requirement*

668. The AML Decree 74 provides authority in respect to AML monitoring, inspection and sanction powers under Articles 3, 15, 16, 17, 18, 19 and 24. There are more general or sector specific powers in the Law on Inspection, Law on the State Bank of Vietnam, Law on Credit Institutions, Securities Law, Insurance Law and Ordinance on Handling of Administrative Violations. However, since AML onsite inspections have not yet been conducted, it is not possible to assess the effectiveness of these available measures in terms of compliance with AML/CFT requirements, as opposed to prudential purposes.

### *Authority to conduct AML/CFT Inspections by Supervisors*

669. There is a general statement of AML inspection powers in Article 18 of AML Decree 74 and general powers are outlined in the primary legislations of the financial sectors. However, it is the Law on Inspection (LOI) passed by the National Assembly on 15 June 2004 that Vietnam deems the most applicable. This Law is also the same law that applies in conducting prudential or specialized inspections by the various supervisory authorities in Vietnam.

670. An AML/CFT inspection is considered a specialized inspection which shall be generally undertaken by the following:

1. Banking Inspectorate of the SBV for credit institutions providing banking, money changing and remittance services.
2. Securities Inspectorate of the State Securities Commission for the securities sector.
3. Finance Inspectorate of the Ministry of Finance for the insurance sector.

671. The aforesaid Inspectorates for the financial sectors are given broad powers and their respective responsibilities are explicitly provided under the LOI and other governing regulations.

672. As an overview, under Article 4 of the LOI, the following terms are construed as follows:

*“1. **State inspection** means the examination, assessment and handling by State management agencies of the implementation of policies and laws, the performance of tasks by agencies, organizations or individuals under their management according to the competence, order and procedures prescribed in this Law and other law provisions. The State inspection includes administrative inspection and specialized inspection.*

*2. **Administrative inspection** means inspection activities of State management agencies according to administrative levels over the implementation of policies and laws and the performance of tasks by agencies, organizations or individuals under their direct management.*

*3. **Specialized inspection** means inspection activities of State management agencies according to branches or domains over the implementation of laws, professional-technical regulations and/or management rules of branches and domains by agencies, organizations or individuals under their management.”*



673. Also, Article 5 of the LOI states that “*Inspection activities must comply with laws; ensure the accuracy, objectiveness, honesty, publicity, democracy and timeliness; not obstruct normal operations of agencies, organizations and individuals subject to the inspection.*”

#### *Power for Supervisors to Compel Production of Records*

674. The relevant supervisory authority, the SBV, SSC or Insurance Department in the MoF, are able to compel the production of records or other documents for supervisory purposes without the need for a court order or SPP approval.

675. Clause 2 of Article 54 of the 2004 Law on Inspection, clearly states the obligations of inspected subjects, among others, to supply information and/or documents at requests of inspection agencies, inspection teams and inspectors, in a prompt, full and accurate manner, and bear responsibility before law for the accuracy and truthfulness of supplied information and documents.

676. These powers are supplemented by sector specific laws or regulations for supervisors. Clause 1 of Article 53 of the Law on the State Bank of Vietnam empowers the Bank Inspectorate, to request the inspected subjects and the concerned parties to provide documents and evidences and answer questions on issues related to the inspection. Articles 119 and 120 of the Law on Credit Institutions provide further powers to obtain records from inspected organization. Clause 1.b of Article 115 of the Securities Law clearly states the duties and powers of persons making inspection decisions. Article 122 of the Law on Insurance Business provides the insurance inspectorate with the authority to compel production of any records or documents in the course of inspection.

#### *Powers of Enforcement & Sanction*

677. Article 24 of AML Decree 74 states that penal sanctions may be imposed under Vietnam’s Penal Code and administrative sanctions may also be imposed in accordance with the Ordinance on Handling of Administrative Violations. The latter Ordinance clearly states the rights of supervisory authorities to handle administrative violations for specialised inspection agencies, from inspectors to ministerial chief inspectors.

678. There are powers of enforcement and sanctions under the primary supervisors’ laws or regulations. Article 120 of the Law on Credit Institutions provides the banking inspectorate with powers of inspection and enforcement. Government Decree 45 issued on 8 March 2007 specifically provides for penalties for administrative offenses in the securities and securities market sector, which included the forms of penalty, measures to remedy consequences, levels of fines, and authority and procedures for imposing penalties.

679. Government Decree No. 118 dated 13 October 2003 provides for the specific government penalties in the insurance business sector, which included the forms, levels and procedures for imposing penalties for any breaches. Articles 124 and 125 of the Law on Insurance Business deals with violations and the imposition of administrative or criminal measures respectively.

#### **Analysis of Effectiveness (Recommendation 29)**

680. The three financial supervisory authorities in Vietnam (SBV, SSC and MoF) have adequate supervisory powers to monitor compliance by financial institutions with AML requirements. However, there has been very limited application of these supervisory powers by the SBV, and none by the other two supervisors in respect to compliance with AML Decree 74. It is also difficult to assess the adequacy or effectiveness of general prudential supervisory powers in respect of enforcing AML Decree 74 requirements in the absence of any AML/CFT supervisory actions by the three supervisors.

### **Recommendation 17 (Sanctions)**

681. There are criminal sanctions in the Penal Code and administrative sanctions in AML Decree 74 and the Ordinance on Handling of Administrative Violations. The sanctions in the primary legislations of the three supervisors are more aimed at sector specific violations.

#### *Availability of Effective, Proportionate & Dissuasive Sanctions*

##### Sanctions under Penal Code

682. Any person convicted for money laundering acts pursuant to Article 250 and Article 251 of the 1999 Penal Code is subject to criminal penalties provided under these two articles. However, as mentioned, these penalties are applicable only to natural persons and they are not aimed at violations of preventative measures. Vietnam advised that Article 285 (Negligence of responsibility) has been used to impose penalties against natural persons for negligence in discharging their duties. Several cases were supplied to the ME Team of bank officials being prosecuted and imprisoned for negligence in fulfilling their duties properly. They had no involvement or prior knowledge of the underlying crime e.g. fraud, but failed to discharge their management responsibilities adequately.

##### Sanctions under AML Decree 74

683. When an individual or organization violates the provision of AML Decree 74, the following administrative penalties shall be imposed pursuant to Article 24(2) of AML Decree 74:

#### Decree 74 - Article 24. Offenses

*“1. Any person guilty of a money laundering related crime shall be dealt with in accordance with the Penal Code of the Socialist Republic of Vietnam.*

*2. When an individual or organization with responsibilities to prevent or combat money laundering breaches a provision of this Decree but the breach does not constitute a criminal offence, such individual or organization shall be subject to the following administrative penalties:*

*(a) A warning shall be issued for a breach being failure to have internal control and audit procedures which imply clauses on prevention and combating of money laundering; failure to assign responsible officials to implement measures against money laundering; or failure to have procedures to obtain information about customers as required by this Decree;*

*(b) A fine from 5,000,000 dong (five million dong) up to 15,000,000 dong (fifteen million dong) for failure to report to the Anti-Money Laundering Information Centre or to a*

*competent State authority as required by article 12 of this Decree; for failure to retain accounting books, files and data for the period required by this Decree; and for failure to inform the Anti-Money Laundering Information Centre or a competent State authority if any accounting book, file or data sent to them is discovered to contain incorrect information;*

*(c) A fine from 10,000,000.00 dong (ten million dong) up to 30,000,000.00 dong (thirty million dong) for informing the parties involved in a transaction about the existence of, or the contents of, a report or information provided in accordance with article 12 of this Decree; for delaying a response to or failing to respond to, without legitimate reason, a request from the Anti-Money Laundering Information Centre or from a competent State authority;*

*(d) In addition to a warning or a fine, any individual or organization in breach may also be deprived for a definite or indefinite term of the right to use the operating licence or practising certificate used to commit the breach; and there may also be confiscation, pursuant to the Ordinance on Handling of Administrative Violations, of objects and facilities used to commit the breach.”*

684. In order to put these monetary fines into context, using the exchange at the time of the on-site of US\$1:VND16,850, the following are the equivalent amounts in US\$: five million dongs is US\$297, ten million dongs is US\$593, fifteen million dongs is US\$890, and thirty million dongs is US\$1,780. The fines available are thus very low, even in the local context.

685. The ability to sanction through suspending or revoking a license would be dissuasive.

#### Sanctions Under Ordinance on Handling of Administrative Violations

686. Article 14 of the Ordinance on Handling Administrative Violations allows for fines ranging up to 70 million dong in the insurance sector and to 500 million dong in the banking and securities sector for offenses in the financial sector. Article 15 allows for expulsion of foreigners involved and Article 16 allows for the deprivation of the rights to use licenses and certificates, either temporarily or permanently.

#### Sector Specific Sanctions

687. The Law on Credit Institutions contains one general reference to sanctions under Article 126, namely “*be disciplined, administratively sanctioned or examined for penal liability*”. It is understood that these measures refer to other laws already mentioned in this section, rather than creating additional sanctions.

688. The Securities Law provide for more comprehensive sanctions. This includes reference in Articles 121, 123 and 126 of the confiscation of illegal incomes earned and a pecuniary penalty of one to five fold of such incomes earned through breaches of public securities offerings and trading.

#### *Designation of Authority to Impose Sanctions*

689. For sanctions under AML Decree 74, pursuant to Article 18(4) of the Decree “specialized inspectors” within the respective supervisory or government agencies are empowered to impose administrative sanctions:

## Article 18. Responsibilities of Specialized Inspectors

*“4. To deal with administrative breaches within their jurisdiction in accordance with the Ordinance on Dealing with Administrative Offences and this Decree.”*

690. Thus, the SBV’s Banking Inspectorate has the right to impose administrative sanctions, as well as the Securities and Finance Inspectorates of the State Securities Commission and the Ministry of Finance.

691. Article 38 in the Ordinance on Handling of Administrative Violations authorizes specialized inspectorates to issue warnings and fines. The primary legislation for each supervisor also designates competent authorities to take action.

### *Ability to Sanction Directors & Senior Management of Financial Institutions:*

692. Article 1(2) of the Ordinance on Handling of Administrative Violations provides that *“2. The administrative sanctions shall apply to individuals, agencies and organizations (hereinafter referred collectively to as individuals and organizations), that intentionally or unintentionally commit acts of violating law provisions on State management, which, however, do not constitute crimes and, as required by law, must be administratively sanctioned.”*

693. In addition, Article 6(1)(b) of the Ordinance on Handling of Administrative Violations also provides that *“b) Organizations shall be administratively sanctioned for all administrative violations they have committed. After serving the sanctioning decisions, the sanctioned organizations shall determine individuals who have committed the administrative violations in order to determine their legal liability according to law provisions.”*

694. Decision No. 1087, dated 27 August 2001, pertaining to regulations on organising and operating of Board of Management, Board of Supervisions, General Director of state-owned and private joint stock commercial bank, also provides under Article 5 thereof that:

*“1. Cases that a person will be disqualified as a member of Board of Management, member of Board of Supervisions, General Director:*

- c. When they are subjects as stipulated in clause 1, 2, 3, 4, 5, 6, Article 3 of this Decision. (including: 10. Do not maintain the good moral qualifications, directing ability and professional skills under the requirements of the State Bank.)*
- e. Joint stock commercial banks are withdrawn establishing and operating licenses.”*

695. Thus, when a joint stock commercial bank is fined for an administrative violation or has its operating license withdrawn, high-level managers of such bank will be sanctioned (criminally or administratively) or might be subject to disciplinary measures such as a warning.

### *Range of Sanctions—Scope and Proportionality*

696. Generally, administrative sanctions provided for under AML Decree 74 and the Ordinance on Handling of Administrative Violations and in the primary legislations of supervisors, are dependent upon the nature and seriousness of the violations. A “warning” may be issued for any

minor administrative violations and then graduating to “monetary fines” from as low as VND 20 million to as high as VND 70 million for banking and related violations. However, as noted above, in US dollar terms these fines are insignificant amounts for any financial institution. There is also the penalty of “expulsion” and the deprivation of the right to use licenses or professional practice certificates which would be dissuasive, although their effectiveness have yet to be tested for AML violations.

697. The Vietnamese authorities have not provided any information on the actual administrative sanctions imposed on various financial institutions.

### **Analysis of Effectiveness (Recommendation 17)**

698. There no available criminal sanctions for violations of preventative measures and the available monetary sanctions are not proportionate and dissuasive. The maximum penalty in AML Decree 74 is thirty million dong which is just under US\$1,780. In the Ordinance of Administrative Violations, the maximum is 70 million dong or about US\$4,000. The powers in the AML Decree 74 and in the Ordinance of Administrative Violations to revoke, either temporarily or permanently, an organization’s license would be dissuasive.

699. There has been no application of sanctions under AML Decree 74, the Ordinance of Administrative Violations or under any other laws for violations of requirements under AML Decree 74. The authorities have also not provided any evidence to the assessment team concerning any credit institution, securities company or insurance company having had its license withdrawn for prudential violations.

### **Recommendation 23 – Market Entry**

#### *Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions*

##### Banking Sector

700. All credit institutions are required to be licensed by the SBV, which is the only competent authority authorized to grant licenses under Article 21 of the Law on Credit Institutions. Details of the background of all proposed board members and senior management must be submitted and approved as part of the licensing regime.

701. Members of the Managing and Control Boards of credit/banking institutions must pass a fit and proper test requirement. Article 40 of the Law on Credit Institutions prohibits certain people from being elected to the Managing Board, the Control Board or appointed as general director (director) or deputy general director (deputy director):

- a) Being under investigation for penal liability;
- b) Having been sentenced for serious offenses of infringement upon the national security, serious offenses of infringement upon the socialist ownership or citizen's ownership; or serious economic offenses;
- c) Having been convicted of other offenses and such criminal records have not yet been written off;

- d) Being a former member of the Managing Board or former general director (director) of a bankrupt company, except for cases prescribed in Clause 2, Article 50 of the Law on Enterprises' Bankruptcy;
- e) Being a former representative at law of a company which has been suspended from operation due to serious violation of law.

702. There is a requirement for any changes on the Managing and Control Boards and major shareholders to be approved by the SBV, under Article 31 of the Law on Credit Institutions.

703. There are no beneficial ownership requirements relating to market entry. Criminals or their associates could hold a significant or controlling interest in a financial institution by way of nominees on the board or senior management. There is a requirement for general information including financial information of the major shareholders, but this does not extend to disclosure of beneficial ownership or the legal sources of funds. There is a prohibition in Article 40 (2) to prevent immediate family members and siblings of the board to take up concurrent positions within the same institution or hold the chief accountant's position.

704. The licensing and fit and proper test requirements for foreign branches, joint ventures and subsidiaries operating in Vietnam as outlined in Articles 105-108 are essentially the same for domestic banks.

#### Other Financial Institutions

705. In the securities and insurance sectors, strict licensing requirements are imposed by the State Securities Commission and the Ministry of Finance, as supervisory agencies. The integrity of prospective officers is taken into consideration and those with criminal records are also prohibited from holding office.

706. However, there are no provisions for ensuring "beneficial owners" are identified under any nominee arrangements, formal or otherwise, and that they be subjected to the fit and proper test, if they have a significant controlling interest under such arrangements.

#### *Licensing or Registration of Value Transfer/Exchange Services*

707. Any natural or legal person who wants to provide money transfer services or currency changing services must be licensed by the SBV and subject to the same due diligence process as for credit institutions.

708. Furthermore, Decision No 22, 2002 and Decision No 170, 1999 of the Prime Minister were issued encouraging Vietnamese individuals residing in foreign countries to transfer money to Vietnam stipulated that:

*"Entities permitted to receive foreign currencies transferred into territory by Vietnamese individuals residing in foreign country and paid for domestic beneficiary"*

709. In practice, all licensed money changers or money remitters are either credit institutions or have some form of formalized arrangements working with credit institutions. However, there exist a large number of informal providers given the prohibitive threshold requirements for SBV licensing.

### ***Ongoing supervision and monitoring – Recommendation 23***

710. Generally, financial institutions are subject to licensing requirements and various conditions and documentary requirements are issued by relevant supervisory authorities, such as the SBV, SSC and MoF. They are also subject to AML/CFT supervision in accordance with AML Decree 74. However, none of the three supervisors have incorporated AML content in their on-going supervision and monitoring of their respective sectors.

### **Analysis of Effectiveness (Recommendation 23 – Market Entry)**

711. Under existing laws and regulations in Vietnam, there are strict licensing requirements before any financial institution may operate. These requirements are explicitly provided under the Law on Credit Institutions, Securities Law and the Law on Insurance Business. Relevant government agencies, such as the SBV, SSC and MoF, undertake comprehensive evaluation of qualifications of prospective members. However, the fit and proper test is limited in scope for controlling shareholders and there are gaps in terms of preventing potential criminal control through nominee arrangements due to the lack of beneficial ownership requirements at the licensing and registration stage. Furthermore, given the number of foreign financial institutions operating in Vietnam, it is also not clear to what extent prudential supervision has been effective in implementing existing market entry requirements given the resources required in enforcing compliance in respect of foreign financial institutions.

### ***Guidelines – R.25 (Guidance for financial institutions other than on STRs)***

712. There is only very limited compliance with this criterion since supervisory authorities have not been pro-active in issuing comprehensive guidance to financial institutions relating to AML/CFT. Only SBV has issued one guideline (No.281) in 2006 and none thereafter, while SSC and MoF have not issued any AML guidelines. The guideline No 281 is considered to be limited in its guidance particularly given that this guideline was and is the only guidance issued to date.

### ***Statistics***

713. There has been no on-site inspection for AML by any of the three financial sector supervisors. Furthermore, the ME team were not provided with statistics on prudential supervision, except for some statistics by the State Securities Commission.

714. For the SSC, there were twelve (12) companies included in the planned inspection program for 2008 while unexpected inspection that was completed was seven (7) groups. Number of complaints and denunciations handled were 14 cases.

## **3.10.2. Recommendations and Comments**

### **Recommendations 17 and 29**

- Amend AML Decree 74 to include dissuasive monetary sanctions for both natural and legal persons e.g. maximum monetary fine should be significantly increased.
- Apply sanctions, using existing and proposed, against non-compliance with the requirements of AML Decree 74.

### Recommendations 23 and 30

- Amend appropriate laws or issue regulations to specifically request information on the origin of the funds used to pay the capital of a bank/financial institution by controlling shareholders.
- Introduce beneficial ownership disclosure requirements.
- Supervisory authorities (SBV, SSC, MoF) should strengthen AML/CFT supervision by conducting AML on-site inspections to ensure that financial institutions are complying with AML requirements. AML inspections may be done simultaneously with periodic/prudential inspections although in the initial phase of building appropriate AML supervisory skills, consideration could be given to themed AML inspections. This approach would allow for greater coverage and focus on AML compliance.
- Supervisory authorities should undertake extensive capacity-building for human and other technical resources to ensure that personnel charged with monitoring AML compliance are equipped with necessary technical skills and knowledge.
- The number of Inspectorates within the SBV, SSC and MoF should be increased so that AML inspections may be undertaken and monitoring AML compliance be given utmost priority

### Recommendation 25

- Supervisory authorities in Vietnam should pro-actively issue supplementary and detailed AML guidelines to fully assist the implementation of AML Decree 74.
- Supervisory authorities should consider disseminating relevant information relating to ML and TF techniques or typologies to strengthen the AML/CFT regime in Vietnam

### Recommendation 32

- Supervisory authorities should consider implementing a database system consolidating information related to prudential and AML inspections, as well as related information on any sanctions and penalties imposed.

### 3.10.3. Compliance with Recommendations 17, 23, 25, 29 & 32

	Rating	Summary of factors underlying rating
<b>R.17</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Lack of a graded sanctions framework that outlines the specific sanctions to be imposed for non-compliance with AML/CFT requirements.</li><li>• Lack of proportionate and dissuasive monetary sanctions.</li><li>• No implementation of available sanctions for AML violations.</li></ul>
<b>R.23</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Lack of beneficial ownership requirements.</li><li>• No AML/CFT onsite examinations have ever been conducted by state competent authorities such as the State Bank of Vietnam, State Securities Commission (SSC) and Ministry of Finance (MoF).</li></ul>
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• No written or detailed feedback provided.</li></ul>
<b>R.29</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• No application of available inspection powers and no implementation of obligations under AML Decree 74.</li></ul>
<b>R.30</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• No allocation of dedicated resources for AML/CFT supervision</li></ul>



<b>R.32</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Information on the number of prudential inspections conducted on credit/banks, securities and insurance sectors not readily available.</li> </ul>
-------------	-----------	--

### **3.11. Money or Value Transfer Services (SR.VI)**

#### **3.11.1. Description and Analysis (summary)**

715. The providers of formal money or value transfer services (remittance services) are licensed by the SBV. The categories of formal remittance providers include:

- credit institutions;
- economic institutions that are licensed by SBV;
- economic institutions that act as an agent for credit institutions;
- credit institutions and economic institutions that sign agent contracts with foreign financial institutions on providing services.

716. In Vietnam, there are about 80 formal remittance service providers including banks and their agents and major international remittance companies, such as Western Union, which uses credit institutions as its agents.

717. There is a significant alternative or informal remittance system in operation in Vietnam which caters for the large Vietnamese diaspora around the globe. These include Vietnamese contract workers in neighbouring countries such as Malaysia, which has around 110,000 Vietnamese contract workers, and in more remote locations such as Russia, the Czech Republic, other eastern European countries and the Middle East. They also cater for Vietnamese who have migrated to countries such as Australia, Canada and the US.

718. The informal remittance system is unregulated. There are no measures currently in place to identify options for regulating this informal system, which based on global typologies, could be a major conduit for money laundering.

719. According to the 2008 INCSR Report, the informal remittance sector often operates through the use of jewellery and gold shops and these informal remittance providers have not been brought under regulation or supervision for money laundering and terrorist financing activities.

#### *Designation of Registration or Licensing Authority*

720. Formal remittance providers in Vietnam are subject to the Ordinance on Foreign Exchange 2005 and Decree 160 of 2006 Detailing the Implementation of the Ordinance on Foreign Exchange. Article 3 (2) of AML Decree 74 designates money or value transfer providers as financial institutions and therefore subject to the Decree.

721. The SBV is the designated licensing authority for remittance providers. This is articulated in Article 42 in the Ordinance on Foreign Exchange Control and further elaborated in Article 49 of the Decree on Implementation of the Ordinance on Foreign exchange. The certification process is outlined in SBV Circular 03/2008 issued in April 2008.

722. The above regime means that informal remittance providers are not covered under Vietnam's laws and operate illegally. It is not feasible because of its prohibitive costs for many small scale informal remittance operators to obtain the formal license needed i.e. essentially to be licensed as a financial institution.

#### *Application of FATF Recommendations*

723. Only licensed credit institutions, providing money remittance services are subject to the AML Decree 74, which includes CDD preventative measures and CTR and STR reporting obligations. However, as highlighted in earlier sections of this report, there are significant issues with the scope and depth of both the AML Decree and its implementation.

#### *Monitoring of Value Transfer Service Operators*

724. The Banking Inspectorate of SBV is the area responsible for conducting inspections for money value services within the credit institutions. However, the supervision on payment activities also resides jointly with Payment and Settlement System Department and Foreign Exchange Department of SBV.

725. For economic institutions/organizations authorized by SBV to provide money value transfer services which are not credit institutions, their transactions are generally monitored by the credit institution in accordance with agency contract entered into by and between the economic and credit institution.

726. Inspections of remittance service at credit institutions are often carried out together with the on-site prudential inspections. There have been no specific inspections on remittance services, either formal or informal.

#### *List of Agents*

727. The State Bank of Vietnam Foreign Exchange Department is responsible for maintaining statistics on remittance service providers. There has been no study of the informal sector by the SBV to ascertain the estimated size of the informal sector.

#### *Sanctions*

728. The SBV and AMLIC have the same sanction powers available as outlined in respect of Recommendation 17. However, the shortcomings are the same. Furthermore, the unregulated sector continues to operate unlicensed.

#### *Additional Element—Applying Best Practices Paper for SR VI*

729. There has been no application of the FATF best practices paper on alternative remittance providers.

### **3.11.2. Recommendations and Comments**

730. The SBV is the authorized body to issue licenses to credit institutions to provide remittance services. However, the informal remittance sector is still an unchallenged force in the market. For the formal remittance sector, despite the fact that the SBV provides remittance licenses to organizations, it does not conduct any inspections or on-site examinations of these activities. Even major international remittance providers are not examined by the SBV for the purposes of AML/CFT compliance.

731. Vietnam should consider the following:

- Perform a detailed assessment of the informal remittance system to identify the risks associated with this sector.
- Undertake inspection of formal remittance providers.
- Consider options for regulating and supervising the activities of the informal remittance sector.
- Come up with procedure and mechanisms to impose sanctions on unlicensed remittance service providers.

### 3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> <li>• No regulation of informal MVT service providers.</li> <li>• Lack of supervision and oversight of formal remittance providers.</li> </ul>

## 4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

### *General Description*

#### 4.1. Customer Due Diligence and Record-keeping (R.12)

##### 4.1.1. Description and Analysis

732. **Legal Framework:** Article 6 (2) of AML Decree 74 describes other individuals and organizations that are responsible to prevent and combat money laundering in accordance with the Decree. These entities are:

- (a) Lawyers, legal consultancy companies, law firms and law partnerships when conducting monetary or other asset transactions on behalf of clients;
- b) Organizations conducting business in games of chance, casinos or lotteries; business organizations which conduct large promotions for customers;
- (c) Companies with business registration which provide real estate trading services;
- (d) Any individual licensed to operate or conduct business the same as any of the financial institutions prescribed in clause 1 of this Article 6.

733. Article 6 (1) (d) of AML Decree 74 also lists individuals trading in gold, silver and precious stones as designated entities. However, accountants and other company service providers are not covered in the decree. There are also gaps in the definitions of DNFBPs included in AML Decree 74. The definition of real estate agent is limited to companies. This is not consistent with the FATF requirement to include all real estate agents regardless of the nature of their business.

734. The Decree is silent on the CDD requirements in relation to the threshold limits for casinos, however discussion held on site would indicate that transaction threshold lower than the FATF standard exist in Vietnam at this time. There are no specific CDD requirements for casinos other than those in AML Decree 74. Other deficiencies in respect of CDD, record keeping and monitoring unusual transactions highlighted in Section 3 of this report are true also for DNFBPs.

735. **Description of DNFBPs:** A detailed description of each DNFBP sector is described in Section 1.3 of this report.

736. **Implementation:** Currently there is no obligation to meet the limited requirements of AML Decree 74 by DNFBPs in Vietnam. At the time of the on site assessment, there has been no guidance issued by responsible agencies defined under Article 17 of AML Decree 74, addressing their specific sector responsibilities. Without this guidance effected entities will not implement any AML obligations placed on them by AML Decree 74. Generally, during discussion with the responsible agencies, the assessment team noted a lack of awareness, as to the existence of the Decree and its associated AML responsibilities.

737. Authorities advised that an inter-ministerial committee under the Prime Minister's sponsorship is being established to address AML obligations under AML Decree 74. SBV is the responsible ministry for establishing this committee.

#### 4.1.2. Recommendations and Comments

738. It is recommended that Vietnam should:

- Revise AML Decree 74 to include all categories of DNFBPs required under R12, including recommended limits for casino transactions and the inclusion of accountants and other company service providers as subject to the requirements of the Decree.
- Revise the definition of Real Estate agents to be consistent with the FATF definition.
- Prior to implementing the obligations in the DNFBP sector, Vietnam should concentrate its efforts in progressing implementation in the credit institutions sector so that it can be used as a bench mark example for other sectors.

#### 4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none"><li>• No implementation - Responsible Ministries, Ministerial level agencies and government agencies defined under Article 17 of AML Decree 74 have not progressed AML responsibilities in their responsible sectors.</li><li>• AML Decree 74 does not fully meet all necessary coverage and limits imposed by recommendation 12.</li></ul>

## 4.2. Monitoring Transactions and other Issues (R.16) (Applying R.13 to 15 & 21)

### 4.2.1 Description and Analysis

#### *Applying Recommendation 13*

739. As discussed under Recommendation 12, there are gaps in the definition and coverage of DNFBP in AML Decree 74. Neither accountant nor other company service providers or all categories of real estate agents are included as designated entities, and therefore not subject to STR reporting obligations. Thus even if DNFBPs were to report suspicious transactions under Article 10, Vietnam would still be not fully compliant. As indicated, there has been no implementation of AML Decree 74 in the DNFBP sectors.

740. The deficiencies highlighted in Sections 3.7 (R14); section 3.8(R15) & section 3.6(R21) in this report are also applicable to DNFBPs, including in relation to terrorist financing.

### 4.2.2. Recommendations and Comments

741. Vietnam should consider undertaking the following measures:

- Raising awareness of STR reporting obligations among DNFBPs and stagger the introduction of STR reporting, with an initial focus on higher risk DNFBPs such as casinos and gold dealers; and
- Revising AML Decree 74 to include all categories of DNFBPs required under R16.

### 4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
<b>R.16</b>	NC	<ul style="list-style-type: none"><li>• The categories of DNFBPs required under Decree 74 to report suspicious transactions are not fully consistent with the standards (c16.1).</li><li>• No Implementation.</li><li>• No terrorist financing requirements.</li></ul>

## 4.3. Regulation, Supervision, and Monitoring (R.24-25)

### 4.3.1. Description and Analysis

#### **Recommendation 24 (Supervision of DNFBPs)**

##### *Regulation and Supervision of Casinos*

742. **General:** Vietnam has approved licenses for five small-size casinos. However, only three casinos have actually commenced operations in Vietnam. There are no internet casinos operating in

Vietnam. The casino at Haiphong Bay is the largest and is a joint venture with a well known international casino operator. It is illegal for a Vietnamese national to enter a casino and the market is targeted at foreigners, principally those working in or visiting Vietnam. The size of the Haiphong Bay casino is relatively small, with a turnover of US\$3 million a year and a maximum payout of US\$2,000, which is available under its roulette game.

743. The Law on Investment (Article 37) and Decree No. 108 of 2006 on business activities related to the game of chance, gambling and casinos for foreigners provide the overarching legal framework for casinos in Vietnam, although provincial authorities can and do issue detailed regulations within this framework. At present casinos in Vietnam are all licensed under the Prime Minister's decision although other agencies are involved in the approval stage such as the People's Committee in provincial and city branches. In addition, the board of director is supervised by the MPS to mitigate against potential criminal links.

744. The Ministry of Planning and Investment and the People's Committees of the provinces and centrally-run cities where casinos are located have primary responsibility for supervision and inspection of casinos. However, there are normally a number of agencies involved in supervising and inspecting casinos:

- The Ministry of Planning and Investment on compliance with business registration and investment certification requirements;
- SBV on foreign exchange and money transfer activities;
- The Ministry of Finance on financial activities;
- The Ministry of Public Security shall be responsible for supervision on public security and national defence; and
- The People's Committee in Province for comprehensive and specific supervision on activities of licensed entities in the local area.

745. According to Article 15 in the **Decision No. 32/2003** dated 27/2/2003, inspections of casinos shall comply with the following stipulations:

- 1. The regular and specialized inspection shall be carried out no more than once a year in an enterprise; each drive shall not exceed 7 days.*
- 2. Irregular inspection and examination: When enterprises show signs of violating this Regulation or Vietnamese laws,*
- 3. If enterprises breach Article 7 of this Regulation, they shall be immediately suspended from business activities and handled according to law provisions.*

746. The Haiphong People's Committee has undertaken monitoring of its only casino and has issued supplementary regulations regarding its operation. This oversight is not specifically in response to AML Decree 74 but to other obligations. However, the Haiphong People's Committee is aware of the Decree .

747. Vietnam advised that there have been no violations by casinos of their licensing obligations.

748. **AML Implementation:** There has been no implementation AML Decree 74 obligations in the casino sector at the national level although the Haiphong People's Committee has commenced discussions with the Haiphong based casino on the requirements of AML Decree 74.

#### *Monitoring Systems for Other DNFBPs*

749. **General:** As mentioned in Section 3, Vietnam has a sectoral based regulation and supervision regime. The current supervisory regimes for other DNFBPs are significantly less developed than for the financial sectors. The Law on Real Estate Business to supervise real estate brokers and agents in Vietnam was introduced only in 2006 and is still being implemented. Laws to regulate and supervise the legal and accountancy professions were only introduced in 2006 and 2003 respectively. For precious stones and metals, gold has been heavily supervised from the perspective of foreign exchange control only, and there is very limited supervision of precious stones.

750. The comments in Section 3 of this report concerning sanctions under Recommendation 17 are also applicable here, and probably more so given the relative newness of the supervisory regimes for DNFBPs.

751. **AML Implementation:** Articles 17 and 18 of AML Decree 74 have specific provisions for relevant ministries and their inspectorates to supervise compliance with the decree, including applying sanctions as appropriate. The relevant sectoral supervisors for the other DNFBP sectors are responsible for implementing AML Decree 74. However, as indicated previously, there has been no implementation by DNFBP supervisors of AML Decree 74 in the DNFBP sectors, and there are no requirements at all for accountants and other company service providers in the Decree.

#### **Recommendation 25 (Guidance for the DNFBP sectors)**

752. There has been no implementation of AML Decree 74 obligations for casinos and other DNFBPs, including the issuance of guidance. Guidelines issued, though very limited, have been on non AML requirements of respective supervisory ministries.

#### **4.3.2. Recommendations and Comments**

- Relevant DNFBP regulatory and supervisory agencies should commence working closely with AMLIC and the SBV to develop a strategy to amend AML Decree 74 , as required, and for a staggered implementation of FATF obligations in the DNFBP sector based on a risk assessment with a focus on the gold and real estate sectors.
- Supervisors should issue AML/CFT guidance to give effect to AML Decree 74 obligations 9 (as amended) after priority sectors have been identified.

#### **4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)**

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
<b>R.24</b>	NC	<ul style="list-style-type: none"> <li>• No implementation of AML/CFT requirements</li> <li>• Vietnam lacks an effective regulatory and supervisory framework for</li> </ul>



		monitoring and ensuring DNFBPs compliance with their AML obligations
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No implementation of AML/CFT requirements</li> <li>• No guidelines have been developed for DNFBPs to assist them in complying with the AML decree</li> </ul>

#### **4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)**

##### **4.4.1. Description and Analysis**

###### *Other Vulnerable DNFBPs*

753. AML Decree 74 includes some but not all the designated DNFBP sectors. In drafting AML Decree 74, Vietnam considered but decided against including other businesses and professions, not defined as DNFBPs by FATF, namely dealers in high value and luxury goods, pawnshops, auction houses and investments advisers. It has included lottery and gaming (i.e. games of chance) as subject to AML Decree 74, beyond just casinos.

754. At this stage in Vietnam, investment advisers, auction houses and dealers in high value and luxury goods are not prevalent, although they are increasing as the economy, until recently, has grown at impressive rates. There are pawn shops but more catering as sources of micro credit for micro enterprises.

###### *Modernization of Conduct of Financial Transactions*

755. Vietnam, being a developing country, is primarily a cash economy. Large cash transactions are still carried commonly out by most individuals or other businesses. However, to reduce reliance on cash payment and transactions, Vietnam promulgated the Law on Electronic Transactions on 29 November 2005 which sets out relevant guidelines governing electronic transactions.

756. In addition, the Decree 161 of 28 December 2006 SBV has an ongoing program to improve the legal and institutional framework for non cash settlements aimed at reducing the reliance on cash payments and enhancing secure payment mechanisms. This includes SBV Decision No.291/2006 dated 29 December 2006 to approve a project on non-cash payments in the period from 2006 to 2010, and then to 2020.

757. Vietnam has issued the following regulations to reduce cash payments:

1. Decree 161 of 28 December 2006 regulating cash payments.
2. Circular No.01/2007 dated 7 March 2007 guiding the implementation of Articles 4 and 7 of Decree No. 161 dated 28 December 2006 regulating cash payments which requires payments of state funds over thirty million Vietnam dong by direct debit.
3. Decision No. 20/2007 dated 15 May 2007 issuing the Regulation on issuance, usage, payment, and providing supporting service for bank cards.

4. Decision No. 32/2007 dated 3 July 2007 on balance credit line for prepaid cards and Decision No. 38/2007 dated 30 October 2007 issuing the Regulation on issuing, using and managing codes for card issuing institutions.
5. Decision No. 48/2007 dated 26 December 2007 issuing the Regulation on collecting payment fees via payment service institutional providers and Decision No. 50/2007 of 28 December 2007 issuing levels of fees collected for payment services via payment service institutional providers.
6. Decision No. 3113 dated 31 December 2007 approving the Sub-Plan to develop a Unified Switching Center as part of Non-cash Payment Plan for the 2006-2010 period and vision to 2020 approved according to the Decision No. 291/2006 of the Prime Minister dated 29 December 2006.
7. Directive 05/2007 dated 11 October 2007 on the salary payment through account to those who receive salary from the State budget in accordance with Directive 20/2007 of the Prime Minister dated 24 August 2007.

758. These measures to promote non- cash payments have contributed to the declining total cash liquidity in the economy. According to the SBV 2007 Annual Report, cash made up 16.36% of the total liquidity, continuing the decreasing trend in recent years: 17.21% in 2006 from 19.01% in 2005 and 20.35% in 2004, reflecting the fact that non-cash payment has been increasingly popular among the population, as the banking system promoted such payment modes as debit card, credit card, and ATM.

759. Over-the-counter transactions by banks have reduced since there are now over 7,000 Automated Teller Machines (ATMs) in Vietnam. Vietnam has encouraged its citizens to use payment card (instead of using cash). A significant example of this was the decision to pay all government employees at the central, provincial and city levels through direct bank debits. This led to a significant increase in the demand and use of ATMs. The use of internet banking is already offered by some big banks, but limited only to account balances inquiries.

760. Vietnam has been withdrawing from circulation VND100,000 and VND50,000 notes printed in cotton to reduce counterfeiting. The largest denomination banknote of VND500,000, equivalent to US\$26, is printed in polymer and first issued on 17 December, 2003.

#### **4.4.2 Recommendations and Comments**

##### **Recommendation 20**

- Vietnam should consider other measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML/TF, and the full implementation of the Law on Electronic Transactions may greatly help.
- Vietnam should undertake aggressive information dissemination campaigns to increase awareness on the benefits of the use of modern and secure techniques.

##### **4.4.3. Compliance with Recommendation 20**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.20</b>	LC	Reliance on cash and gold as means of settlement.

--	--	--

## 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

### 5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

#### *Legal Framework*

761. The National Assembly has enacted the Law on Enterprises 2005. Chapter II of this legislation sets out the business registration requirements for sole proprietorships, partnerships, limited companies and shareholder companies. Only shareholder companies issue share certificates.

762. The National Assembly has also enacted the Securities Law that regulates public offerings, listing, dealing, trading, investing and the securities market.

763. Neither the Law on Enterprises nor the Securities Law contains any requirement for the identification or verification of beneficial ownership, including under any nominee arrangement during the registration and licensing stage. The requirements are limited to legal ownership.

#### *Measures to Prevent Unlawful Use of Legal Persons*

#### Law of Enterprise

764. Article 18 of the Law of Enterprise sets out what must be filed to form a limited liability company, which is a company with two to fifty members but does not issue shares. Such a company must provide a list of its members together with copies of the identification cards of its members, copies of its members' passports or other legal personnel certifications. A member that is an organization, such as a limited liability company, must provide its establishment decision (which appears to be the document that confirms the formation of the company) and its company registration certificate.

765. Article 19 sets out the requirements for a shareholder company, which is a company that has three or more shareholders and issues share certificates. Such a company needs to provide a list of the founding shareholders and copies of their identification cards, passports or other legal personnel certifications. A limited liability company or a shareholder company that own shares must provide its establishment decision and business registration certificate.

766. Article 28 of the Law of Enterprise provides that within 30 days of being granted its business registration, an enterprise must publish on the website of the business registration agency, or in newspapers, information including its name, address of head office and details about its members or, in the case of a shareholder company, its founding shareholders. The ME team was told by the Ministry of Planning and Investment ("MPI") that information in the registration bodies are open to the public and some registration bodies post information online.

767. Clause 2 of Article 28 requires an enterprise to notify, within the time limit and by the methods set out in Clause 1 of Article 28, any change in its business registration.

768. We were informed by the MPI that there is nothing in law that requires a limited liability company or a shareholder company to disclose its beneficial owners.

769. Clause 3 of *Article 162 – State management responsibility over enterprise* provides that the Provisional People’s Committees and the People’s Committees in centrally governed cities are responsible for organizing business registration bodies. There are 58 provinces in Vietnam and five centrally-controlled municipalities existing at the same level as provinces (which include Hanoi and Ho Chi Minh). Article 163 requires that such business registration bodies must set up a business registration body for the granting of certificates of registration. The business registration bodies are also required to set up and manage the system for recording information and providing information to state bodies, interested organizations and individuals as set out in regulations provided by law. In practice, this has meant that the provincial offices of the MPI are the registration bodies, under the joint supervision of the People’s Committees and the central office of the MPI.

770. Articles 43 and 44 allow a member of a limited liability company to transfer his contributed capital to another member, or possibly a third party. Presumably this would have to be disclosed according to Article 28.

771. Law on Enterprise – Shareholder Companies — *Article 86 – Register book of shareholders:*

1. *A company shall make and maintain a register book of shareholders from the date of being granted the Certificate of business registration. Such a book may be in the form of either writing or electronic files or both.*
2. *The book of shareholder registration must contain the following content:*
  - a) *Name and address of the company’s head office;*
  - b) *Total number of authorized shares, types and amounts of shares of each type.*
  - c) *Total number of paid-in shares of each type and value of paid-in equity capital.*
  - d) *Names, permanent residential address, nationality, ID, passport or other legal individual certifications numbers with respect to shareholders are individuals; name, permanent residential address, nationality, the number of the establishment decision or the registration number with respect to shareholders are organizations.*
  - d) *Total shares of each type for each shareholder, date of subscribing shares.*
3. *Register book of shareholders shall be kept in the head office of the company or the Center for registration, custody, clearing and settlement of securities. All shareholders shall have the right to check, refer to, extract, copy the content of the register book of shareholders at any time during the working hours of the company or the Center of registration, custody, clearing and payment of securities.*
4. *Shareholders holding 5% or more of the number of the shares shall be registered with the competent business registration office within 7 days from the date of acquiring such a ratio of shares.*

772. Clauses 3 and 4 of Article 87 provide that shares will be deemed to be sold when they have been paid for in full and the information about the buyer set out in paragraph 2 of Article 86 has been accurately recorded in the register book of shareholders.

773. Clause 5 of Article 87 provides that:

*All share certificates shall be freely transferable except for cases stipulated in clause 3 on Article 81 and clause 5 in Article 84 of this Law. The transfer can be made in writing as usual by hand delivery only. The transferring paper will be signed by the transferor and transferee or by their authorized representatives. The transferor shall still be the owner of the related shares until the transferee's name is recorded in the register book of shareholders.*

*In case only some shares of a bearer share certificate are transferred, the old share certificate shall be deleted and the company shall issue new share certificates to record the transferred shares, and the remaining shares (f the old share certificate).*

774. It does not appear that notice of the transfer of securities of a shareholder company is required to be given to the public pursuant to Article 28, unless it involves a founding shareholder.

#### Securities Law

775. The Securities Law applies to public companies, which are joint stock companies that have offered their shares to the public or are listed on an exchange. It appears that a joint stock company is the same thing as a shareholder company under the Law on Enterprise.

#### *Article 53 – Securities depository:*

- 1. The securities of public companies must be centrally deposited at the Securities Depository Centre before transactions are conducted.*
- 2. Securities shall be centrally deposited at the Securities Depository Centre under the form of general depository. The securities holders are co-owners of general securities in proportion to the number of securities deposited.*
- 3. The Securities Depository Centre shall be entitled to carry out separate depository with respect to registered securities and other assets upon request of the owners.*

#### *Clause 1 of Article 54 – Transfer of securities ownership:*

*The transfer of securities ownership with respect to categories of securities registered at the Securities Depository Centre shall be undertaken via the Securities Depository Centre;*

776. In its response to the MEQ and in response to the ME team's questions, the State Securities Commission informed the ME team that the Securities Depository Centre, a legal entity, is the depository for all securities of public companies.

777. Securities investors open accounts and deposit securities with a securities depository member (securities depository member includes securities companies and securities depository

banks). Investors' securities are then re-deposited in the Securities Depository Centre general depository accounts of that securities depository member opened at Securities Depository Centre.

778. *Article 57 – Confidentiality* provides that the Securities Depository Centre and depository members are responsible for keeping information about customer's securities ownership secret. The exceptions to the secrecy requirement is for Auditors conducting an audit of the Securities Depository Centre, Customers of the Securities Depository Centre seeking information about their securities holdings and an information request from the relevant legal authorities.

779. The ME team was informed that there is a large grey market for the trading of shares of public companies in which companies' shares are bought and sold directly without using the Securities Depository Centre. These companies comprise almost 75% of all public companies and it is very difficult to supervise the transactions conducted in this market.

#### *Access to Information on Beneficial Owners of Legal Persons*

780. In Articles 56 (c) and Article 72 (1)(d) of the Law on Enterprise, there are references to the obligations of board members and senior management respectively to provide and make available on a timely basis information on "related persons" to the company. The phrase "related person" is defined in Article 4 (17) (d) to be, "an organization or individual with a direct or indirect relationship with the enterprise...and includes individual or individuals with capability of control over decisions and/or operations of such enterprises". The definition includes individuals, close relatives or person (s) with controlling interests or any individual who is authorized to represent persons with controlling interests. It is not exactly clear how these requirements work in practice but they do seem to cover a limited aspect of beneficial ownership requirements. It should be noted however that the obligation of disclosure is to the company, rather than to the government.

781. There are provisions in the AML Decree 74 for both AMLIC and the MPS to access information. Item 1 of Article 14 of AML Decree 74 authorizes the AMLIC to require any agency, organization or individual involved to provide data, files and information on the transactions prescribed in Articles 9 and 10 of the Decree. Item 3 of Article 16 of AML Decree 74 sets out the responsibility of the Ministry of Public Security to organize the investigation of money laundering related crime; provide guidance to other agencies in conducting preliminary investigations of money laundering related crime in accordance with the law and AML Decree 74; and to advise the SBV of the results of the investigations into money laundering cases.

782. According to these stipulations, AMLIC and Ministry of Public Security are authorized to get access to all of a company's documents in respect of transaction prescribed in Articles 9 and 10 of the Decree. The relevant investigation Articles in the Penal Code and Criminal Procedure Code, (particularly Article 65), would apparently allow authorities to obtain information about beneficial ownership.

783. Despite these powers, it would be challenging for competent authorities to access beneficial ownership requirements given the absence of any such requirements upfront in the registration and licensing stage, although there are some reporting requirements once the company is established. While this would be less of an issue when the legal and beneficial owners are the same, it poses significant challenges when they are not. Even if there are beneficial ownership requirements

up front, given the number of foreign investors in Vietnam, determining true beneficial ownership of foreign share owners would be a significant resource challenge for Vietnam particularly as there is no requirement for foreign directors to be resident in Vietnam. Further, the requirement to register at the provincial level may mean that obtaining access to information about a company is slow and cumbersome, even for shares locally owned.

784. Vietnam advised that in the future, the State Securities Commission and Securities Depository Centre will develop a new depository system that permits details to be registered about every investor.

#### *Prevention of Misuse of Bearer Shares*

#### Law on Enterprises

#### *Article 85 – Share certificates*

1. *Certificates issued by a shareholding company or recorded in the book entry evidencing the ownership of one or more shares issued thereby are referred to as share certificates. A share certificate so issued may be either bearer share certificate or non-bearer share certificate. A share certificate must contain the following contents:*

*...d) Name, permanent residential address, nationality, ID, passport or other legal individual certification numbers with respect to the individual shareholders who are individuals; name, residential address, nationality, the number of the establishment decision or the registration number of [with respect to non-bearer share certificates];*

785. In its response to the MEQ, Vietnam wrote that in the version of the Enterprise Law provided to the ME team, item 4(d) of Article 65 did not have the words “with respect to non-bearer share certificates”, as it should have.

786. The Ministry of Planning and Investment advised that bearer shares that provide for the person who possesses the share certificate to be recognized as the owner are not legal. Rather, the use of the word “bearer” means a share certificate issued that does not have the personal information of the owner on it. However, such shares cannot be bought and sold without providing the company the details of the purchaser and seller, which then registers the change of ownership. Therefore, in law, Vietnam does not allow bearer shares.

787. The Ministry of Justice advised that bearer shares without the name on the actual share holder must be registered with the share registry. If that person sells it to a third party and the change is not registered, the third party will not be recognized as the legal owner.

#### *Additional Element — Access to Information on Beneficial Owners*

788. In its response to the MEQ, reference was made to Clause 2, Article 22 of Decree No 88/2006/ND-CP of the Government dated 29 August 2008 on business registration. However, we were not provided with a copy of this Decree nor were provided any information about it.

### 5.1.2 Recommendations and Comments

789. Vietnam should consider to:

- Amend its laws to include the requirement to disclose beneficial ownership information upfront during the registration or licensing stage and to update such information when changes occur.
- Finalise the progress towards a central Companies Registry to make available to the public current information about the legal and beneficial owner of legal persons.
- Enact specific laws to allow the relevant legal authorities to obtain information about the beneficial owners of legal persons.

### 5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
<b>R.33</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• There is no requirement to disclose beneficial ownership information during the registration and licensing stage.</li><li>• There is no central Companies Registry.</li><li>• There are no specific laws allowing authorities to obtain information about beneficial owners.</li></ul>

## 5.2 Legal Arrangements — Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1 Description and Analysis

#### *Legal Framework*

790. Vietnam is, in part, a Civil Code jurisdiction, whose legal system has been modelled after the Civil Code system of France. Civil law jurisdictions generally do not recognize trusts, which are a creation of English common law and have subsequently become a fundamental part of all common law jurisdictions.

791. The ME team was advised by the Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Court, that the concept of a "trust" is not recognized in Vietnam. However, they were not able to point to any specific prohibition in Vietnam laws, although they informed the team that activities are illegal if not specifically provided for by law.

792. It is not certain that foreign trusts are not operating in Vietnam. There appears to be no obstacle for a Vietnamese citizen to be a trustee of a foreign trust.

### 5.2.2 Recommendations and Comments



793. Vietnam should consider examining the operations of foreign trusts in the country and enact appropriate laws or regulations.

### 5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
<b>R.34</b>	NC	<ul style="list-style-type: none"><li>• No specific laws preventing or regulating the operations of foreign trusts.</li></ul>

## 5.3. Non-Profit Organizations (SR.VIII)

### 5.3.1. Description and Analysis

#### NPO Sector

794. There are no comprehensive statistics of domestic Non-Profit Organizations (NPOs). However, based on statistics provided by the Ministry of Home Affairs, there are 390 NPOs licensed to operate nationally, 1,000 to operate in specified provinces, and 10,000 to operate at the community level. For international NPOs, there are about 600 international NPOs operating in Vietnam, with the majority from Western Europe, North America, and the Asia-Pacific region.

#### *Legal Framework*

795. There are numerous laws and regulations that govern the legal establishment and operations of NPOs in Vietnam. In terms of specific laws and regulations addressing the NPO sector, there are different requirements for domestic and international NPOs, particularly in the licensing and registration stage, and to a lesser extent during the implementation stage.

796. All domestic NPOs are now governed by Government Decree 48 of 2008 which assigns the Ministry of Home Affairs as the primary agency for NPO affairs. NPOs are not permitted to conduct revenue generating activities in Vietnam. For international NPOs, the Prime Minister issued Decision No. 340 dated 24 May 1996 which promulgated the Regulations on the Operation of Foreign Non-Governmental Organizations in Vietnam. This was followed by Prime Minister Decision No. 64 dated 26 May 2001 that provided further Regulation on the Management and Utilization of grant from International Non-Governmental Organizations.

797. There are three interrelated bodies dealing with international NPOs: the Committee for Foreign Non-Governmental Organization Affairs (COMINGO); the Vietnam Union of Friendship Organisations (VUFO); and the People's Aid Coordinating Committee (PACCOM). Vietnam established COMINGO specifically to oversight the licensing and monitoring of international NPOs.

#### *Review of Adequacy of Laws & Regulations of NPOs*

798. The State Bank of Vietnam in May 2007 requested the Ministry of Internal Affairs and VUFO to examine NPO' activities in respect of the following:

- *Examine, list and point out any inappropriate stipulation in relevant legal document in regard to the Non-Profit Organizations' activities under their management.*
- *Evaluate these organizations' operation about: amount of aiding money (distributed by geography, career), nationality and registered business.*
- *Design AML/CFT program regarding Non-Profit Organizations (include Non-Government Organizations).*

799. It is understood that this exercise is on-going. It has undertaken a review of laws and regulations. However, it has not undertaken a comprehensive review of all NPOs registered in Vietnam, both domestic and international, to develop a risk profile of its NPO sector and determine which ones might be potentially at risk of terrorist financing.

#### *Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse*

800. There does not appear to be any clear strategy in place to raise awareness of the threats posed to NPOs from potential abuse by terrorist groups. The authorities advised that anti money laundering and terrorist financing concerns have been discussed, as part of workshops and meetings held by COMINGO for relevant Ministries, agencies and organizations in provinces. However, given terrorist financing has not been criminalized as an autonomous offence and typologies work is still in its nascent stage in Vietnam, it is not clear to what extent these meetings have conveyed potential terrorist financing risk factors to NPO interlocutors.

#### *Supervision or Monitoring of NPOs*

801. **International NPOs:** Prime Minister's Decisions 340 and 64 outline the licensing and ongoing supervisory requirements of international NPOs operating in Vietnam. COMINGO is responsible for approving all international NPOs working in Vietnam. It has nine members including Foreign Department of Central Community, Government Office, Foreign Affairs Ministry, Ministry of Public Security, Finance Ministry, Planning and Investment Ministry, Internal Affairs Ministry, The Government Committee for Religious Affairs and The Vietnam Union of Friendship Organizations.

802. Prime Minister's Decision No. 340 outlines three categories of international NPOs operating in Vietnam, namely project operation, project office and representative office. All three categories are subject to an operational permit, with the latter two categories based on graduation from the preceding category.

803. International NPOs must provide information on their organization profiles, including addresses, financial resources, statutes and proposed operational plans in Vietnam, including sources of funding. However, there is no requirement to obtain details of the senior management or controlling mind of the NPO. There is a requirement for the CV of the chief of staff of the Vietnam operations but not the CVs of senior headquarter staff. A certified or notarized copy of the legal status of the NPO in the home jurisdiction is required to be submitted.

804. COMINGO is responsible for reviewing and for vetting all international NPO operations in Vietnam, including all three categories. COMINGO, being a multi-agency Committee draws on its

membership to verify information provided, including checks by the Ministry of Foreign Affairs to verify legal status and the MPS to verify the Vietnamese counterpart (s) for the international NPO.

805. Once licensed or permit issued, international NPOs are required to submit bi-annual and annual progress reports and financial statements, as specified in Article 14 of Prime Minister's Decision 340 to the Committee and the project holder agency (Ministry, line agency, central office of people's organization, People's Committee of Province or centrally-administered city). However, there is no clear definition of an "international NPO" in the abovementioned Decisions.

806. **Domestic NPOs:** The requirements for domestic NPOs are different. All domestic NPOs must now be licensed and registered with the Ministry of Home Affairs under Government Decree 48 of April 2008. The Ministry has a dedicated but under-resourced Department of NGOs. However, sectoral ministries are involved in both the approval and monitoring of NPOs, depending on the sectoral focus of the NPO concerned. Domestic NPOs are subject to similar requirements as for international NPOs but more comprehensive information is required in terms of senior management and a list of all NPO members. If needed, and if suspicious, the Ministry of Home Affairs will refer to the MPS for background checks of the NPO management team and members.

807. **Inspection:** COMINGO through the People's Aid Coordinating Committee (PACCOM) do undertake on-site monitoring of large international NPOs operating in Vietnam. However, no detailed statistics was provided to the team in terms of the number of inspection visits undertaken, although the Ministry of Home Affairs, advised that only a few on-site inspections were undertaken by its Inspectorate department in the last 12 months because of limited staff resources, both for domestic and international NPOs. Supervision is predominately off-site through review of reports submitted.

808. **NPO Transparency:** There is no explicit requirement for NPO information to be made publicly available in Vietnam. Most domestic NPOs are community based cooperatives, which report back to members but not the broader public, except to government oversight agencies including the local People's Committee. The major international NPOs do make reports available to the public, and is working to promote self regulatory measures and greater transparency through initiatives such as the VUFO-NGO Resource Centre, that was established in 1993 through a partnership between International NPOs working in Vietnam, and the Vietnam Union of Friendship Organisations (VUFO).

809. **Sanctions:** Article 27 of Decision 340 provides for sanctions if an NPO operates without a proper license or permit or violates the regulatory requirements. They can have their permit temporarily or permanently suspended. There is no scope for warning or monetary fines. Other violations are referred for action under the laws of Vietnam.

810. NPOs are also subject to the Ordinance on Administrative Violations which provides for monetary fines, expulsion of foreigners and revocation of license. The fines for a small domestic NPO would be dissuasive, but not for a large international NPO.

811. The authorities advised that licenses have been withdrawn, extensions refused or applications rejected because of inconsistencies with the NPOs' scope of operations or the aid and development priorities and purposes in Vietnam. There have been cases of NPO fraud but none in respect of potential terrorism financing.

812. **Record Keeping:** There is no requirement under the NPO specific regulations (i.e. Decisions 340 and 64 and Decree 48) for NPOs to maintain records for at least five years or for any period. Authorities advised that NPOs are expected to keep all records of transactions and also make them available to the Central and the Local authorities wherever the NPO is licensed and registered.

*Measures to ensure effective investigation and gathering of information (c. VIII.4): Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1): Access to information on administration and management of NPOs during investigations (c. VIII.4.2): Sharing of information, preventative actions and investigative expertise and capability, with respect NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):.*

813. The Ministry of Home Affairs maintains registration details of domestic NPOs while the nine agencies COMINGO maintain information on international NPOS. Information on NPOs is available to all relevant agencies, and the local Peoples' Committee. Operational progress reports submitted by international NPOs are also maintained respectively by the Ministry of Home Affairs and COMINGO members. There is no centralized agency responsible for maintaining information on all NPO operations in Vietnam, both domestic and international.

814. The lack of a centralized agency for maintaining information on all NPOs in Vietnam may constrain the timeliness upon which such information can be accessed for either supervisory or law enforcement purposes.

*Responding to international requests regarding NPOs - points of contacts and procedures*

815. COMINGO is responsible for dealing with any international NPO relationship including any request for information. Its Secretariat, the People's Aid Coordinating Committee (PACCOM), would coordinate the response. However, there are no clear procedures in place in respect to international cooperation.

### **5.3.2. Recommendations and Comments**

816. Vietnam has a comprehensive set of procedures for the licensing of the domestic and international NPOs. However, a lack of supervision and outreach to the NPO sector can pave the ground for potential abuse of NPOs, by criminal elements including money launderers and terrorist organizations. In addition, lack of coordination among various agencies on the activities of the NPO can possibly serve as another threat to the reputation of the NPO sector.

817. Vietnam should consider to:

- Complete its NPO Sector Review with a focus on developing a risk profile of the sector in terms of terrorist financing;
- Devise a comprehensive plan for the supervision of NPOs;
- Conduct regular reviews of the NPO sector to maintain compliance with the applicable laws and regulations;
- Provide outreach programs in relation to terrorist financing; and

- Centralize information on the activities of the NPO sector to facilitate access and sharing in ML/TF cases.

### 5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> <li>• Incomplete sector review</li> <li>• Lack of proper oversight and supervision</li> <li>• Lack of NPO transparency requirements</li> <li>• No systematic outreach programs</li> <li>• No formal channel for international cooperation</li> </ul>

## **6. NATIONAL AND INTERNATIONAL CO-OPERATION**

### **6.1. National Co-Operation and Coordination (R.31)**

#### **6.1.1 Description and Analysis**

818. AML Decree 74 identifies the roles and responsibilities of key AML implementing ministries and agencies, including the SBV (Article 15), MPS (Article 16), other ministries and ministry-equivalent organizations and organizations directly under the Government's control (Article 17), Ministries' Inspectors (Article 18) and People Committees (Article 19).

819. There is no National Coordination Committee (NCC) for AML/CFT. However, the Prime Minister issued letter No. 1511/TTg-GHGT on 11 September 2008 that appointed the SBV to coordinate with other ministries and organizations to establish a NCC, in the form of the Multi-Ministry Directive Committee in AML/CFT. The SBV is discussing with other relevant ministries to establish the Multi-Ministry Directive Committee in AML/CFT.

820. Despite the absence of a formal NCC on AML/CFT, the SBV, as the lead agency, has held regular operational meetings with relevant ministries and agencies, including the MPS, Ministry of Foreign Affairs and Ministry of Internal Affairs to discuss specific issues. The following meetings have been undertaken:

- Meeting with PACCOM (2007);
- Meeting with Banking Association (5/2008);
- Meeting with representatives from Associations: precious metals and stones, securities, insurances, real estates and law businesses. (7/5/2008);
- Meeting with PACCOM (4/2008);
- Meeting with Ministry of Internal Affairs (4/2008);
- Meeting with contacting points from Ministries and organizations regarding answers of MEQ (6/3/2008, 17/4/2008, 25/8/2008).

821. The level of coordination between AMLIC and other law enforcement agencies and investigative bodies appears to be limited at this stage. AMLIC is not involved in any MPS intelligence meetings or briefings. There is also no designated liaison officer for MPS in AMLIC or vice versa.

822. The Prime Ministerial Directive on "the preventing and combating terrorism in the new circumstances" issued on 15 November 2007 requires government agencies to coordinate their efforts in respect of counter-terrorism activities. This Prime Ministerial directive assigns the MPS as the lead agency, in co-ordination with the Ministry of Defence, to prevent and combat terrorism. Under this arrangement, the SBV is responsible with the MPS for certain thematic concerns, including on preventing and combating money laundering and terrorist financing. There seems to be operational coordination but regular higher policy meetings and discussions involving all relevant ministries on terrorist financing concerns seem to be absent.

823. The most tangible example of interagency coordination both in terms of policy and operational concerns, is in respect of international NPOs. The Committee for Foreign Non-

Governmental Organization Affairs (COMINGO) is a nine member ministry inter-agency coordination mechanism for international NPOs; it meets on regular basis to oversight international NPOs, both in terms of registration and on-going monitoring.

### 6.1.2. Recommendations and Comments

824. Vietnam should proceed to implement the Prime Ministerial directive to establish a Multi-Ministerial Directive Committee in AML/CFT as soon as possible, and ensure its terms of references address policy and operational implementation concerns.

### 6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
<b>R.31</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Lack of National Coordination Committee to address policy and operational AML/CFT concerns.</li> </ul>

## 6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1. Description and Analysis

#### *Ratification of AML Related UN Conventions*

825. Vietnam acceded to the 1988 UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on 4 November 1997 and on the United Nations website was shown to have made the following reservations:

*“Reservations to article 6 on Extradition, article 32 paragraph 2 and paragraph 3 on Dispute settlement.”*

826. Vietnam signed the United Nations Convention against Transnational Organized Crime on 13 December 2000 (Palermo Convention). However, it has not ratified or acceded to the Convention. According to the *Law on Conclusion, Accession and Implementation of Treaties* “signing” means a legal act undertaken by a competent or authorized person that is or is not subject to rectification and approval. The Ministry of Foreign Affairs informed the ME team that the Ministry of Justice was considering sending the Palermo Convention to the National Assembly for ratification.

827. The ME team was informed that the Government is currently in the process of preparing the legal environment for the implementation of this Convention.

#### *Implementation of Vienna Convention*

828. Articles 192 to 201 of the Penal Code meet the requirements of Article 3 of the Vienna Convention. Vietnam claims that it has also taken steps to implement the Vienna Convention by the passing of the Law of Drug Prevention and Fight (2000) (amended in 2008). However, the Drug

Prevention Law contains no criminal provisions and it does not implement any of the relevant Articles of the Vienna Convention.

829. As noted, Vietnam has expressed a reservation to Article 6 on Extradiction without qualification. There were concerns expressed by some members to Vietnam's reservation as it raises doubts as to its compatibility with the object and purpose of the Convention, in particular the fundamental principle that perpetrators of drug-related crime should be brought to justice, regardless of their whereabouts.

830. Vietnam's Law on Mutual Legal Assistance, Articles 340 to 346 of the Criminal Procedure Code and Article 20 of AML Decree 74 in general meet the requirements of Articles 3-11 of the Vienna Convention. However, there is a need to clarify the terms "property" and "proceeds", to improve the definition of money laundering to be fully in compliance with international law and deal with the issue of organized criminal groups.

831. The ME team was not provided with any information or material about the measures Vietnam has taken in respect of commercial carriers or illicit transport by sea. However, Article 144 of the Penal Code does specifically allow the relevant authorities to seize articles using the mail system.

#### *Implementation of Palermo Convention*

832. Although the Palermo Convention is not yet applicable to Vietnam, it should be noted that Articles in the Penal Code satisfy some of the Articles of the Palermo Convention, but there are significant gaps. Vietnam has not criminalized the participation in an organized criminal group, nor has it established the offence of conspiracy.

833. The Law of Mutual Legal Assistance, Articles 340 to 346 of the Criminal Procedure Code and Article 20 of Decree 74 meet most of the requirements of Articles 10 to 16 and 18 of the Palermo Convention.

834. Vietnam does not criminalize legal persons and, as with the Palermo Convention, does not meet all or fulfil all aspects of the Vienna Convention's requirements with respect to money laundering. Vietnam lacks effective laws allowing for the identifying, tracing, seizing, freezing and confiscation of property that are the proceeds of crime.

#### *Ratification and implementation of CFT Related UN Conventions*

835. Vietnam acceded to the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (CFT Convention) on 25 September 2002. On the United Nations website, Vietnam was shown to have made the following reservations:

*Acceding to this Convention, the Socialist Republic of Vietnam makes its reservation to paragraph 1 of Article 24 of the Convention.*



*The Socialist Republic of Vietnam also declares that the provisions of the Convention shall not be applied with regard to the offences set forth in the following treaties to which the Socialist Republic of Vietnam is not a party:*

- *International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;*
- *Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;*
- *International Convention for [the] Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.*

836. Vietnam has entered into eight of the twelve international treaties on terrorism, however the ME team was not provided with a list of these eight treaties.

837. Vietnam has passed no laws to implement the CFT convention.

838. The SBV has sent a directive to the General Directors of credit institutions to implement UN Security Council Resolution 1267. Other than this, the Government has taken no steps to implement this Convention.

## **6.2.2 Recommendations and Comments**

839. Vietnam should:

- Ratify the Palermo Convention
- Ratify the CFT Convention.
- Enact laws to fully implement all of the relevant Articles of the three Conventions.
- Enact laws to fully implement Special Resolutions 1267 and 1373.
- Withdraw its reservation with respect to Art 6 of the Vienna convention.

## **6.2.3 Compliance with Recommendation 35 and Special Recommendation I**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.35</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Has not ratified or acceded to the Palermo convention.</li> <li>• Inadequate implementation.</li> </ul>
<b>SR.I</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has failed to pass laws to implement special Resolution 1267 and 1373.</li> <li>• Vietnam has failed to take any steps to implement the CFT Convention.</li> </ul>

### **6.3 Mutual Legal Assistance (R.36-38, SR.V)**

#### **6.3.1 Description and Analysis**

##### *Legal Framework:*

840. Vietnam's Law on Mutual Legal Assistance is the primary legislation. It came into effect on 1 July 2008. Article 4 on Principles of mutual legal assistance states:

1. *Mutual legal assistance shall be carried out on the principle of respect for each other's independence, sovereignty and national territorial integrity, non interference in each other's internal affairs, equality and mutual benefit in accordance with the Constitution and law of Vietnam and international treaties to which Vietnam is a party.*
2. *In case Vietnam and the foreign country has not yet signed or acceded to any international treaty concerning mutual legal assistance, the legal assistance shall be performed on the principle of reciprocity, provided that this does not contradict Vietnamese laws and in compliance with international law and practice.*

841. The other two key laws are the Criminal Procedure Code – Part IIX on International Cooperation and AML Decree 74 – Article 21 on Types and form of international cooperation. Vietnam is also party to the ASEAN MLA Treaty.

#### **Recommendation 36**

##### *Widest Possible Range of Mutual Assistance*

842. Article 17 of the Law on Mutual Legal Assistance provides that the forms of mutual legal assistance that can be offered includes:

- a) *Service of documents and other records and documents concerning mutual legal assistance in criminal matters;*
- b) *summons of witnesses; experts and persons who have rights and obligations in the case;*
- c) *collection and provision of evidence;*
- d) *criminal prosecution;*
- e) *exchange of information; and*
- f) *other forms of mutual legal assistance in criminal matters.*

843. Vietnam is also able to provide mutual legal assistance pursuant to Articles 340 to 346 of the Criminal Procedure Code, which cover some of the subject matters in the Law on Mutual Legal Assistance:

*Item (f) of Clause 1 of Article 21 – Type and form of international cooperation of Decree No. 74:*

*Implement requests for legal assistance to investigate and deal with money laundering activities by foreign individuals and organizations in Vietnam and Vietnamese individuals and organizations abroad; and*

844. Vietnam's laws, and in particular the Law on Mutual Legal Assistance, meet a significant number of the requirements of this criterion. However, because of Vietnam's lack of laws for identifying, tracing, freezing, seizing, and confiscating the proceeds of crime, its laws on mutual legal assistance are not fully compliant.

*Provision of Assistance in Timely, Constructive and Effective Manner*

845. Article 23 of the Law on Mutual Legal Assistance provides that:

1. *Within 15 days of receipt of a request for legal assistance in criminal matters sent by a foreign competent authority, the Supreme People's Procuracy shall record it in the Register of requests for legal assistance in criminal matters, check its validity and transmit it to the agency conducting criminal proceedings of Vietnam for execution. If the request is not valid, the Supreme People's Procuracy shall return it to the competent authority of the requesting State and shall specify reasons therefore.*
2. *Within 5 working days of receipt of the document informing the results of request's execution sent by the agency conducting criminal proceedings of Vietnam, the Supreme People's Procuracy shall send it to the competent authority of the requesting State according to an international treaty to which Vietnam and that foreign state are parties, or through the diplomatic channels.*
3. *If the request for legal assistance in criminal matters cannot be executed or cannot be executed within the time limit required by the foreign competent authority, or cannot be executed without additional conditions, the agency conducting criminal proceedings of Vietnam shall inform in writing the Supreme People's Procuracy of the reasons therefore for it to notify the competent authority of the requesting State.*

846. The law provides for timely, constructive and effective assistance, however, little information has been provided about how such assistance is provided in practice. It would be difficult to evaluate its effectiveness taking into account that the Law on Mutual Legal Assistance only entered into force recently.

*No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance*

847. Vietnam's laws appear to meet this criterion. There are no unreasonable, disproportionate or unduly restrictive conditions, as demonstrated by the following articles:

Article 21 – Refusal or postponement of the execution of a foreign request for legal assistance in criminal matters of the Law on Mutual Legal Assistance provides:

1. *A foreign request for legal assistance in criminal matters shall be refused in one of the following circumstances:*

- a) *It is not in conformity with the obligations of Vietnam under the international treaties to which Vietnam is a party and Vietnamese laws;*
  - b) *The execution of the request may jeopardize the sovereignty or national security of Vietnam;*
  - c) *The request is for prosecution of a person for a criminal conduct of which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam;*
  - d) *The request relates to a criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Vietnam;*
  - e) *The request relates to a law violation which does [not] constitute a criminal offence under the Penal Code of Vietnam.*
2. *The execution of a foreign request for legal assistance in criminal matters may be postponed if the execution of that request would cause obstacle to the investigation, prosecution, trial, or the enforcement of a judgment in Vietnam.*
  3. *After it decided to refuse or postpone the execution of a request under paragraphs 1 and 2 of this Article, the Supreme People's Procuracy shall inform the requesting State of the reasons therefore and measures to be taken.*

AML Decree 74 – Article 22 – Refusal of request for legal assistance:

1. *Vietnamese relevant state authorities shall refuse a request for legal assistance in the following circumstances:*
  - a) *The request is detrimental to national sovereignty, security or other important interests of Vietnam; or*
  - b) *The request is not in accordance with international treaties or agreements which Vietnam signed or participated in; or Vietnamese laws.*
2. *The Vietnamese relevant authorities shall be entitled to refuse a request for legal assistance in the following circumstances:*
  - a) *The request for assistance does not meet conditions set forth in Article 21 of this Decree; or*
  - b) *The requested individual or organization has been convicted of or is being investigated or prosecuted for a money laundering crime under Vietnamese law arising from conduct which is the basis for the request.*
3. *The relevant state authorities of Vietnam shall inform the designated authorities of the requesting State of the reason for refusal.*

Law on Mutual Legal Assistance – Article 27 – Use of information and evidence in mutual legal assistance in criminal matters:

1. *Information or evidence provided by the agencies conducting criminal proceedings of Vietnam shall be used for the purposes specified in the request for legal assistance in*

*criminal matters only, and shall not be disclosed or transmitted to any third party, except with the prior written consent of the competent authority of Vietnam.*

2. *The agencies conducting criminal proceedings of Vietnam must apply appropriate measures to keep confidential the fact of a request for legal assistance in criminal matters, its contents and supporting documents, as well as criminal procedural actions to be taken under the request. If the request cannot be executed without breaching confidentiality requirements stipulated by the laws on protection of state secrets, the Supreme People's Procuratorate must so inform in writing the requesting State and may agree with the foreign competent authority on alternative measures, if any.*
3. *In sending a request for legal assistance in criminal matters to a foreign country, the Supreme People's Procuratorate must request the foreign competent authority to take the following measures to:*
  - a) *Keep confidential the information and evidence provided by Vietnam and use that information and evidence solely for the purposes stated in the request; and*
  - b) *Ensure that the information and evidence are protected against unauthorized modification, change, disclosure or other misuse.*

#### *Efficiency of Processes*

848. Vietnam advised that requests for mutual legal assistance, such as requests for service of judicial documents and identifying a Vietnamese national alleged to have committed crimes in a foreign country, are dealt with in a very short period of time. In some cases, the requests have been dealt with within 1 to 3 days. An example was provided of the identifying of Nguyen Xuan Minh and Tran Quoc Tuan under a request from the Czech Republic that was received on 5 September 2006 and replied to in writing on 8 September 2006. However, some information provided by other jurisdictions suggests that the process of providing mutual legal assistance may not always meet the deadlines set out in Article 23.

#### *Provision of Assistance Regardless of Possible Involvement of Fiscal Matters*

849. Item 1(e) of Article 21 of the Law of Mutual Legal Assistance probably prohibits providing assistance relating to a law violation that does not constitute an offence according to the Penal Code. It is considered "probably" because Clause 1 of Article 21 appears to be missing the word "not". Article 161 – Tax evasion of the Penal Code makes it an offence for a person to evade tax in the amount of over fifty million dong. Therefore, depending on the amount in question, legal assistance may be provided for a fiscal matter.

#### *Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws*

850. Vietnam advised that secrecy or confidentiality requirements of financial institutions or DNFBP are not grounds for authorized agencies to refuse a request for mutual legal assistance, although please see comment concerning conditions attached to mutual legal assistance requests.

#### *Availability of Powers of Competent Authorities*

851. The relevant authorities appear to have the powers required by Recommendation 28 in response to requests for mutual legal assistance.

#### *Avoiding Conflicts of Jurisdiction*

852. Vietnam has no law or any apparent procedure to deal with conflicts of jurisdiction in cases that are subject to prosecution in more than one country.

#### *Additional Element — Availability of Powers of Competent Authorities*

853. The Criminal Procedure Code (Article 341) and the Law of Mutual Legal Assistance (Articles 17, 18, 19, 21 and 23) establish procedures for provision of mutual legal assistance requests. Direct contact among competent judiciary authorities appears to be foreseen in Article 23(2) of the Law of Mutual Legal Assistance. The existence of 14 bilateral mutual legal assistance agreements may facilitate mutual legal assistance procedures among Vietnam and the parties to the agreements.

### **International Cooperation under SR V**

#### *Additional Element under SR V*

854. Vietnam has not criminalized the financing of terrorism, terrorist acts or terrorist organizations and therefore cannot provide international co-operation according to its laws.

855. Vietnam has no procedure to allow direct requests for assistance between the foreign and Vietnamese judicial or law enforcement agencies.

### **Recommendation 37 (Dual Criminality and Mutual Assistance)**

#### *Dual Criminality and Mutual Assistance*

856. Item 1(e) of Article 21 of the Law on Mutual Legal Assistance appears to provide that legal assistance shall be refused where the “*request relates to a law violation which does not constitute a criminal offence under the Penal Code of Vietnam*”. Article 342 of the Criminal Procedure Code states that a request for mutual judicial assistance may be refused if it is not consistent with the domestic laws of Vietnam.

#### *International Cooperation under SR V*

857. Vietnam has not criminalized the financing of terrorism, terrorist acts and terrorist organizations. It would be difficult for Vietnam to respond to mutual legal assistance given its requirement for dual criminality.

### **Recommendation 38**

#### *Timeliness to Requests for Provisional Measures including Confiscation*

858. Item 2(c) of Article 21 of AML Decree 74 allows for an urgent request for international cooperation to be sent by any form of medium. It is not clear, however, if the international cooperation that can offered under Article 21 includes the temporary measures to prevent and combat money laundering set out in Article 11 of AML Decree 74.

#### *Property of Corresponding Value*

859. Vietnam does not have any laws allowing for the freezing, seizing or confiscation of property of a corresponding value to the proceeds of crime. Clause 4 of Article 251 of the Penal Code allows for the confiscation of property in the amount equal to the property legalized. It is difficult, however, to see how this could be used to provide legal assistance.

#### *Coordination of Seizure and Confiscation Actions*

860. Vietnam has not provided any information about arrangements made with other countries for the co-coordinating of seizure and confiscation actions.

#### *Asset Forfeiture Fund*

861. Although not a requirement, Vietnam has not established an asset forfeiture fund.

#### *Sharing of Confiscated Assets*

862. Vietnam has pointed to Article 346 of the Criminal Procedure Code and Article 46 of the Law on Mutual Legal Assistance to argue that its laws can allow for the sharing of confiscated assets and money with a foreign country.

863. Criminal Procedure Code – Article 346 – *The reception, transfer of documents, objects and money related to the case:*

1. *The reception of documents related to the case are conducted in conformity with international treaties to which the Socialist Republic of Vietnam and provisions of the Codes.*
2. *The transfer of objects and money related to the case to the territories outside the territory of the Socialist Republic of Vietnam is conducted in conformity with laws of the Socialist Republic of Vietnam.*

Law on Mutual Legal Assistance – Article 46 – *Surrender of articles and exhibits:*

*To the extent and under conditions provided for by international treaties to which both Vietnam and the requesting state are parties and subject to rights of third parties, which shall duly respected, all articles and exhibits that are proceeds of crime or which may be*

*required as evidence found in the territory of Vietnam may be surrendered, if the requesting state so requests.*

864. No material was provided to support these claims and it does not appear that Vietnam has ever shared confiscated assets with a foreign jurisdiction.

*Additional Element*

865. Vietnam's Mutual Legal Assistance Law does cover civil matters but not specifically on foreign non-criminal confiscation order. However, Article 3 of the Mutual Assistance Law allows for, *"matters which are not provided for by this Law, provisions of the laws on civil procedure, the laws on criminal procedures or other relevant legal provisions of Vietnam shall apply."*

866. Vietnam has stated that, *"Chapter IV of Civil Procedure code specifically stipulates on recognition and enforcement of foreign court judgments" in Vietnam. "The decisions and civil judgments include non-criminal asset confiscation orders".* Vietnam cited four Articles from the Civil Procedure Code.

*Article 343 – Principles on approving and execution of civil judgments and sentences of foreign Court, decisions of foreign Referees.*

- 1. Vietnam's Courts shall consider the implementation of foreign Courts' civil judgments and sentences in Vietnam in the following cases:*
  - a) Courts' civil judgments and sentences of foreign countries that Vietnam and such countries have signed or joined the Treaty on such issues.*
  - b) Foreign Courts' civil judgments and sentences that are stipulated for recognizing and implementing under the provisions of Vietnam laws.*

*Article 344 – The right to approve and execution of civil judgments and sentences of foreign Court, decisions of foreign Referees.*

- 1. Person who have the right to execute or legal representative shall have the right to request Vietnam's Courts to approve and execute of civil judgments and sentences of foreign Courts, decisions of foreign Referees. If individual under the execution is a resident and working in Vietnam or agency, organization has head-office in Vietnam or property related to the executions of civil judgments and sentences of foreign Courts, decisions of foreign Referees at the time sending out the request letter.*

*Article 346 – When Vietnam's Courts approve and execute civil judgments and sentences of foreign Courts in Vietnam those judgments and sentences shall have the same legal enforcements as civil judgments and sentences of Vietnam's Courts. Civil judgments and sentences of foreign Courts which are not approved and executed by Vietnam's Court shall not have legal enforcement in Vietnam.*



*Article 348 – To ensure the right to transfer money, property of civil judgments and sentences of foreign Courts, decisions of foreign Referees.*

*Vietnam’s Government shall ensure the right to transfer money, property of civil judgments and sentences of foreign Courts, decisions of foreign Referees which were approved and executed in Vietnam by Vietnam’s Courts. The transferring of such money and property shall be implemented under the provisions of Vietnam’s law.”*

867. Vietnam gave no explanation about how the Civil Procedure Code could be used to satisfy any of the criteria either in law or in practice.

## **SR V**

868. Vietnam has not criminalized the financing of terrorism, terrorist acts or terrorist organizations and therefore cannot provide international co-operation according to its existing laws.

## **Statistics**

869. Vietnam has signed 14 agreements with other countries on mutual legal assistance. All of these agreements (except the one with Republic of France) have stipulations for the provision of assistance in criminal matters. The ME team was not provided with copies of any of the agreements.

870. The Supreme People’s Procuracy issued a table setting out details of 205 requests for legal assistance made to Vietnam from 18 foreign jurisdictions covering the period 2004 to 2008.

871. The ME team was informed that the cases include: foreign countries’ transfer of cases to Vietnam for processing under Agreements on Mutual Legal Assistance, investigations pursuant to the request of foreign countries, identifying a Vietnamese national alleged to have committed crimes in foreign countries and service abroad of judicial documents.

- Czech Republic: 109 cases
- Republic of Poland: 36 cases
- Federal of Russia: 12
- Republic of German: 11
- Republic of Ukraine: 4
- Republic of France: 4
- China: 4
- Hungary: 3
- Taiwan: 2
- Canada: 2
- Argentina, Slovakia, Korea, Japan, Mongolia, Netherlands, United Nations: each country/organization has one request for mutual legal assistance.

### 6.3.2 Recommendations and Comments

872. The following are recommended to enhance compliance and effective implementation of the international standards:

- Vietnam needs to amend the Law on Mutual Legal Assistance to allow it to provide legal assistance to foreign authorities for the identifying, freezing, seizing and confiscation of the proceeds of crime and assets that could be used to finance terrorism and money laundering.
- Vietnam should develop procedures to allow it to coordinate the freezing and seizing of the proceeds of crime with foreign authorities.
- Vietnam should consider setting up an Asset Forfeiture Fund and provide for civil forfeiture.
- Vietnam should draft laws, as part of its overall obligation to criminalize the financing of terrorism that allow for providing legal assistance, including the freezing of assets, to freeze, seize and confiscate terrorist assets.

### 6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
<b>R.36</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The Law of Mutual Legal Assistance does not specifically allow for the freezing, seizing and confiscating of the proceeds of crime.</li><li>• The recent adoption of the Law on Mutual Legal Assistance makes it difficult to assess its effectiveness.</li><li>• It is difficult for Vietnam to provide mutual legal assistance for freezing orders due to a lack of freezing provisions and mechanisms.</li><li>• Mandatory requirements as to dual criminality and sufficient importance present potential impediments.</li></ul>
<b>R.38</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The Law of Mutual Legal Assistance does not have any provisions for providing effective and timely assistance for identifying, freezing, seizing and confiscation of the proceeds of crime.</li></ul>
<b>R.37</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The requirement for dual criminality in respect of all types of mutual legal assistance is restrictive.</li></ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• Vietnam has failed to take any steps to satisfy this recommendation.</li></ul>

## **6.4 Extradition (R.37, 39, SR.V)**

### **6.4.1 Description and Analysis**

#### *Legal Framework:*

873. Extradition is dealt with in Articles 343 and 344 of the Criminal Procedure Code and by Articles 32 to 48 of the Law on Mutual Legal Assistance. Article 344 of the Criminal Procedure Code and Article 36 of the MLA state that Vietnam will refuse to extradite its own citizens and dual criminality is required. Vietnam has expressed reservation in relation to the entirety of Article 6 on extradition in the Vienna Convention. It has not ratified the Palermo and UNCAC conventions. It has acceded to the CTF Convention but has not criminalised terrorist financing in accordance with Article 2.

874. As previously noted, Vietnam has stated that it has signed agreements on mutual legal assistance with fourteen foreign countries. Twelve of these agreements have provisions that stipulate extradition (the two that do not are the agreements with China and France).

875. Vietnam also stated that the agreements usually stipulate that member countries shall extradite a person present in the territory of a member country for criminal prosecution or judgment enforcement. The general condition stipulated in the Conventions is that extradition for criminal prosecution shall be implemented only in cases of a crime where a penalty of imprisonment of one year or longer may be handed down and further that extradition shall be based on principals of dual criminality.

876. All of the agreements stipulate that requests for extradition could be refused if: (1) the person sought for extradition is a citizen of the country that is subject to the request; (2) the person cannot be prosecuted for criminal liability or the person would not need to serve the sentence due to the lapse of time or other legal reasons; and (3) The person has been convicted by a court of the requested country with an enforceable judgment for the offence for which extradition is requested or if the case is suspended as provided for in the Penal Code.

877. The agreements also stipulate that in cases of refusal, the requested country shall have responsibility to notify the requesting country of its refusal and the reasons for refusal.

878. The agreements on Mutual Legal Assistance usually have stipulations on the contents of documents to be used in requests for extradition.

879. Vietnam signed a separate agreement with South Korea on 15 September 2003. This agreement stipulates the responsibilities for extradition, crimes that allow for extradition, compulsory refusal for extradition, right to self decide on refusal for extradition, postponement of extradition, procedures, documents required for extradition, information supplementation, emergency seizure, simple extradition, cases of more than one request for extradition for one person, transfer of extradited person, counter extradition, transfer of assets, announcing extradition result, transit and expense.

### *Dual Criminality and Mutual Assistance*

880. The following two laws contain relevant provisions for extradition in respect of dual criminality requirements:

#### *Criminal Procedure Code:- Article 334 – Refusal of extradition*

1. *The Vietnamese authorized bodies in criminal proceedings shall refuse extradition under one of the following circumstances:*

*The persons requested to be extradited are citizens of the Socialist Republic of Vietnam;*

*Under the domestic laws of the Socialist Republic of Vietnam, the sought person cannot be prosecuted for criminal liability or the sought person does not need to serve the sentence due to the lapse of time or other legal reasons;*

#### *Law of Mutual Legal Assistance:- Article 33 on Extraditable offences:*

1. *Extraditable offences are offences punishable under the criminal laws of both Vietnam and the requesting state in force at the time of extradition by imprisonment for a period of at least one year, for life imprisonment, or for death or has been sentenced by the court of the requesting state to imprisonment and the remaining term of imprisonment to be served is at least six months.*
2. *It shall not matter whether the laws of both Vietnam and the requesting state place the conduct referred to in paragraph 1 of this Article within the same category of offence or denominate the offence by the same terminology;*

#### *Law of Mutual Legal Assistance: Article 35 – Refusal of Extradition:*

1. *The agencies conducting criminal proceedings of Vietnam may refuse to grant extradition in any of the following circumstances:*
  - a) *The conduct committed by the person whose extradition is requested does not constitute an offence under the Penal Code of Vietnam:*

881. Article 33 on extradition in the MLA would imply that Vietnam does not take a restrictive approach when considering how the requesting country categorizes or names the relevant offence.

### *Money Laundering as Extraditable Offence*

882. A person can apparently be extradited for a conduct that is criminalized by Articles 250 and 251 of the Penal Code, which have been discussed above. However, as noted in Section 2.1 of this report, there are significant deficiencies in both Articles.

### *Extradition of Nationals*

883. Vietnam will not extradite a Vietnamese citizen. This is stated clearly in Article 35 (1) (a) of the Law on Mutual Legal Assistance which states that, “*Vietnam shall not grant extradition...The person whose extradition is requested is a Vietnamese citizen*”.

### *Cooperation for Prosecution of Nationals*

884. There is also no specific procedure or requirement for its diplomatic missions upon receipt and refusal of an extradition request solely on the grounds of Vietnamese nationality to refer the matter to MPS for investigation and prosecution in Vietnam.

885. Article 29 of the Law on Mutual Legal Assistance allows Vietnam to consider requests to prosecute a Vietnamese citizen for offences committed in a foreign country. Vietnam has not provided any statistics on whether it has been requested to prosecute its own citizens in lieu of extradition.

886. The Criminal Procedure Code does not prescribe evidentiary tests for extradition.

### *Efficiency of Extradition Process*

887. Vietnam has provided an example of the timing of its provision of legal assistance in respect to the extradition of a Jang Bung Jo, a Korean citizen. The request for extradition was received on 20 March 2007 and completed on 20 April 2007. No other information was provided with respect to this case and no other examples or material was provided.

### *Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition*

888. Vietnam did not provide any information or material about the existence of simplified procedures relating to extradition. However, Vietnam’s mutual legal assistance treaty with South Korea may contain a simplified procedure for extradition.

## **SR V**

889. Vietnam has not criminalized the financing of terrorism, terrorist acts or terrorist organizations and therefore it is unlikely a person could be extradited for terrorist financing.

### Statistics

890. Only one case involving a Korean national was provided. It is not clear whether this related to money laundering or due to the lack of detail. No other statistics were provided.

891. Another APG member advised that in response to a formal extradition request, Vietnam elected to exercise its sovereign right to deport the person rather than to extradite the person.

#### 6.4.2 Recommendations and Comments

892. The inability of Vietnam to extradite its own nationals and a lack of procedures to prosecute within Vietnam in lieu of extradition is an ~~serious~~ impediment to effective implementation of Recommendation 39. Its reservation to Article 6 of the Vienna Convention is also a serious concern, particularly given that drug trafficking is the second largest source of illicit proceeds in Vietnam, and a major element of international money laundering.

893. The following are recommended to enhance compliance and effective implementation of the international standards:

- Vietnam should consider establishing procedures whereby it would be able to respond to an extradition request of its own nationals by submitting the case without undue delay to the MPS for the purposes of prosecution within Vietnam of the offence set forth in the request.
- Vietnam should consider whether to seek to establish standardized procedures for the extradition of persons residing in its jurisdiction.
- Vietnam should pass laws that make the financing of terrorism an extraditable offence.

#### 6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
<b>R.37</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Dual criminality is required.</li><li>• Vietnam will not extradite its own citizens.</li></ul>
<b>R.39</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Vietnam does not extradite its own citizens.</li><li>• Vietnam does have any standard procedures for cooperation with foreign authorities for the extradition of persons in Vietnam.</li><li>• No detailed statistics to demonstrate effective implementation of bilateral extradition agreements.</li></ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• Vietnam has not criminalized money laundering and accordingly could not extradite a person for the financing of terrorism.</li></ul>

#### 6.5. Other Forms of International Co-Operation (R.40 & SR.V)

##### 6.5.1. Description and Analysis

894. Article 20 of AML Decree 74 includes provisions for international cooperation. It assigns the SBV and the MPS as the two state government agencies to enter into international agreements. Article 21, which deals with the types and forms of international cooperation, allows for cooperation and exchange of information and experiences relating to the prevention and combating of money laundering. However, it is unclear what assistance can be provided.

895. In addition to the treaties and agreements entered into by Vietnam for Mutual Legal Assistance, Vietnam has a number of other bilateral and multilateral gateways for international cooperation. However, Vietnam does not appear to allow for the exchange of information between non-counterparties. Article 19 of the Law of Mutual Legal Assistance requires that a request for assistance contains the name of the agency making the request and the purpose of the request.

896. **Law Enforcement:** On 16 November 2006, the MPS and the US Drug Enforcement Administration (DEA) signed a Memorandum of Understanding (MOU) on combating transnational drug-related crime. The MOU is intended to improve information sharing and coordinated operations between DEA and MPS, as well as strengthen and consolidate existing cooperative efforts to combat the transnational drug trafficking and money laundering organizations that threaten both Vietnam and the United States.

897. According to the U.S. State Department Report, Foreign law enforcement representatives in Vietnam acknowledge that real operational cooperation on counternarcotics cases is minimal due to legal prohibitions and policy restrictions that preclude Vietnam's drug enforcement authorities from sharing information and supporting bilateral investigations with foreign police agencies. Without changes in Vietnamese law to allow the establishment of a legal and procedural basis for Vietnam's cooperation with foreign law enforcement agencies, operational "cooperation" will remain limited and largely determined on a case-by-case basis.

898. The MPS also has signed several agreements regarding Anti-Terrorism with other foreign counterparts including with Australia, Philippines, Malaysia, Indonesia, Laos, Singapore, Thailand, and U.S.A.

899. **Anti-Corruption:** The Government Inspectorate responsible for implementation on the law on corruption is a member of the ASEAN Agreement on corruption. It has sought information from the Indonesian and Singaporean anti-corruption agencies under this ASEAN framework.

900. **Financial Supervisory:** In 2007, the SBV has signed memoranda of understanding/letters of exchange, provided information for enhancing management, ensuring system security with banks of Taiwan, Russia, South Korea, Australia, UK, Malaysia, Singapore, China, Hong Kong; and continued to negotiate for signing letters of exchange with Japan, USA, France, the Netherlands, Thailand, Laos, Germany, Belgium, Switzerland, Austria, India and Canada.

901. The SBV also recently signed an MOU with the National Bank of Cambodia, as the latter has just approved two Vietnamese banks to open branches in Cambodia. It also has an MOU with the Bank of Lao, where Vietnam has a joint venture bank.

902. The SBV's strategy is to continue to push for bilateral cooperation with the central banks and the financial surveillance units of other countries through the signing of agreements, memoranda, and letters of exchange of information on banking supervision.

903. The State Securities Commission ("SSC") has signed Memorandums of Understanding ("MOU") with the following foreign regulators:

- a) Korea Financial Supervising Commission;

- b) China Securities Regulatory Commission;
- c) Malaysia Securities Commission;
- d) Monetary Authority of Singapore;
- e) Thailand's Security and Exchange Commission;
- f) Securities and Exchange Board of India;
- g) UAE's Securities and Commodities Commission;
- h) Financial Services Authority

904. The Ministry of Finance has also signed memoranda for international cooperation on insurance matters. For example it signed an MOU with the Association of Insurance Commissioners (NAIC), which represents the chief insurance regulatory officers in fifty states in the U.S. to provide for mutual assistance and the exchange of information for the purpose of facilitating the performance of insurance regulatory functions in both jurisdictions.

905. No information was provided by the Government about whether any of these MOUs have provisions addressing money laundering or terrorist financing.

#### **6.5.2 Recommendations and Comments**

906. The following are recommended to enhance compliance and effective implementation of the international standards:

- Vietnam should continue to develop relationships with foreign jurisdictions for the purpose of allowing the free exchange of information in respect of money laundering and the financing of terrorism.
- Vietnam should consider allowing AMLIC to communicate directly with foreign FIUs and obtain information based on requests for foreign FIUs.
- Vietnam should work towards developing standard procedures for the providing of legal assistance that will allow for assistance to be provided promptly in urgent cases and allow for foreign agencies to contact their counterparts and non-counterparts in Vietnam directly.

#### **6.5.3. Compliance with Recommendation 40 and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors relative to s.6.5 underlying overall rating</b>
<b>R.40</b>	<b>PC</b>	AMLIC cannot directly exchange information with FIUs. Vietnam has not established a standard procedure for exchanging information.
<b>SR.V</b>	<b>NC</b>	Vietnam does not have laws allowing it to provide international assistance with respect to the financing of terrorism.



## 7. OTHER ISSUES

907. The establishment of a National Coordination Committee and the proactive involvement of all relevant competent authorities are essential requirements for the effective implementation of AML Decree 74. Furthermore, the scope and depth of AML Decree 74 needs to be extended to include coverage of TF preventative measures and the detailed anti money laundering requirements outlined in the FATF standards.

908. Vietnam needs to assign additional resources to AML/CFT efforts in the country. While AMLIC is the lead agency, it cannot accomplish these targets without additional staffing resources, not just within AMLIC and the SBV, but in other competent authorities. Furthermore, continued capacity building is required for existing and new staff working on AML/CFT matters.

### 7.1. Resources and Statistics

	Rating	Summary of factors underlying rating
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• AMLIC lacks sufficient human and technological resources to carry its functions</li><li>• Lack of trained staff in financial investigations</li><li>• Lack of dedicated resources for TF.</li><li>• Knowledge of money laundering and terrorism financing threats and vulnerabilities in Customs is limited, and dedicated staffing resources is ad hoc.</li><li>• No allocation of dedicated resources for AML/CFT supervision.</li></ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Lack of detailed and disaggregated statistics</li></ul>

### 7.2. Other relevant AML/CFT Measures or Issues

#### Technical Assistance

909. Generally, the assessment team observed an incomplete understanding of the core AML principles and considers that Vietnam would benefit from specific technical assistance. Vietnam should seek technical assistance from the various donor agencies that are willing to provide support in order to quickly grow their expertise and confidence in AML/CFT measures.

910. Vietnam should consider allowing any technical advisor(s) based in this jurisdiction to be placed within the SBV premises which would allow easier access and discussion with SBV personnel and also allow mutual confidence to be achieved in a shorter period of time.

### 7.3. General Framework for AML/CFT System (see also section 1.1)

Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any

structural elements set out in section 1.1. Where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system, these should be brought forward in the relevant sections of the report and cross-referenced with this section.

**Table 1. Ratings of Compliance with FATF Recommendations**

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>4</sup></b>
<b>Legal systems</b>		
1. ML offense	<b>PC</b>	<ul style="list-style-type: none"> <li>• Vietnam does not have comprehensive anti-money laundering laws that criminalize money laundering according to all the requirements of the Vienna Convention and the Palermo Convention.</li> <li>• The definition of the word “property in the Penal Code is unclear and does not adopt the definition of property in Article 2(d) of the Palermo Convention.</li> <li>• Vietnam has not criminalized terrorist financing, piracy, insider dealing and market manipulation, the participation in an organized criminal group and racketeering which are required to be predicate offences under the FATF “Designated categories of offences”.</li> </ul>
2. ML offense—mental element and corporate liability	<b>PC</b>	<ul style="list-style-type: none"> <li>• Legal persons are not subject to criminal liability under the Penal Code.</li> </ul>
3. Confiscation and provisional measures	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is lack of specific provisions to allow the authorities to freeze, seize and take provisional measures.</li> <li>• There do not appear to be any specific laws allowing for the identifying and tracing of the proceeds of crime.</li> <li>• Vietnam has no penal laws allowing for the voiding of contracts designed to frustrate confiscation.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>LC</b>	<ul style="list-style-type: none"> <li>• No clear provisions for terrorist financing.</li> </ul>

<sup>4</sup> These factors are only required to be set out when the rating is less than Compliant.

5. Customer due diligence	NC	<ul style="list-style-type: none"> <li>• Lack of CDD implementation - Decree 74 has only been partially implemented within the credit institutions sector namely the banking sector.</li> <li>• Financial institutions are not explicitly prohibited by law from opening or maintaining anonymous accounts or accounts in obviously fictitious names.</li> <li>• Article 8(1) does not require financial institutions to conduct CDD in circumstances required by c5.2(b); 5.2(c) ; 5.2(e)</li> <li>• The applicable threshold requirement for savings account cash transactions exceeds the applicable FATF designated thresholds are above the FATF standards where CDD is required.</li> <li>• The designated threshold for occasional customers is above the FATF benchmark in relation to SRVII requirements.</li> <li>• There is no explicit requirement for financial institutions to verify a customer's identity to using reliable, independent source documents, data or information.</li> <li>• The requirements on identifying customers who are legal persons are not consistent with the standards.</li> <li>• The concept of beneficial owners is not understood in Vietnam and as such not reflected in any legislation.</li> <li>• No requirement for financial institutions to identify any person said to be acting on behalf of another person is so authorized.</li> <li>• No requirement to verify the identity of any person acting on behalf of another person.</li> <li>• No legislative or other enforceable means requiring financial institutions to conduct ongoing due diligence of a business relationship</li> <li>• No legislative or other enforceable means to require enhanced due diligence for higher risk categories of customer business relationship or transaction</li> <li>• No ongoing due diligence obligations within</li> </ul>
---------------------------	----	--

		<p>Vietnamese legislation</p> <ul style="list-style-type: none"> <li>• No specific requirement to ensure CDD is kept up to date.</li> <li>• No legislation requiring the termination of a business relationship where certain criteria have not been applied.</li> <li>• No specific legislative requirement for financial institutions to apply CDD requirements on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.</li> <li>• Sanctions of Decree 74 are not dissuasive, proportionate or effective.</li> <li>• No AML inspections conducted to gauge any effectiveness of implementation of Decree 74.</li> </ul>
6. Politically exposed persons	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no legislative obligations or other enforceable means covering any obligations in relation to PEPs.</li> </ul>
7. Correspondent banking	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no legislative obligations or other enforceable means for reporting entities to undertake enhanced CDD in relation to correspondent banking obligations or relationships.</li> </ul>
8. New technologies & non face-to-face business	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no specific legislation or guidance in relation to the misuse of technological developments for money laundering or terrorist financing, or addressing any specific risks associated with non face-to-face transactions.</li> </ul>
9. Third parties and introducers	<b>NA</b>	
10. Record-keeping	<b>PC</b>	<ul style="list-style-type: none"> <li>• AML Decree 74 has not been implemented outside of credit institutions.</li> <li>• Requirements covering the retention of transaction records are not comprehensive.</li> <li>• No requirement to retain business correspondence or account files.</li> <li>• No timeframe articulated to produce records.</li> </ul>

11. Unusual transactions	<b>PC</b>	<ul style="list-style-type: none"> <li>• AML Decree 74 has only been implemented in the banking sector.</li> <li>• No specific requirement to retain the details of any investigation and analysis of any unusual or large transactions.</li> </ul>
12. DNFBP–R.5, 6, 8–11	<b>NC</b>	<ul style="list-style-type: none"> <li>• No implementation - Responsible Ministries, Ministerial level agencies and government agencies defined under Article 17 of AML Decree 74 have not progressed AML responsibilities in their responsible sectors.</li> <li>• AML Decree 74 does not fully meet all necessary coverage and limits imposed by recommendation 12.</li> </ul>
13. Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• The AML decree has not been supplemented by comprehensive sectoral guidelines that would help reporting entities identify possible red flags and suspicious transactions, or other forms of illegal activities or fraud schemes.</li> <li>• No explicit provision in the AML Decree to report attempted transactions.</li> <li>• Lack of effective implementation as total STR figure is very low.</li> <li>• STR obligation not yet implemented in other financial sectors.</li> </ul>
14. Protection & no tipping-off	<b>PC</b>	<ul style="list-style-type: none"> <li>• AML Decree does not contain explicit provision that no administrative, criminal or civil proceedings shall lie against any individual or organization that makes a cash or suspicious transaction report in good faith or in regular performance of duties.</li> <li>• Inadequate guidance on tipping-off provision.</li> <li>• Potential inadvertent tipping off because of requirement in AML Decree 74 to suspend transactions if linked to known criminal list.</li> </ul>
15. Internal controls, compliance & audit	<b>NC</b>	<ul style="list-style-type: none"> <li>• Obligation limited to credit institutions.</li> <li>• No comprehensive internal control and audit procedures developed by domestic financial</li> </ul>

		<p>institutions relating to AML.</p> <ul style="list-style-type: none"> <li>• Internal and external audit programs of financial and non-financial institutions do not yet include audit test to determine compliance with existing AML laws/regulations.</li> <li>• Ongoing employee training programs for credit institutions limited only to basic AML training and only limited number of staff have been trained.</li> </ul>
16. DNFBP-R.13-15 & 21	<b>NC</b>	<ul style="list-style-type: none"> <li>• The categories of DNFBPs required under Decree 74 to report suspicious transactions are not fully consistent with the standards (c16.1).</li> <li>• No Implementation.</li> <li>• No terrorist financing requirements.</li> </ul>
17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of a graded sanctions framework that outlines the specific sanctions to be imposed for non-compliance with AML/CFT requirements.</li> <li>• Lack of proportionate and dissuasive monetary sanctions.</li> <li>• No implementation of available sanctions for AML violations.</li> </ul>
18. Shell banks	<b>PC</b>	<ul style="list-style-type: none"> <li>• No legislative requirement restricting financial institutions from entering into or continue correspondent banking relationships with Shell banks.</li> <li>• No legislative requirement requiring financial institutions to satisfy themselves that their respondent banks are not dealing with Shell Banks.</li> </ul>
19. Other forms of reporting	<b>C</b>	<ul style="list-style-type: none"> <li>• The Recommendation is fully-observed.</li> </ul>
20. Other DNFBP & secure transaction techniques	<b>LC</b>	<ul style="list-style-type: none"> <li>• Reliance on cash and gold as means of settlement.</li> </ul>
21. Special attention for higher risk countries	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has no system or guidance in place to alert any sector in relation to countries or territories that do not adequately apply the FATF standards.</li> <li>• Vietnam has no legislative requirement to apply counter measures where the FATF standards are not considered to be adequate.</li> </ul>

22. Foreign branches & subsidiaries	<b>N/A</b>	
23. Regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of beneficial ownership requirements.</li> <li>• No AML/CFT onsite examinations have ever been conducted by state competent authorities such as the State Bank of Vietnam, State Securities Commission (SSC) and Ministry of Finance (MoF).</li> </ul>
24. DNFBP—regulation, supervision and monitoring	<b>NC</b>	<ul style="list-style-type: none"> <li>• No implementation of AML/CFT requirements</li> <li>• Vietnam lacks an effective regulatory and supervisory framework for monitoring and ensuring DNFBPs compliance with their AML obligations</li> </ul>
25. Guidelines & Feedback	<b>NC</b>	<ul style="list-style-type: none"> <li>• Lack of any feedback to reporting entities related to STRs, CTRs and other related statistical information.</li> <li>• Lack of detailed and comprehensive guidelines related to STR, currency transaction reporting and other AML compliance issues.</li> <li>• Lack of any updated documentation apart from an initial guideline.</li> <li>• No written or detailed feedback provided.</li> <li>• No implementation of AML/CFT requirements</li> <li>• No guidelines have been developed for DNFBPs to assist them in complying with the AML decree</li> </ul>
<b>Institutional and other measures</b>		<ul style="list-style-type: none"> <li>•</li> </ul>
26. The FIU	<b>PC</b>	<ul style="list-style-type: none"> <li>• No guidance provided to other STR reporting entities mentioned in AML Decree 74 apart from credit institutions.</li> <li>• AMLIC lacks sufficient operational independence.</li> <li>• No reports have been published yet.</li> <li>• AMLIC lacks sufficient human and technological resources to carry its functions.</li> <li>• Lack of effective implementation</li> </ul>
27. Law enforcement authorities	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no specific provision allowing competent authorities to postpone or waive</li> </ul>



		<p>action in respect of terrorism financing.</p> <ul style="list-style-type: none"> <li>• The effectiveness of ML/TF investigation is impeded by the lack of specialized financial investigators in dedicated units.</li> <li>• No dedicated team on terrorism financing.</li> <li>• Lack of statistics to demonstrate that measures are effectively implemented.</li> <li>• Legal measures appear fairly comprehensive but there is little evidence as to how these measures work in practice.</li> </ul>
28. Powers of competent authorities	<b>LC</b>	<ul style="list-style-type: none"> <li>• Lack of statistics to demonstrate use of available powers.</li> <li>• Powers limited in respect of terrorist financing.</li> </ul>
29. Supervisors	<b>PC</b>	<ul style="list-style-type: none"> <li>• No application of available inspection powers and no implementation of obligations under AML Decree 74.</li> </ul>
30. Resources, integrity, and training	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of trained staff in financial investigations</li> <li>• Lack of dedicated resources for TF.</li> <li>• Knowledge of money laundering and terrorism financing threats and vulnerabilities in Customs is limited, and dedicated staffing resources is ad hoc.</li> <li>• No allocation of dedicated resources for AML/CFT supervision.</li> </ul>
31. National co-operation	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of National Coordination Committee to address policy and operational AML/CFT concerns.</li> </ul>
32. Statistics	<b>PC</b>	<ul style="list-style-type: none"> <li>• Information on the number of prudential inspections conducted on credit/banks, securities and insurance sectors not readily available.</li> <li>• Lack of detailed and disaggregated statistics</li> </ul>
33. Legal persons–beneficial owners	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no requirement to disclose beneficial ownership information during the registration and licensing stage.</li> <li>• There is no central Companies Registry.</li> <li>• There are no specific laws allowing authorities to obtain information about beneficial owners.</li> </ul>
34. Legal arrangements – beneficial owners	<b>NC</b>	<ul style="list-style-type: none"> <li>• No specific laws preventing or regulating the operations of foreign trusts.</li> </ul>
<b>International Cooperation</b>		

35. Conventions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Has not ratified or acceded to the Palermo convention.</li> <li>• Inadequate implementation.</li> </ul>
36. Mutual legal assistance (MLA)	<b>PC</b>	<ul style="list-style-type: none"> <li>• The Law of Mutual Legal Assistance does not specifically allow for the freezing, seizing and confiscating of the proceeds of crime.</li> <li>• The recent adoption of the Law on Mutual Legal Assistance makes it difficult to assess its effectiveness.</li> <li>• It is difficult for Vietnam to provide mutual legal assistance for freezing orders due to a lack of freezing provisions and mechanisms.</li> <li>• Mandatory requirements as to dual criminality and sufficient importance present potential impediments.</li> </ul>
37. Dual criminality	<b>PC</b>	<ul style="list-style-type: none"> <li>• The requirement for dual criminality in respect of all types of mutual legal assistance is restrictive.</li> <li>• Dual criminality is required.</li> <li>• Vietnam will not extradite its own citizens.</li> </ul>
38. MLA on confiscation and freezing	<b>PC</b>	<ul style="list-style-type: none"> <li>• The Law of Mutual Legal Assistance does not have any provisions for providing effective and timely assistance for identifying, freezing, seizing and confiscation of the proceeds of crime.</li> </ul>
39. Extradition	<b>PC</b>	<ul style="list-style-type: none"> <li>• Vietnam does not extradite its own citizens.</li> <li>• Vietnam does have any standard procedures for cooperation with foreign authorities for the extradition of persons in Vietnam.</li> <li>• No detailed statistics to demonstrate effective implementation of bilateral extradition agreements.</li> </ul>
40. Other forms of co-operation	<b>PC</b>	<ul style="list-style-type: none"> <li>• AMLIC cannot directly exchange information with FIUs.</li> <li>• Vietnam has not established a standard procedure for exchanging information.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>NC</b>	<ul style="list-style-type: none"> <li>• Vietnam has failed to pass laws to implement special Resolution 1267 and 1373.</li> <li>• Vietnam has failed to take any steps to implement</li> </ul>

		the CFT Convention.
SR.II	Criminalize terrorist financing	<b>NC</b> <ul style="list-style-type: none"> <li>• Terrorist financing has not been criminalized in a manner that is consistent with Article 2 of the Terrorist Financing Convention.</li> </ul>
SR.III	Freeze and confiscate terrorist assets	<b>NC</b> <ul style="list-style-type: none"> <li>• Vietnam has no specific law to freeze and confiscate terrorist assets in accordance with UNSCRs.</li> <li>• Vietnam has not properly implemented UN Special Resolution 1267 and UN Special Resolution 1373.</li> </ul>
SR.IV	Suspicious transaction reporting	<b>NC</b> <ul style="list-style-type: none"> <li>• Terrorist financing not explicitly considered a criminal offense under the Penal Code of Vietnam; hence, reporting requirement for STR not a legal obligation.</li> <li>• No explicit provision in the AML Decree to report a STR on any attempted transaction relating to terrorist financing.</li> </ul>
SR.V	International cooperation	<b>NC</b> <ul style="list-style-type: none"> <li>• Vietnam has failed to take any steps to satisfy this recommendation.</li> <li>• Vietnam has not criminalized money laundering and accordingly could not extradite a person for the financing of terrorism.</li> <li>• Vietnam does not have laws allowing it to provide international assistance with respect to the financing of terrorism.</li> </ul>
SR.VI	AML/CFT requirements for money/value transfer services	<b>NC</b> <ul style="list-style-type: none"> <li>• No regulation of informal MVT service providers.</li> <li>• Lack of supervision and oversight of formal remittance providers.</li> </ul>
SR.VII	Wire transfer rules	<b>NC</b> <ul style="list-style-type: none"> <li>• No specific requirement to ensure complete originator information is included in outgoing wire transfers.</li> <li>• There is no requirement for the originator's account number or unique reference number if no account number exists to be included in an outgoing payment instruction.</li> <li>• Identification requirements for the occasional customer are above the de minimus thresholds,</li> </ul>

		<p>and are only applied to cash related threshold reporting transactions.</p> <ul style="list-style-type: none"> <li>• No legislative requirement or other enforceable means that require full originator information to accompany or be made available within the required timeframe for domestic transfers.</li> <li>• No specific requirements for financial institutions in the payment chain to ensure that all originator information accompanies a wire transfer.</li> <li>• No obligation for the beneficiary financial institution to assess incoming wire transfers that are missing complete originator information for any AML/CTF risk exposure. (Currently there is no CTF legislation).</li> <li>• There are no measures in place to effectively monitor the compliance of financial institutions with rules and regulations implementing SRVII.</li> <li>• The lack of legislation or other enforceable means does not allow any monitoring of compliance or appropriate sanctions to be applied against the various obligations under SRVII.</li> </ul>
SR.VIII Nonprofit organizations	<b>PC</b>	<ul style="list-style-type: none"> <li>• Incomplete sector review</li> <li>• Lack of proper oversight and supervision</li> <li>• Lack of NPO transparency requirements</li> <li>• No systematic outreach programs</li> <li>• No formal channel for international cooperation</li> </ul>
SR.IX Cash Border Declaration & Disclosure	<b>PC</b>	<ul style="list-style-type: none"> <li>• Declaration system does not cover bearer negotiable instruments.</li> <li>• Powers to stop or restrain currency and bearer negotiable instruments are not clearly articulated in law.</li> <li>• Sanctions are not effective, proportionate and dissuasive and are not clearly specified in law in relation to ML/TF.</li> <li>• Customs does not have methods in place for analysing or identifying their collected cross-border information in terms of suspicious cases related to ML/TF in order to notify AMLIC.</li> </ul>

		<ul style="list-style-type: none"> <li>• The authorities cannot demonstrate that there is an effective system in place due to a lack of statistics provided.</li> <li>• Effectiveness impeded by lack of ML/TF dedicated or specialized staff and comprehensive statistics.</li> </ul>
--	--	--

**Table 2. Recommended Action Plan to Improve the AML/CFT System**

<b>FATF 40+9 Recommendations</b>	<b>Recommended Action (in order of priority within each section)</b>
<b>1. General</b>	
<b>2. Legal System and Related Institutional Measures</b>	
Criminalization of Money Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> <li>• Vietnam needs to enact comprehensive anti-money laundering laws that criminalize money laundering according to the requirements of the Vienna Convention and the Palermo Convention.</li> <li>• Vietnam should amend the definition of property in the Penal Code so that it conforms to the definition of property in Article 2(d) of the Palermo Convention.</li> <li>• Vietnam should seek to criminalize all of the offences contained in the definition of “Designated categories of offences”.</li> <li>• Vietnam should consider making legal persons subject to the Penal Code.</li> </ul>
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> <li>• Vietnam should criminalize the financing of terrorism according to the Article 2 of the CFT Convention.</li> <li>• Terrorist financing should be a predicate offence.</li> <li>• Terrorist financing offences should apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from where the terrorist/terrorist organization is located or the terrorist act occurred or will occur.</li> <li>• Criminal liability should extend to legal persons, but making legal persons subject to criminal liability should not preclude the possibility of parallel criminal, civil or administrative proceedings in countries where more than one form of liability is available.</li> <li>• Natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil and administrative sanctions for terrorist financing.</li> <li>• Vietnam should enter into all of the Conventions and Protocols listed in the Annex to the Terrorist Financing Convention.</li> </ul>
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> <li>• Improve its existing laws to specifically provide for the freezing, seizing and confiscation of the proceeds of crime.</li> <li>• Expand the investigation powers of the relevant authorities, and improve co-ordination among them, to specifically provide for</li> </ul>

	<p>identifying and tracing the proceeds of crime.</p> <ul style="list-style-type: none"> <li>• Make specific provision in its laws for provisional measures to be done on an ex parte basis.</li> <li>• Have formal laws and procedures enacted to protect innocent third parties, whose property has been frozen or seized.</li> <li>• Enact laws allowing for confiscation to include instrumentalities intended for the use of money laundering and terrorist financing offences and property of corresponding value.</li> <li>• Enact laws allowing for the voiding of actions, contractual or otherwise, that are being done to frustrate the confiscation of property.</li> </ul>
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> <li>• In the light of its accession to CFT Convention, immediately enact laws with provisions allowing for the freezing and confiscation of terrorist assets, including provisional measures, and set up effective procedures to implement these laws as part of the overall requirement to criminalize the financing of terrorism; and</li> <li>• Implement UN Special Resolutions 1267 and 1373 by enacting the appropriate laws.</li> <li>• Once implemented, Vietnam should provide clear guidance to financial instruments and other persons and entities that may hold targeting fund or other assets.</li> </ul>
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> <li>• Develop a strategic implementation plan for AMLIC, setting out future goals and objectives and resource requirements, regardless of whether it remains a unit or expands into a department within the SBV.</li> <li>• Enhance the operational independence of AMLIC within the SBV.</li> <li>• Install an IT system as soon as possible to collect CTRs and other information including cross border information to enhance the analysis process and ensure that timely statistics can be collated. This IT system could commence with AMLIC using its existing information holdings i.e. a basic integrated database using STRs, CTRs, cross-border information and criminal and terrorist lists.</li> <li>• Work closely with the compliance officers of credit institutions in order to provide them with further guidance to enhance both the</li> </ul>

	<p>volume and quality of STRs.</p> <ul style="list-style-type: none"> <li>• Provide STR reporting guidelines to other (non-bank) reporting entities stipulated in AML Decree 74.</li> <li>• Increase awareness amongst MPS and other investigating agency staff regarding the value of financial transactions information.</li> <li>• Provide more training to the personnel of AMLIC, MPS and credit institutions to enable them to conduct their duties properly.</li> </ul>
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> <li>• Provide additional resources to money laundering and terrorist financing investigations in parallel with underlying predicate offense investigations.</li> <li>• Amend the relevant laws to explicitly allow competent authorities to: postpone or waive arrest of suspected persons and the seizure of money for the purpose of identification and evidence gathering in respect of terrorism financing; and the use of special investigation techniques e.g. controlled delivery or technical or interception device for surveillance.</li> <li>• AMLIC, the MPS and other investigating bodies should work collaboratively to develop money laundering typologies, and to improve methods for sharing trends and typologies amongst other relevant agencies.</li> <li>• Maintain up-to-date, consolidated and disaggregated statistics regarding money laundering, terrorist financing, predicate offence investigations and the seizure and confiscation of assets.</li> <li>• Increase awareness of money laundering and terrorism financing threats and vulnerabilities for staff in investigative bodies, and the SPP and AMLIC.</li> <li>• Enhance the investigative bodies' capacity in financial investigation techniques.</li> <li>• Provide more specific training to prosecutors and judges across the country on AML/CFT and related financial crimes.</li> </ul>
<b>3. Preventive Measures–Financial Institutions</b>	
Risk of money laundering or terrorist financing	
Customer due diligence, including	<ul style="list-style-type: none"> <li>• SBV should produce a one, three and five year strategic plan</li> </ul>



<p>enhanced or reduced measures (R.5–8)</p>	<p>detailing their road to full implementation of AML Decree 74, as amended, in all sectors, staggering the implementation across the affected sectors to allow for achievable implementation of the Decree’s objectives. The prime emphasis should be the core FATF recommendations and higher risk areas.</p> <ul style="list-style-type: none"> <li>• Vietnam should concentrate on using the banking institutions sector as a “model” sub sector, to allow SBV to develop adequate supervision skills that can then easily be transferred to other sectors covered by AML Decree 74.</li> <li>• SBV should consider engaging with the peak industry bodies such as the Bankers Association to provide more education to their regulated entities on a regular basis, in relation to the new concepts introduced in AML Decree 74. Additionally, this strategy could be used for any other FATF requirements that have not been addressed in current legislation, but that should be implemented in any revised AML/CFT amendments.</li> <li>• SBV should encourage the Vietnam Bankers Association and International Bankers Working Group in Vietnam to form a joint AML body that could engage with the SBV in expanding the AML/CFT regime in Vietnam, specifically the understanding of the core concepts and processes involved in such a regime. This initiative could involve seeking assistance from the various major international banks located in Vietnam, and drawing on that to provide global expertise to develop key training modules and concepts of an effective AML program.</li> <li>• Vietnam should produce tailored, detailed and enforceable guidelines for each sector, as it implements AML Decree 74 obligations in each sector, rather than rely on the one generic and high level guideline.</li> <li>• Vietnam should amend AML Decree 74 or pass specific legislation to: <ul style="list-style-type: none"> <li>• prohibit the existence (opening or maintenance) of numbered or anonymous accounts ;</li> <li>• impose the applicable designated thresholds where CDD is required;</li> <li>• expand the identification documentation requirements for a natural person beyond the identity card;</li> <li>• extend identification requirements to cover any safe custody or deposit boxes given this product’s pending introduction to the Vietnam market;</li> </ul> </li> </ul>
---	--

	<ul style="list-style-type: none"> <li>• introduce a requirement to verify customers identity using reliable, independent source documents (whether permanent or occasional);</li> <li>• include expanded guidance covering how financial institutions should identify the veracity or adequacy of any previously obtained customer identification;</li> <li>• include a requirement to identify the beneficial owner or operating mind of a legal person or arrangement;</li> <li>• introduce on-going due diligence requirements;</li> <li>• introduce risk based CDD measures including enhanced due diligence for higher risk customers and the capacity to apply reduced CDD for lower risk customers;</li> <li>• specify the timing for verification of customers;</li> <li>• introduce the requirement to terminate any account, already activated, where relevant CDD requirements are unable to be met; and</li> <li>• introduce CDD requirements for existing customers on the basis of materiality and risk.</li> </ul> <ul style="list-style-type: none"> <li>• SBV should consider expanding existing guidance in relation to the obligation of maintaining up to date CDD information, particularly in relation to the use of an identity card as a prime document where the prime document carries no obligation to maintain up to date information such as address.</li> <li>• Vietnam should introduce specific legislation requiring special attention to be provided to PEPs that address the individual components of FATF Recommendation 6.</li> <li>• Vietnam should consider incorporating their surveillance of persons holding prominent public functions in Vietnam (i.e. domestic PEPs) into their AML/CFT regime.</li> <li>• Vietnam should introduce legislation that addresses the following requirements of FATF Recommendation 7 on cross – border Correspondent Banking relationships <ul style="list-style-type: none"> <li>• requirement to obtain information on respondent institution (c. 7.1);</li> <li>• assessment of AML/CFT controls in respondent institution (c. 7.2);</li> <li>• approval of establishing correspondent relationships (c. 7.3);</li> <li>• documentation of AML/CFT responsibilities for each</li> </ul> </li> </ul>
--	--

	<p>institution (c. 7.4);</p> <ul style="list-style-type: none"> <li>• payable-through accounts (c. 7.5).</li> </ul> <ul style="list-style-type: none"> <li>• Vietnam should introduce obligations that require financial institutions to have policies in place or to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.</li> <li>• Vietnam should also require its financial institutions to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and when conducting ongoing CDD.</li> <li>• Vietnam should carefully consider and address any AML/CFT risks arising from the introduction of internet banking and ATM proliferation, together with any other similar trends that emerge as Vietnam's financial system develops and matures.</li> <li>• Vietnam should consider the implications of mobile phone usage and any AML exposure this new technology may provide. A number of other South East Asian jurisdictions have witnessed the growth in this threat and Vietnam is encouraged to contact those jurisdictions to build their own knowledge of this new technological change.</li> </ul>
Third parties and introduced business (R.9)	
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• Ensure that there is no inhibition to financial institution information when any terrorist financing legislation is implemented; and</li> <li>• Consider stating specifically that there should be no barriers to the sharing of information in relation to R7, 9 and SRVII recommendations.</li> </ul>
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• Vietnam should expand record keeping obligations under AML Decree 74 to cover all requirements of FATF Recommendation 10, while taking into consideration any complementary legislation.</li> <li>• Vietnam should expand the coverage of Recommendation 10 to all institutions covered by the law.</li> </ul>

	<ul style="list-style-type: none"> <li>• Vietnam should issue specific legislation to address all aspects of the SRVII requirements.</li> <li>• Vietnam should consider the role of any interposing institution (the institution receiving the payment instruction from overseas) in the payment chain when preparing its legislation, as it will be that institution which will maintain any correspondent banking relationship with the sending institution.</li> <li>• Vietnam should consider amending AML Decree 74 to include a clear timeframe for reporting entities to provide information to competent authorities upon request.</li> </ul>
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> <li>• SBV should develop more comprehensive material to assist their supervisory constituency in understanding the new concepts in AML Decree 74 and how these concepts can be translated and integrated into existing processes and procedures.</li> <li>• Vietnam should amend AML Decree 74 to include a specific and stand alone requirement for designated entities to pay special attention or to monitor unusual large or complex transactions or series of such transactions, which have no apparent economic or visible lawful purpose. It is one concept that requires development in Vietnam together with special attention for those high risk countries.</li> <li>• Vietnam should introduce a legislative requirement to retain documentation relating to any investigation involving the analysis of any large or unusual transactions for a period of five years.</li> <li>• Vietnam should introduce specific legislations addressing all components of Recommendation 21.</li> </ul>
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	<p><b>Recommendation 13</b></p> <p>Vietnam authorities should strengthen the STR reporting regime by undertaking the following:</p> <ul style="list-style-type: none"> <li>• Amend AML Decree 74 or issue appropriate regulation to mandate STR reporting on any attempted transactions related to money laundering or other illegal or criminal activity.</li> <li>• Apply warnings and sanctions to reporting entities for non-compliance with STR reporting obligations.</li> <li>• Conduct comprehensive and rigorous outreach programs to increase the level of STR reporting initially among credit</li> </ul>

	<p>institutions, and then across all financial sectors.</p> <ul style="list-style-type: none"> <li>• Issue updated guidelines and typologies, and conduct ongoing workshops, to provide useful feedback to reporting entities both specifically and also on a generic level.</li> <li>• Issue STR reporting guidelines to other financial sectors beyond credit institutions.</li> <li>• Vietnam should consider allowing for the electronic submission of STRs to AMLIC using secure facsimile particularly for urgent STR reports, or providing a “hotline” in respect of urgent STR reports.</li> </ul> <p><b>Recommendation 14</b></p> <ul style="list-style-type: none"> <li>• Vietnam should consider amending AML Decree 74 to provide clear “safe harbour provisions” for those who report in good faith or in the regular performance of duties, or exonerating them from criminal or civil proceedings.</li> <li>• Include an explicit reference in AML Decree 74 requiring that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU.</li> <li>• Vietnam should consider amending AML Decree 74 to expand on the confidentiality requirements of reports received, including the manner in which such information is stored and maintained, and the parameters in which such information can be used by third parties.</li> <li>• As a deterrent factor, Vietnamese authorities should continue awareness raising to emphasize among reporting entities that appropriate penalties shall be applied for those who intentionally violate “breach of confidentiality” or the “tipping-off” provision under existing laws of Vietnam.</li> </ul> <p><b>Recommendation 19</b></p> <ul style="list-style-type: none"> <li>• Vietnam should hasten the development of an IT system relating to the electronic submission of CTRs to AMLIC and that such development be done in consultation with reporting entities to provide for a more complete and potentially “cleaner” delivery of this information.</li> </ul> <p><b>Recommendation 25</b></p> <ul style="list-style-type: none"> <li>• Pro-actively issue additional STR guidelines, such as the adoption of known international best practices (ex. Basel Paper, FATF and APG updates on ML typologies), as well as</li> </ul>
--	--

	<p>typologies from local cases as guidance in identifying suspicious transactions.</p> <ul style="list-style-type: none"> <li>• Issue periodic regulatory advisories to reporting entities relating to certain types of illegal activities or fraud schemes perpetrated abroad or in Vietnam so that appropriate STR may be submitted when any illegal transactions is uncovered.</li> <li>• AMLIC should provide periodic feedback to reporting entities related to STRs and CTRs, as well as other related statistical information.</li> </ul> <p><b>Special Recommendation IV</b></p> <ul style="list-style-type: none"> <li>• Subject to the criminalization of terrorist financing, Vietnam should amend AML Decree 74 or issue a regulation mandating STR reporting on terrorism financing.</li> </ul>
Cross Border Declaration or disclosure (SR IX)	<ul style="list-style-type: none"> <li>• Amend relevant laws and regulations to extend the declaration requirement to specifically include physical cross-border transportation of bearer negotiable instruments as defined by FATF and required under SRIX.</li> <li>• Review preventive measures at the airport by keeping all inbound and outbound passenger records from the arrival and departure card, as well as customs declaration information for both declared and non-declared persons, for a designated time to provide useful information to competent authorities, if needed, when conducting investigations.</li> <li>• Redesign the declaration form to include information on declaration obligations and penalties for false declaration and increase public awareness regarding these obligations and penalties.</li> <li>• Provide clearly in law, customs officers' authority to stop or restrain currency or bearer negotiable instruments where there is a suspicion of money laundering and terrorism financing.</li> <li>• Amend relevant legislations or regulations to allow for effective, proportionate and dissuasive sanctions for false declaration and for carrying out physical cross border transportation of currencies and bearer negotiable instruments that are related to money laundering and terrorism financing.</li> <li>• Provide AMLIC and other investigative authorities with the ability to access Customs information in a timely basis.</li> <li>• Ensure authorities accessing Customs information are subject to strict safeguards particularly in regards to any possible</li> </ul>

	<p>dissemination of Customs information to third parties.</p> <ul style="list-style-type: none"> <li>• Develop a system to maintain up to date consolidated and disaggregated statistics regarding ML/TF or Illegal cross-border transportation of goods and/or currencies.</li> <li>• Customs and other competent authorities such as border guard should receive more training on AML/CFT.</li> </ul>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p><b>Recommendation 15</b></p> <ul style="list-style-type: none"> <li>• Supervisory authorities should issue appropriate guidance to implement AML Decree 74 obligations in their financial sectors.</li> <li>• Supervisory authorities in Vietnam should consider developing a “model internal control and audit procedures operating manual”, that is comprehensive and detailed in scope, which can be used as a starting point by financial institutions to develop their own AML internal control and audit procedures manual or AML compliance manual.</li> <li>• Supervisory authorities should consider issuing a regulation mandating that internal and external audits should include periodic audit test and transaction sampling to determine compliance with existing AML Decree and regulations.</li> <li>• Vietnam authorities should ensure that financial institutions undertake an aggressive AML training program by requiring financial institutions to design an annual AML training program which shall be subject to monitoring by supervisory authorities, particularly during AML inspections.</li> </ul>
Shell banks (R.18)	<ul style="list-style-type: none"> <li>• Vietnam should consider introducing specific legislation prohibiting the establishment or continued operations of shell banks in Vietnam.</li> <li>• Vietnam should also consider introducing legislative requirements: <ul style="list-style-type: none"> <li>• Restricting financial institutions operation in Vietnam from entering into or continuing correspondent banking relationships with a Shell Bank; and</li> <li>• Requiring financial institutions operating in Vietnam to satisfy themselves that their respondent banks in a foreign country do not allow their accounts to be accessed by a Shell Bank.</li> </ul> </li> </ul>
The supervisory and oversight system—competent authorities and	<p><b>Recommendations 17 and 29</b></p> <ul style="list-style-type: none"> <li>• Amend AML Decree 74 to include dissuasive monetary</li> </ul>

<p>SROs</p> <p>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, &amp; 32)</p>	<p>sanctions for both natural and legal persons e.g. maximum monetary fine should be significantly increased.</p> <ul style="list-style-type: none"> <li>• Apply sanctions, using existing and proposed, against non-compliance with the requirements of AML Decree 74.</li> </ul> <p><b>Recommendations 23 and 30</b></p> <ul style="list-style-type: none"> <li>• Amend appropriate laws or issue regulations to specifically request information on the origin of the funds used to pay the capital of a bank/financial institution by controlling shareholders.</li> <li>• Introduce beneficial ownership disclosure requirements.</li> <li>• Supervisory authorities (SBV, SSC, MoF) should strengthen AML/CFT supervision by conducting AML on-site inspections to ensure that financial institutions are complying with AML requirements. AML inspections may be done simultaneously with periodic/prudential inspections although in the initial phase of building appropriate AML supervisory skills, consideration could be given to themed AML inspections. This approach would allow for greater coverage and focus on AML compliance.</li> <li>• Supervisory authorities should undertake extensive capacity-building for human and other technical resources to ensure that personnel charged with monitoring AML compliance are equipped with necessary technical skills and knowledge.</li> <li>• The number of Inspectorates within the SBV, SSC and MoF should be increased so that AML inspections may be undertaken and monitoring AML compliance be given utmost priority</li> </ul> <p><b>Recommendation 25</b></p> <ul style="list-style-type: none"> <li>• Supervisory authorities in Vietnam should pro-actively issue supplementary and detailed AML guidelines to fully assist the implementation of AML Decree 74.</li> <li>• Supervisory authorities should consider disseminating relevant information relating to ML and TF techniques or typologies to strengthen the AML/CFT regime in Vietnam</li> </ul> <p><b>Recommendation 32</b></p> <ul style="list-style-type: none"> <li>• Supervisory authorities should consider implementing a database system consolidating information related to prudential and AML</li> </ul>
--	---



	inspections, as well as related information on any sanctions and penalties imposed.
Money value transfer services (SR.VI)	<p>Vietnam should consider the following:</p> <ul style="list-style-type: none"> <li>• Perform a detailed assessment of the informal remittance system to identify the risks associated with this sector.</li> <li>• Undertake inspection of formal remittance providers.</li> <li>• Consider options for regulating and supervising the activities of the informal remittance sector.</li> <li>• Come up with procedure and mechanisms to impose sanctions on unlicensed remittance service providers.</li> </ul>
<b>4. Preventive Measures – Non-financial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>• Revise AML Decree 74 to include all categories of DNFBPs required under R12, including recommended limits for casino transactions and the inclusion of accountants and other company service providers as subject to the requirements of the Decree.</li> <li>• Revise the definition of Real Estate agents to be consistent with the FATF definition.</li> <li>• Prior to implementing the obligations in the DNFBP sector, Vietnam should concentrate its efforts in progressing implementation in the credit institutions sector so that it can be used as a bench mark example for other sectors.</li> </ul>
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>• Raising awareness of STR reporting obligations among DNFBPs and stagger the introduction of STR reporting, with an initial focus on higher risk DNFBPs such as casinos and gold dealers; and</li> <li>• Revising AML Decree 74 to include all categories of DNFBPs required under R16.</li> </ul>
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> <li>• Relevant DNFBP regulatory and supervisory agencies should commence working closely with AMLIC and the SBV to develop a strategy to amend AML Decree 74, as required, and for a staggered implementation of FATF obligations in the DNFBP sector based on a risk assessment with a focus on the</li> </ul>

	<p>gold and real estate sectors.</p> <ul style="list-style-type: none"> <li>Supervisors should issue AML/CFT guidance to give effect to AML Decree 74 obligations 9 (as amended) after priority sectors have been identified.</li> </ul>
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> <li>Vietnam should consider other measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML/TF, and the full implementation of the Law on Electronic Transactions may greatly help.</li> <li>Vietnam should undertake aggressive information dissemination campaigns to increase awareness on the benefits of the use of modern and secure techniques.</li> </ul>
<b>5. Legal Persons and Arrangements &amp; Non-profit Organizations</b>	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>Amend its laws to include the requirement to disclose beneficial ownership information upfront during the registration or licensing stage and to update such information when changes occur.</li> <li>Finalise the progress towards a central Companies Registry to make available to the public current information about the legal and beneficial owner of legal persons.</li> <li>Enact specific laws to allow the relevant legal authorities to obtain information about the beneficial owners of legal persons.</li> </ul>
Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> <li>Vietnam should consider examining the operations of foreign trusts in the country and enact appropriate laws or regulation.</li> </ul>
Non-profit organizations (SR.VIII)	<ul style="list-style-type: none"> <li>Complete its NPO Sector Review with a focus on developing a risk profile of the sector in terms of terrorist financing;</li> <li>Devise a comprehensive plan for the supervision of NPOs;</li> <li>Conduct regular reviews of the NPO sector to maintain compliance with the applicable laws and regulations;</li> <li>Provide outreach programs in relation to terrorist financing; and</li> <li>Centralize information on the activities of the NPO sector to facilitate access and sharing in ML/TF cases.</li> </ul>
<b>6. National and International</b>	

<b>Cooperation</b>	
National cooperation and coordination (R.31 & 32)	<ul style="list-style-type: none"> <li>• Vietnam should proceed to implement the Prime Ministerial directive to establish a Multi-Ministerial Directive Committee in AML/CFT as soon as possible, and ensure its terms of references address policy and operational implementation concerns.</li> </ul>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>• Ratify the Palermo Convention</li> <li>• Ratify the CFT Convention.</li> <li>• Enact laws to fully implement all of the relevant Articles of the three Conventions.</li> <li>• Enact laws to fully implement Special Resolutions 1267 and 1373.</li> <li>• Withdraw its reservation with respect to Art 6 of the Vienna convention.</li> </ul>
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<ul style="list-style-type: none"> <li>• Vietnam needs to amend the Law on Mutual Legal Assistance to allow it to provide legal assistance to foreign authorities for the identifying, freezing, seizing and confiscation of the proceeds of crime and assets that could be used to finance terrorism and money laundering.</li> <li>• Vietnam should develop procedures to allow it to coordinate the freezing and seizing of the proceeds of crime with foreign authorities.</li> <li>• Vietnam should consider setting up an Asset Forfeiture Fund and provide for civil forfeiture.</li> <li>• Vietnam should draft laws, as part of its overall obligation to criminalize the financing of terrorism that allow for providing legal assistance, including the freezing of assets, to freeze, seize and confiscate terrorist assets.</li> </ul>
Extradition (R. 39, 37, SR.V & R.32)	<ul style="list-style-type: none"> <li>• Vietnam should consider establishing procedures whereby it would be able to respond to an extradition request of its own nationals by submitting the case without undue delay to the MPS for the purposes of prosecution within Vietnam of the offence set forth in the request.</li> <li>• Vietnam should consider whether to seek to establish standardized procedures for the extradition of persons residing in its jurisdiction.</li> <li>• Vietnam should pass laws that make the financing of terrorism</li> </ul>

	an extraditable offence.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> <li>• Vietnam should continue to develop relationships with foreign jurisdictions for the purpose of allowing the free exchange of information in respect of money laundering and the financing of terrorism.</li> <li>• Vietnam should consider allowing AMLIC to communicate directly with foreign FIUs and obtain information based on requests for foreign FIUs.</li> <li>• Vietnam should work towards developing standard procedures for the providing of legal assistance that will allow for assistance to be provided promptly in urgent cases and allow for foreign agencies to contact their counterparts and non-counterparts in Vietnam directly.</li> </ul>
<b>7. Other Issues</b>	
Other relevant AML/CFT measures or issues	<ul style="list-style-type: none"> <li>• Vietnam needs to assign additional resources to AML/CFT efforts in the country. While AMLIC is the lead agency, it cannot accomplish these targets without additional staffing resources, not just within AMLIC and the SBV, but in other competent authorities. Furthermore, continued capacity building is required for existing and new staff working on AML/CFT matters.</li> <li>• Vietnam should consider allowing any technical advisor(s) based in this jurisdiction to be placed within the SBV premises which would allow easier access and discussion with SBV personnel and also allow mutual confidence to be achieved in a shorter period of time.</li> </ul>

## **Annex 1. Authorities' Response to the Assessment**

### **VIETNAM'S FINAL RESPONSE TO THE EVALUATION**

First of all, Vietnam would like to express our sincere thanks to the Co-chairs, APG Secretariat, members, providers for assisting Vietnam to understand and implement 40+9 Recommendations of FATF. We highly appreciate the endless efforts of the ME Team in evaluating the AML/ CFT in Vietnam.

Vietnam would like to share the difficulties which the ME team faced with during the on-site visit to Vietnam and the time after. As you know, Vietnam is a developing country with low income. Although we had made some progress in the legal system but still had some problems such as: overlapping, scattering and the meaning of words can be understood only if you are Vietnamese. Furthermore, thinking of the people from common-law-system countries differed from the way of thinking of the people from the civil-law-system countries, thus some inappropriate conclusions and ratings in the Report due to the misunderstanding Vietnam's legal system are understandable.

Besides, the official language in Vietnam is Vietnamese. All the documents which were translated into English are not official and not certified by any authority. In some cases, one Vietnamese word is translated in the same documents into 2 or 3 English words. It also causes the difference in understanding. Moreover, all the reports were needed to be translated into Vietnamese before circulating to the relevant Government agencies for comments. It seems disadvantage not only for Vietnam, but also for other countries which do not use the official language of the APG.

Vietnam would like to explain some issues relating to the ME Report and inform all members with some progresses we have reached after the ME team left Vietnam up to present.

#### **1. About the ME report:**

1.1. Firstly, we consider that the ratings for Recommendations 1, 2, 3, 17, 27, 31, 36, 39 is not reasonable and not fair to Vietnam. Despite of the fact that the Team had mentioned partially some features, but there are still misunderstandings of Vietnam's legal system and the law enforcement aspects of the country. Let us go by each recommendation as follows:

##### **1.1.1. Relating to the Recommendation 1:**

There are 7 criteria for the rating, but due to the time pressure, Vietnam wants to mention some important aspects such as:

(i) The Criminalization of Money Laundering has already stipulated in Vietnam legal system in accordance with the requirements of the Vienna and Palermo Conventions, but it is scattered in many different articles of the Penal Code. The definition of "money laundering" was only delivered in the Decree 74 on anti-money laundering in 2005, but money laundering acts can be prosecuted and judged in facts by different articles of the Penal Code. The acts of concealing, consuming the property acquired through commission of crimes by other person; acts of legalizing money and property acquired through commission of crime; concealing crimes (including

concealments of offenders and proofs or material evidences of a crime), obstructing investigation or handling the offender; non-denouncing the criminals are criminalized in articles 250, 251, 20, 21, 22 of the Penal Code. The Articles 21 and 22 (and relating articles 313, 314) almost were not mentioned in the Report.

(ii) The definition of “property” is stipulated in the Article 163 of the Civil Code, which is our basic Code for the legal system. By this Article, the “property” includes things, money and the rights on property, and as mentioned in Articles from 174 to 181 may be movable or immovable, mains or subsidiaries, yield or revenue, segregative or non-segregative, consumable or non-consumable, common or specific, synchronic and other money-valued rights, including the property rights. Thus, it should be understood in such way about the ‘property’ in the Penal Code in Vietnam. And this definition meets the requirements of the Article 2.d of Palermo Convention.

(iii) Other criteria are fully observed in the ME report.

Vietnam recognized that we are lack of experience and technology to categorize the cases in regards to the amount and the value of properties (including properties served as exhibits and properties laundered) confiscated from predicate offences. These impacts on the Team’s ability in appropriately rating. Anyway, some important statistics required by the criteria, such as the number of cases investigated, prosecuted, judged, the number of defendants, the values of properties confiscated are provided by Vietnam and mentioned by the Team in the Report.

By this, Vietnam would like to emphasize on the number of hundreds of trials each year for money laundering and other predicated offences. It means the purpose of anti-money laundering activities is reached and it illustrates the effectiveness of the implementation of this FATF’s Recommendation.

#### 1.1.2. About Recommendation 2:

We should mention that this Recommendation of FATF does not impose countries to apply criminal liabilities on legal persons, but gives some flexibility for the countries to handle the case with legal persons in compliance with domestic law’s principles. Thus, this should not be the reason for downgrading the implementation of this Recommendation. There are 5 criteria for rating the implementation, one of those is not applicable to Vietnam and 3 of those have been completely met by Vietnam: intentional element, possibility for authorities to establish the intentional element from the actual circumstances, administrative punishment to legal persons. The only thing, as mentioned, we have no detailed statistics of sanctions applied to legal persons, but we usually used such type of sanctions: warning, suspension of one or more types of activities, special control over the activities of institutions.

#### 1.1.3. About Recommendation No. 3

We believe that, the ME Team had tried, within the limited time, to understand and to show the nature of the legal system in Vietnam to as full as possible extent. However, we fully understand

the situation that, it was very hard, even impossible, to fully understand and write down all the pieces of legislation in one or two days. We wish to draw your attention to the 5 underlying factors, on which the Team based and given PC rating as follows:

The 02 factors: “Lack of specific provision to allow the authorities to freeze and seize”; and “There seems to be no specific laws allowing for the identifying and tracing of the proceeds of crime” were not accurately expressed. These powers are clearly provided for in Vietnam Criminal procedures code. Article 34.2.c empowers the head of investigation body to issue warrant of hunting to the charged person, search, seize, inventory of properties, and settle material evidences. Article 35.1.d stated that investigators have to execute warrant of arrest, detention, custody, search, seize, inventory of property.

Another underlying factor is “Vietnam has no penal law allowing for the voiding of contracts designed to frustrate confiscation”. It is our duty that we did not find the regulation for the Team on time. Although we have known that somewhere we have the related pieces of regulation, but only after the Meeting with the Team on this Sunday, we finally found. Article 19.9 of the Government Decree No 06/2008/ND-CP dated 16/1/2008 imposes fines up to 40 millions of VND for (a) trading of goods which is imposed by the authorities with urgent preventive measures to be confiscated or banned for circulation; (b) producing, processing, recycling, assembling, refilling, packaging, importing by persons or organizations of goods which is imposed by the authorities with urgent preventive measures to be confiscated or banned for circulation. The authorities should require (or do itself): (1) to destroy goods posing risks against the health of human, livestock, plants, environment; including toys harmful to the education and health of children and harmful cultural articles; (2) Immediately confiscate other goods.

Another underlying factor is “deficiencies for the taking of provisional measures”. This assessment did not fully reflect the reality in Vietnam. In fact, we have power to bring to the court people of ranks for their failure to deliver their responsibility caused damages in accordance with Article 285 of the Penal Code. Here is a specific case. The staffs of Incombank, Hai Phong branch with complicity of a foreign bank branch’s staff were dealing in foreign exchange and caused a loss of VND 100 billions (around USD 5.5 million) of the Bank. The competent authority in Vietnam had brought to trial the Director of the Incombank, Haiphong branch for his negligence. This is demonstrated that managers and directors of financial institutions in Vietnam, whether wanted or not, should have had their internal control procedures in place to protect themselves and the institutions from the abusing or from violations of their staff. There were 69 trials in 2007 and 116 in 2008 under Article 285 of the Penal Code.

#### 1.1.4. About Recommendation 17

Vietnam sees that all 4 criteria are implemented and are met by our legislation. It was described by the Team in the Report. The legal framework, which covers administrative punitive measures as well as criminal liabilities applicable to money-laundering activities and is provided for in the Penal Code and the Government Decree on AML, demonstrates our full compliance with

criteria 1 and 2 or this Recommendation. Many people were prosecuted and judged due to the negligence, as in the bank's branch case mentioned above. This clearly shows Vietnam's compliance with the Criterion 3 of recommendation 17. The administrative punitive measures are graded in increasing levels as provided for in the Ordinance on handling administrative punishments. The Team considered the fines applicable to violations against legislation on AML as not dissuasive, but we think, the 2,000 USD fines should be dissuasive in comparison with average income in Vietnam.

#### 1.1.5. About Recommendation No. 27

Rating for implementation of this Recommendation should follow the two main criteria on the power of competent authorities in investigating money laundering and financing of terrorism and the power of making appropriate decisions on legal or other measures to postpone execution of arrest warrant or seizing the properties in order to identify perpetrators or collect evidence. The responsibilities and the powers of Vietnam's law enforcement agencies are already mentioned in the report, but not the power to postpone execution of some temporary measures. Vietnam would like to add some as follows: Article 34.2.b and e of the Criminal Code empowered the head of investigating body to apply, change, or cancel deterrent measures (i.e.: order for arrest, custody, temporary detention, ...) and suspend investigation, cease investigation or resume investigation. Article 36.2.c also allows the chairman of supreme people's Procuracy to use this power. One of the underlying factors, the APG evaluation team based on to give the rating for the recommendation No. 27 as partial compliant, is lack of financial specialized investigators. This does not reflect the fact that Vietnam has 6,000/approximately 80,000 investigators in charge of investigating law violations in finance and banking industry as well as assisting other bodies in investigation of financial related matters of other predicated offences. Therefore, Vietnam requests the Plenary to consider and upgrade the rating for this recommendation No. 27 from partial compliance to large compliance.

#### 1.1.6. Recommendation No. 31:

The only one underlying factor, which the Team based on to rate Vietnam's implementation of this recommendation as partial compliant, is that Vietnam has no National Coordination Committee (NCC). However, from Vietnam's understanding, there is no criterion imposing countries to establish the NCC. The recommendation only requires countries to have a coordination mechanism among all domestic relevant agencies. Although Vietnam officially established an inter-agency Steering Committee for anti-money laundering chaired by Deputy Prime Minister in April 2009, but sine the early stage of drafting and developing the Government Degree on prevention and suppression of money laundering, the central Bank of Vietnam has coordinated and consulted with other government agencies and relevant self-regulators such as Banking association, law bar, ...Many achievements from the main policies made through this mechanism are the membership of Vietnam in APG, the strategic plan approved by Prime Minister to fully implement FATF 40+9 recommendations, the work program for receiving the APG mutual evaluation Team, the program for revising and improving laws on anti money laundering. In addition, the domestic cooperation and



coordination is also shown via the information exchange amongst Ministry of Foreign Affairs, Central Bank, FIU in relation to the implementation of UN Security Council's Resolutions, the alerts of international organizations and other jurisdictions in the world. This close cooperation is also demonstrated by Vietnam's FIU in provision of information, assistance for investigating agencies; signing of MOU on information exchange with Interpol National Central Bureau Vietnam; project development for online information exchange between Vietnam Customs and the SBV, whereas FIU acts as one of the SBV's unit having rights to access and explore that system. The effectiveness and efficiency of this domestic cooperation mechanism is reviewed periodically in the SBV reports submitted to the government. The SBV acts as a focal point and main authority body in charge of making semi-annual reports and/or urgent reports when needed on AML/CFT. Right after reviewing each report, the government immediately gives instructions to all relevant government agencies on the implementation of the approved program and measures need to be taken to overcome obstacles and make necessary adjustments. It is obvious that all 3 criteria specified in recommendation No. 31 have been fully met by Vietnam.

#### 1.1.7. Recommendation No. 36

After reviewing Vietnamese legal regime, the APG evaluation team indicated 4 underlying factors to be used for assessing Vietnam's implementation of this Recommendation as Partial Compliant. Although Vietnam highly appreciates the efforts made by the team, we wish to add some more information that may influence the rating as follows:

(1) Articles 19.2 (d) and (đ) of the Law on Mutual Legal Assistance describes the content of requesting document for legal entrustment in criminal matters as following: “(d). Description of properties and places where properties need to be sought; the grounds to determine the crime derived properties at requested country and may fall under the jurisdiction of requesting country; the execution of sentences, decisions of the court with regard to entrustment of search, seizure or trace and confiscation of properties derived from crimes; (đ). Measures need to be taken to implement legal entrustment in criminal matters that may lead to the discovery and confiscation of crime derived properties”. If the legal entrustment documents meet requirements set by the Law, the competent authorities of Vietnam will conduct this legal entrustment in accordance with provisions on the process and procedures set forth in Criminal Procedures Code.

(2) The dual criminality prescribed in the Law on Mutual Legal Assistance doesn't obstruct AML efforts because the predicate offences cover all kinds of crime in the Penal Code, therefore, Vietnam is not satisfied with the underlying factors used by the team to evaluate Vietnam's implementation of this Recommendation as Partial Compliant.

#### 1.1.8. Recommendation No. 39

There are five criteria used for evaluation of implementation of Recommendation No. 39. The first criterion is met by Vietnam because the money laundering offence shall be extradited in

accordance with Articles No. 343 and 344 of Criminal Procedures Code of Vietnam and Article No. 33 of Law on Mutual Legal Assistance. The second criterion allows jurisdictions to select either extradition of their own nationals or the submission of the case to the competent authority for prosecution at the request of country seeking extradition. Vietnam doesn't extradite Vietnamese citizen. As it has its own process and procedures for investigation, prosecution, adjudication of Vietnamese nationals who are committed crimes in foreign countries as prescribed in Article 29 of the Law on Mutual Legal Assistance (at investigation stage, the case will be assigned to public security bodies for investigation; if it happens at prosecution stage, the case will be handled by the People's Procuracies. The implementing process and procedures are conducted in accordance with the Vietnamese laws). Therefore, the second criterion is fully met. The third criterion is also implemented through the cooperation in investigating and providing evidences and documents between Vietnam and other jurisdictions. The fourth criterion is also met by Vietnam because we have process and procedures to execute extradition request after receiving sufficient criminal case file, as set forth in Articles from No. 38 through No. 43 of Law on Mutual Legal Assistance. Therefore, Recommendation 39 is met by Vietnam.

#### 1.2. Special Recommendations I through VII

Some observations and comments set in the report with regard to CFT activities seem to be inaccurate with real legal picture and practical situation of Vietnam. We are fully aware of difficulties faced by the evaluation team in understanding Vietnamese approach in dealing with "terrorist financing" issues. The acts of "financing" or "supporting" any offence in any form must be considered and treated as "accomplice" pursuant to provisions set forth in Article 20 of the Vietnam's Penal Code. The provision set forth therein enables competent authorities of Vietnam to conduct investigation, prosecution and conviction to anyone "supporting terrorism". Among FATF recommendations, there is no any criterion imposing jurisdictions to have separate legal provision on terrorist financing, but allow countries to choose mechanism to criminalize terrorist financing conducts. We believe that Vietnam has its own capacity and internal mechanism to convict FT activities and therefore, partially met the legal aspect of this criterion. In addition, as a non-permanent member of the United Nations' Security Council, Vietnam has promptly implemented the UN's Resolutions and expressed its willingness and good attitude toward international cooperation with other jurisdictions in warning domestic financial institutions of transactions relating to terrorist groups and individuals. The clear proof of these efforts is a safe, secured and stable environment of the nation. We are confident that many delegates from APG member countries herein have chance to visit our country and recognize this fact. These achievements come from a good system of both legal and practical security aspects. Therefore, we strongly want to seek your right understanding of our issues by taking into account specific natures of the Vietnamese legal system and of other jurisdictions evaluated by the APG, FATF, IMF or the WB missions.

#### **2. The progress made with regard to AML/CFT since the on-site visit.**

After the on-site visit Vietnam has been made some new progresses as follows:

- Firstly, on April 23<sup>rd</sup> 2009, the Prime Minister of Vietnam issued his Decision on the establishment of an official Inter-ministerial Steering Committee for ALM in Vietnam. The Committee includes members from 13 relevant Ministries and Agencies. The Committee is chaired by the current First Deputy Prime Minister Nguyen Sinh Hung. This shows that Vietnam has paid great attention to and made concrete steps with regard to ALM/CFT issues.

- Secondly, in June 2009, the National Assembly of Vietnam passed the new amendments of and supplements to the Penal Code such as, the amendment of the Article 84 with regard to terrorism; Article 251 with regard to money laundry; Article 230(b) on financing terrorism; and the supplements to the Law on stock market stipulation, insider trading, high-tech crimes...etc to make the Law more suitable to new environment.

- Thirdly, many new studies and researches have been made on the application of criminality to legal entities; initiatives have been introduced for open discussion at meeting sessions of the Government and the Standing Committee of the National Assembly.

- Fourthly, by the end of November 2008, the Government adopted Strategic Plan for full implementation of 40+9 Recommendations of FATF. This was mentioned in the clarification of Recommendation No.31.

## **Annex 2. Details of All Bodies Met During the On-Site Visit**

List of ministries, other government authorities or bodies, private sector representatives and others.

1. Anti-Money Laundering Information Centre (AMLIC)
2. Customs
3. DNFBPs
4. Financial institutions
5. Government Inspectorate
6. Hanoi Bar Association
7. Ministerial Inspectorates
8. Ministry of Construction
9. Ministry of Defence Border Guards and Rangers
10. Ministry of Finance
11. Ministry of Foreign Affairs
12. Ministry of Home Affair
13. Ministry of Justice
14. Ministry of Planning and Investment
15. Ministry of Public Security (MPS)
16. Ministry of Trade and Industry
17. People's Committees
18. State Securities Commission
19. Supreme People's Court
20. Supreme People's Procuracy (SPP)
21. The State Bank of Vietnam
22. Vietnam Association of Accountants and Auditors
23. Vietnam Bankers Association
24. Vietnam Bankers Association
25. Vietnam Gold Traders Association
26. Vietnam Union of Friendship Organisation (VUFO)

**Annex 3. List of All Laws, Regulations, and Other Material Received**

1. Law on Accounting 2003
2. Law on Civil Code 2005
3. Law on Commercial Activities 2005
4. Law on conclusion accession and implementation of treaties 2005
5. Law on Credit institutions 1997
6. Law on Criminal Procedures Code 2001
7. Law on Customs 2001
8. Law on Customs amendments and additions 2005
9. Law on Drug Prevention and Fight 2000
10. Law on Enterprise 2005
11. Law on E-Transactions 2005
12. Law on Inspection 2004
13. Law on Insurance Business 2000
14. Law on Investment 2005
15. Law on Lawyers 2006
16. Law on Legal Aid 2006
17. Law on Mutual Legal Assistance 2007
18. Law on Organization of Peoples Courts 2002
19. Law on Penal Code 1999
20. Law on People's Public Security Forces 2005
21. Law on Real Estate Business 2006
22. Law on Remuneration 2003
23. Law on Securities Sector 2006
24. Law on Social Insurance 2006
25. Law on State Bank of Vietnam and amendment 1997
26. Law on Tax Administration 2006
27. Law on the State Audit 2005
28. Law Against Corruption 2005
29. Ordinance No.34 2001 on National Archives
30. Ordinance No.14 2002 for Handling Administrative Violations
31. Ordinance No.23 2004 on Criminal Investigations
32. Ordinance No.28 2005 on Foreign Exchange
33. Ordinance on Public Employees 1998
34. Decree No.64 2001 Payment Services Providers
35. Decree No.70 2000 Keeping Secret and Archiving Customer Information
36. Decree No.108\_2006 on Foreign Investment
37. Decree No.160 2006 Implementation of Foreign Exchange Ordinance
38. Decree No.160 2006 on Foreign Exchange
39. Decree No.174\_1999 Gold Management
40. Decree No. 20 2000 Sanctioning Administrative Violations Monetary Banking Operations
41. Decree No. 35 2007 Electronic Banking
42. Decree No. 45\_2007 Insurance Business
43. Decree No. 72 2006 Foreign Offices and Branches

44. Decree No. 74 2005 on Anti Money Laundering
45. Prime Minister Decision No. 32\_2003 Electronic Gaming
46. Prime Minister Decision No.6\_2001 International NPOs
47. Prime Minister Decision No.63\_2007 State Securities Commission
48. Prime Minister Directive No. 25\_2007 on Preventing and Combatting Terrorism.
49. Prime Minister Regulation No. 340\_1996 on International NPOs
50. SBV Decision No. 20 2007 Bank Card Operations
51. SBV Decision No.30 2006 on Regulation of Cheques
52. SBV Decision No.35 2006 on Management of E- banking
53. SBV Decision No.45 2007 Confidentiality of Each Type of Document, Materials Containing State Secret in Banking Area
54. SBV Decision No.51 2007 On Credit Information
55. SBV Decision No.1727 2007 AMLIC Operations
56. SBV Decision No. 1284 2002 on Account Opening
57. SBV Guideline No.1 2007 on 1267 and 1373
58. SBV Guideline No.281 2006 to Credit Institutions on AML
59. SBV Report Sample of Guideline 281
60. SBV Guidance No.4294 Warning of Crimes in Banking Sector
61. SBV Circular No.03 08 Foreign Exchange Services by Credit Institutions
62. SBV Circular No.7 2007 on Foreign Purchase of Shares in Banks
63. SBV Circular No. 10 2003 on Gold
64. SBV 2007 Annual Report
65. SBV AMLIC Proposal Nov 2008
66. Vietnam AML CFT Implementation Action Plan
67. Article 251 Conviction Case 478
68. Article 345 Transfer of Files and Exhibits of Criminal Cases
69. Cross Border Sanction Statistics
70. Joint Circular No.01 2005 Military Courts
71. List of 5 Casinos
72. List of Credit Institutions in Vietnam
73. Ministry of Trade Circular No.17 1999 on Gems Business
74. MoF Circular No 38 Disclosure of Information Securities Market
75. MoF Circular No.155 2007 Insurance Business Guidelines
76. MoF Decision No.108 2008 on Regulation of Trading in Unlisted Companies
77. MPI Company Registration Instructions
78. Mutual Legal Assistance Statistics
79. People's Committee of Haiphong Regulation No. 1804 2003 on Casino

## **Annex 4. Copies of Key Laws, Regulations, and Other Measures**

### **GOVERNMENT**

**Socialist Republic of Vietnam**  
**Independence - Freedom - Happiness**

No.: 74/2005/ND-CP  
Hanoi, June 7 2005

### **Governmental Decree To Prevent and Combat Money Laundering**

#### **The Government**

In order to realize the objectives of preventing and combating money laundering to help protect national security, social order, and the legitimate rights and interests of the individuals, agencies and organizations;

- Pursuant to the Criminal Code dated 1999;
- Pursuant to the Law on the Organization of the Government dated December 25, 2001;
- Pursuant to the Law on State Bank of Vietnam dated December 12, 1997 and the Law on Amending and Supplementing a number of Articles of the Law on the State Bank of Vietnam dated 17 June 2003
- Pursuant to the Law on Credit Institutions dated December 12, 1997 and the Law on Amending and Supplementing a number of Articles of the Law on Credit Institutions dated 15 June 2004
- Pursuant to the Ordinance on Administrative Penalties dated July 2, 2002;
- In consideration of the proposal of the Governor of the State Bank of Vietnam.

#### **Decrees**

#### **Chapter I**

#### **General Regulations**

##### **Article 1: Governing scope**

This Decree provides for mechanisms and measures to prevent and combat money laundering activities in Vietnam conducted through monetary transactions or transactions involving other assets; responsibilities of individuals, agencies, and organizations in preventing and combating money laundering; and international cooperation against money laundering.

##### **Article 2: Application of the Decree**

1- This Decree applies to Vietnamese individuals, agencies and organisations and foreign individuals and organisations, and persons without nationality who are resident in Vietnam that conduct or provide services to customers relating to monetary transactions or transactions involving other assets.

2- This Decree also applies to foreign individuals and organizations which are not resident and do not operate in the territory of Vietnam but conduct transactions or provide customers with services relating to monetary transactions or transactions involving other assets in Vietnam.

3- In case international treaties which Vietnam has signed or participated in have other provisions than those in this Decree, the provisions of such international treaties shall be applied.

**Article 3:** In this Decree these terms shall be interpreted as follows:

1- “Money laundering” shall mean the act of an individual or organization who tries to legalize money and assets obtained from criminal activity through the following specific acts :

- Engaging, directly or indirectly, in a transaction that involves money or assets obtained from criminal activity;

- Acquiring, receiving, possessing, moving, transferring, assigning, carrying, using, removing from and bringing into Vietnam money or assets obtained from criminal activity; - Investing in a project, work, contributing money to an enterprise or otherwise trying to conceal, disguise or impede the establishment of the true nature, origin, or location, movement process, or ownership of money or assets obtained from criminal activity;

2- “Financial institutions” means any organization which conduct one or more business activities, including: accepting deposits; lending; financial leasing, transferring of money or value; issuing and managing payment instruments; providing financial guarantees and commitments; trading foreign exchange, money market instruments, transferable securities, participating in securities issuance; managing investment portfolio of individuals and collectives; administering cash or liquid securities on behalf of other individuals or collectives; investing, managing funds or money on behalf of other individuals or collectives; providing life insurance and other investment related insurance; and exchanging currencies.

3 - “Monetary transactions or transactions involving other assets (referred to as transactions)” shall mean transactions that generate the conversion, assignment or change in the ownership of money or assets held by an individual, agency or organization;

4 - “Customer identification” shall mean the necessary procedures to be done in accordance with this Decree in order to obtain information relating to individuals, organizations which conduct transactions involving money or other assets.

5 - “Identifying information” shall mean the information required to be obtained under Article 8 Item 3 of this Decree 3 used to determine the related parties, the purpose and nature of the transaction.

6 - "State competent authority" shall mean any State authority having State management function or assuming the tasks of directing, guiding, collecting and processing information, investigating, or dealing with money laundering related actions in accordance with this Decree.



7 - "Suspicious transactions" shall mean any transaction having unordinary or money laundering related features; being warned by the State competent authority or identified in accordance with this Decree.

**Article 4:** General principles to prevent and combat money laundering

1 - The prevention, discovery, hindrance and prosecution of money laundering shall be conducted in accordance with the law while ensuring national sovereignty and security; normal economic and investment activities; protecting legitimate rights and interests of individuals, agencies and organizations; preventing the abuse of authority and misuse of anti-money laundering procedures to violate legitimate rights and interests of relevant individuals, agencies and organizations.

2 - International cooperation against money laundering shall be conducted consistent with the principles of respecting national independence and sovereignty; mutual benefit and in accordance with Vietnamese laws, unless the international treaties which Vietnam has signed or participated in otherwise provide.

**Article 5:** Anti-money laundering responsibility

1- Preventing and combating money laundering is the responsibility of every individual, agency and organization.

2- Agencies, organizations and individuals are strictly prohibited to participate in or contribute to money laundering activities.

3- The State's policy is to encourage and protect individuals, agencies and organizations that participate in anti-money laundering activities; encourage those organizations and individuals who have conducted money laundering activities to give themselves up or report to the state competent authority; organize combating against money laundering related crimes.

**Article 6:** Individuals and organizations responsible for anti money laundering

1- Financial Institutions responsible for undertaking measures of prevention and anti-money laundering in accordance with this Decree, include:

- a- Entities which are established and operate in accordance with stipulations of the Law on Credit Institutions;
- b- Brokers, money investors, or institutions offering payment services in the territory of Vietnam;
- c- Entities which involve in issuing, listing, transaction, trading, deposit, clearing securities;
- d- Individuals and organizations which trade, sell and purchase foreign exchange, gold and silver, precious stones;
- e- Insurance companies, insurance brokers and institutions relating to pension and welfare, social and economic programs; and
- f- Organizations located in the territory of Vietnam representing or acting on behalf of foreign financial institutions;

2- Other individuals and organisation which have responsibility for anti money laundering as referred to in this Decree, include

- a. Lawyers, legal consultant companies, law offices, law partnerships conducting monetary transactions or transactions involving other assets on behalf of customers;
- b. Entities doing business on games of chance, casino or lottery, business companies with big promotion programs for customers
- c. Licensed companies providing services relating to the trade of real estate
- d. Individuals allowed to operate or do business as one of the financial institutions referred to in Item 1 of this Article.

## **Chapter II**

### **Measures to Prevent and Combat Money Laundering**

#### **Article 7: General Prevention Measures**

1- Financial Institutions referred to in Item 1 Article 6 of this Decree shall be responsible for undertaking the following measures:

- a- Establish procedures for internal controls and audit in line with existing laws to efficiently prevent and combat money laundering;
- b- Assign staff specialized in the implementation of policies, plans, procedures and measures to prevent and combat money laundering;
- c- Develop procedures for learning, updating information and customer identification in accordance with Article 8 of this Decree;
- d- Store and update data and report transactions in accordance with Article 12 of this Decree;
- e- Quickly implement specific requests by State competent authorities and cooperate with other individuals, agencies and organisations to prevent and combat money laundering;
- f- Train staff to enhance their responsibilities in preventing and combating money laundering;
- g- Apply temporary measures authorised in accordance with Article 11 of this Decree.

2- Individuals and organisations identified in Item 2 of Article 6 of this Decree shall be obliged to perform the measures referred to in points c, d, e and g of Item 1 of this Article.

#### **Article 8: Customer Identification**

1- The following circumstances require customer identification in accordance with this Decree:

- a- A customer, being an individual or an organization, opens an account for the first time;
- b- A cash transaction of the kind referred to in Article 9 of this Decree;
- c- A transaction has the suspicious features referred to in Article 10 of this Decree;

d- Any transaction where, having regard to the nature and scope of the transaction, the individual or organisation referred to in Article 6, considers it appropriate.

## 2- Identification requirements

a- The purpose of this Article is to ensure that customer identification information is reliable and up to date.

b- Information collected in accordance with this Article shall be treated confidentially.

## 3- Identification information:

Individuals and organisations referred to in Article 6 of this Decree shall collect the following information which shall be recorded in a form determined by them:

a- Date, month and year of the account opening or performance of the transaction;

b- Full name of the individual or representative of the organization or agency applying for the transaction; passport, identification card number, or other identification documents; living and registered residence address;

c- Full and short business name, business license number, registered tax number, office address of the headquarters or the owner of the entity, which applied for or delegated a third party to apply for the transaction;

d- Business name, address, identification card number or business license number of the individuals or the organizations who are parties to the transaction, in particular the person authorizing the transaction and the beneficiary of the transaction;

e- Form, purpose and value of the transaction; and

f- Full name of the individual or staff who performed the identification

## 4- Identification measures:

If the identifying information provided by the customer seems to be suspicious, individual or organisation referred to in Article 6 of this Decree shall determine the authenticity of the information by the following measures:

a- Research and collect information from other institutions which have or had a relationship with the customers and compare it with the information provided by the customer;

b- Collect information from branches, representative offices, subsidiaries and associates, located in the area where the provided information originated;

c- Contact authorized agencies in the area where the provided information originated; or

d- Draw up other legally appropriate measures to ensure identification requirements are met;

## 5- Storage of identification information:

In addition to maintaining and preserving information in accordance with the existing regulations, individuals or organisations referred to in Article 6 of this Decree shall maintain for at least 5 years after the date of account transaction closure identification information relating to the transactions referred to in Item 1 of this Article.

**Article 9:** Mandatory reporting of large value transactions

- 1- One or more transactions in cash undertaken by a person or entity in a single day with a total value of 200,000,000 dong ( two hundred million dong) or higher or the equivalent amount in foreign currency or gold, unless otherwise referred to by law.
- 2- For deposits into savings accounts, one or more transactions in cash undertaken by a person or an entity in a single day with a total value of 500,000,000 dong (five hundred million dong) or higher or the equivalent amount in foreign currency or gold;
- 3- The Prime Minister shall adjust the values of the cash transactions referred to in Items 1 and 2 of this Article in accordance with the actual economic and social situation of Vietnam from time to time.

**Article 10:** Suspicious Transactions

- 1- Transactions are considered suspicious if they have any of the following features:
  - a- The Parties involved in the transaction provide incorrect, inadequate or inconsistent identifying information; or try to persuade the individual or organisation which provides the transaction service not to report about the transactions to state competent authority as required by the law;
  - b- The transactions conducted under the order or authorization of individuals, organizations relating to criminal activities whose names are in the warning and statistic lists prepared by the Ministry of Public Security in order to prevent, fight against money laundering and combat using money or assets to create conditions or finance criminal activities in or outside the territory of Vietnam
  - c- Transactions in which via identification information or review of the economic and legal basis of related parties it is possible to determine that the participating parties of transaction may be related to criminal activities or to individuals or organisations referred to in point b of Item 1 of this Article;
  - d- Individuals or organizations are involved in high value transactions which do not correspond to the known scope of their business or employment or do not relate to their known legal activities;
  - e- There is a sudden change in the volume of transactions, a rapid inflow and withdrawal of cash from the account, a large number of transactions occur in a day but the account balance remains very small
  - f- A large number of small value transactions from various accounts results in large account balance, transfers through different accounts to one account in a short period of time or vice verse; money is circulated through numerous accounts; the parties involved do not appear to care about the fees;
  - g- Letters of Credit and other trade finance mechanism are used to make foreign transfers with high values and large discounts while the particular transaction is not consistent with the regular business of the customer;
  - h- A legal entity opens an account and undertakes no other transactions for a significant period; a Vietnamese enterprise opens and operates a foreign account in the name of a foreign legal entity or natural person;
  - i- A large foreign transfer from a foreign currency account of an enterprise following receipt of numerous small deposits by electronic transfer, cheques or bill of exchange;

- j- The transfer of money abroad by a foreign enterprise shortly after receipt of invested capital where the payment is not consistent with the known business activity;
- k- Frequent large payments by insurance companies to the same customer;
- l- The transfer of money by securities institutions which are inconsistent with their securities activities;
- m- Any other transactions which financial institutions find unusual or which have an unreliable legal basis;

2. The list of suspicious transactions are supplemented periodically by the State Bank of Vietnam in a separate document after consultations with relevant ministries and agencies

3. Individuals and organisations referred to in Article 6 of this Decree shall be responsible for updating the lists referred to in point b of Item 1 of this Article for awareness and implementation.

**Article 11:** Temporary measures to prevent and combat money laundering

1- The applicable temporary measures to prevent and combat money laundering include:

- a- Suspending the transaction;
- b- Freezing the account;
- c- Temporarily seize or hold an asset;
- d- Taking into custody a person suspected to be involved in money laundering;
- e- Other preventative measures required by the law.

2- The application of temporary measures shall be performed within the given authority in accordance with existing law without affecting the safety of the existing financial and monetary system;

3- Individuals and organizations referred to in Article 6 of this Decree shall be entitled to suspend a transaction when any party involved in the transactions is in the lists referred to in point b of item 1 of Article 10 of this Decree or when there is reason to believe that the transaction is related to criminal activity; At the same time they must report promptly the transaction to the Anti Money Laundering Information Centre or other State competent authorities and freeze the accounts as required by State competent authorities.

4- The relevant investigation authorities can apply the measures of freezing accounts, temporarily seizing of holding an asset; taking into custody a person suspected and other preventive measures required by the law.

**Article 12:** Form and content of reports and provision of information

1- Individuals and organisations referred to in Article 6 of this Decree shall report all transactions referred to in Article 9 and 10 of this Decree to the Anti Money Laundering Information Centre or the relevant state authorities as follows:

- a- Form of reports: Reports may be in written, electronic or other legally acceptable means; when necessary, telephone reporting is acceptable, but telephoned reports must be reconfirmed by one of

the above-mentioned means; The persons reporting or signing this report shall be those who perform the transaction or specialized or authorized officer of the reporting institutions and agencies;

b- Content of reports: Reports shall include identification information as referred to in Item 3, Article 8 of this Decree; time and term of the transaction or the order to perform the transaction; parties involved in the transaction; documents used by parties for the transaction; and the preventive measures, if any, which have been taken;

c- Reporting Time: Transactions shall be reported at the latest of 48 hours since the moment the transaction referred to in Article 9 was made or since the moment the transaction referred to in Article 10 of this Decree was identified or within 24 hours if the transaction is believed to relate to criminal activity. The Governor of the State Bank of Vietnam shall provide the reporting time for specific types of transactions.

2- An individual, agency or organisation referred to in Article 6 of this Decree shall not notify the parties to a transaction of the fact of or the contents of a report or other information provided.

3- Other individuals, agencies and organizations may, when they become aware of a suspicious transaction, inform in writing or by other means and provide information to the Anti Money Laundering Information Centre, or State competent authorities. When State competent authorities receive information concerning a suspicious transaction they must process the information in accordance with the legal authority and promptly report that information to the Anti Money Laundering Information Centre.

4- Information related to the reported transactions under this Decree shall be treated as confidential and provided only to the relevant authorities in accordance with law. The individuals, agencies and organizations that make reports and provide information on transactions as referred to in item 1 of this Article shall not be considered to have breached the regulations on confidentiality of deposited money and assets of customers or any other regulations on confidentiality of customer information.

### **Article 13: Information processing**

1- Upon receiving a report or other information relating to a transaction of the kind referred to in Articles 9 and 10 of this Decree, the Anti Money Laundering Information Centre shall carry out the following activities:

a- Analyze received information or reports;

b- Compare received information or reports with the available data and information, held by the Anti Money Laundering Information Centre;

c- Require any individuals or organizations to provide additional information or data relating to a report or information received;

d- Make recommendations or provide warnings to individuals, organisations referred in Article 6 of this Decree and relevant State competent authorities on issues arising from reported transactions;

2- Where the Anti Money Laundering Information Centre has reason to believe there is a link between a transaction and criminal activity, it shall immediately inform the competent investigating authority, provide all documents and material evidence to the authority, cooperate closely with the

authority in the investigation process and provide any additional related information and documents upon request.

**Article 14:** The Anti Money Laundering Information Centre

1- The Anti Money Laundering Information Centre (AMLIC) is a unit under the State Bank of Vietnam; acting as the contact point to receive and process information, entitled to require related individuals, agencies and organizations to provide documents and information with regards to transactions referred to in Articles 9 and 10 of this Decree; disseminate documents and information in accordance with this Decree. It is an organization established to help the Governor of the State Bank of Vietnam to perform the duties stipulated in Article 15 and items 1, 4 of Article 20 of this Decree.

2. The Anti Money Laundering Information Centre shall be headed by a director who is assisted by a number of deputy directors appointed by the SBV Governor.

3. The Anti Money Laundering Information Centre shall have its own seal and be headquartered at the State Bank of Vietnam.

4. The functions, specific responsibilities, powers, organizational structure and working arrangements of the Anti Money Laundering Information Centre shall be determined by the Governor of the State Bank of Vietnam.

**CHAPTER III**  
**RESPONSIBILITIES OF STATE AGENCIES TO PREVENT AND COMBAT**  
**MONEY LAUNDERING**

**Article 15:** Responsibilities of the State Bank of Vietnam

1. Act as the leading agency and cooperate with Ministry of Public Security and concerned agencies in formulating and implementing strategies, guidelines, policies and action plans to prevent and combat money laundering in the Vietnamese territory; conduct research and take measures to restrict cash payment in the territory of Vietnam.

2. Exchange information concerning performance and effectiveness of anti-money laundering operations with other relevant State agencies and submit consolidated reports to the Government annually or whenever required by the Government.

3. Cooperate with concerned agencies, organizations and individuals in the conduct of anti-money laundering measures in compliance with the prevailing laws and this Decree.

4. Receive, consolidate, analyze process, store and provide information, materials, and documents in accordance with Articles 12 and 13 of this Decree, and disseminate materials and documents concerning possible money laundering cases to the relevant state authorities for investigation and prosecution in accordance with law.

5. Conduct research and apply scientific analysis and information technology to prevent and combat money laundering;
6. Provide training to relevant staff of the State Bank of Vietnam and financial institutions on analyzing, processing information and detecting money laundering

**Article 16.** Responsibilities of the Ministry of Public Security

1. Act as the leading agency and cooperate with concerned agencies, organizations, and individuals in preventing and combating money laundering criminals; receive and process information on criminals involved in money laundering.
2. Act as the leading agency and cooperate with concerned agencies, organizations, and individuals in disseminating information and conducting education about anti-money laundering.
3. Organize investigation of money laundering related criminals; provide guidance to other agencies in conducting preliminary investigation of money laundering related criminals in accordance with law and this Decree; advise the State Bank of Vietnam of the results of money laundering investigations.
4. Exchange information and materials on new methods of money laundering in the country and abroad with SBV via the Anti Money Laundering Information Centre.
5. Provide training to the officers involved in the investigation, prevention and combating money laundering related crimes.

**Article 17:** Responsibilities of Ministries, Ministerial level agencies and government agencies

- 1- To issue guidelines and supervise units under their responsibility in the implementation of this decree.
- 2- Within the given authority, to cooperate quickly with other state authorized agencies, individuals and organisations in the prevention and combating of money laundering.
- 3- Cooperate and assist agencies under Ministry of Public Security, Supreme..???, Supreme Court in the investigation, prosecution and trial of money laundering related crimes.
- 4- To make consolidated reports on the prevention and combating of money laundering in the areas under their regulatory responsibility and send these reports to the State Bank of Vietnam for submission to the Government before 31 December each year.

**Article 18:** Responsibilities of Specialized Inspectors

- 1- To report to the Anti Money Laundering Information Centre or the relevant State competent authorities information or reports on transactions referred to in Articles 9 and 10 of this Decree and to maintain the information and the relevant files for at least five years.



2- To adequately and promptly provide information upon request by the Anti-Money Laundering Information Centre and the relevant State competent authorities responsible for investigation, prosecution and trial.

3- To supervise the units under their regulatory responsibility if there are transactions relating to money laundering, as requested by the Anti Money Laundering Information Centre or relevant State competent authorities.

4- To deal with administrative violations, within their authority, in accordance with the Ordinance on Administrative Sanctions and this Decree.

**Article 19:** Responsibilities of People Committees of different levels

1. To guide the belonged units to conduct research and implement the provisions of this Decree within their competent functions and duties.

2. Closely coordinate with state competent agencies to implement policies, strategies, guidelines and plan in respect to preventing and combating money laundering

**CHAPTER IV**  
**INTERNATIONAL COOPERATION AGAINST MONEY LAUNDERING**

**Article 20:** Responsibilities of the Government agencies which participate in international cooperation against money laundering:

1. The State Bank of Vietnam shall be the leading agency for negotiating, signing and implementing international treaties, agreements concerning the exchange of information on suspicious transactions related to money laundering;

2. The Ministry of Public Security shall be the leading agency in negotiating, signing international treaties on mutual legal assistance, extradition and anti-money laundering cooperation; organizing the implementation of the directives, policies and international treaties on fighting money laundering offences;

3. Upon receiving a request for international cooperation against money laundering, the relevant State competent authorities shall expeditiously inform the State Bank of Vietnam (if it is a request for cooperation in exchange of information as specified in Item 1 of this Article) or the Ministry of Public Security (if it is a request for cooperation in mutual legal assistance as specified in Item 2 of this Article) of the nature, substance and timing of the request, any other parties involved in the request, any relevant cooperation programs and possible reasons for refusal of legal assistance for the purpose of consolidating and coordinating the response to the request.

4. The State Bank of Vietnam and the Ministry of Public Security shall be responsible for providing guidance to agencies participating in international anti-money laundering cooperation.

**Article 21:** Type and form of international cooperation

## 1. Forms of cooperation

- a. Cooperate in the detection and prevention of money laundering activities in accordance with the laws of Vietnam and other related countries;
- b. Sign multi-lateral and bilateral international treaties to prevent and combat money laundering;
- c. Collect information, conduct research and exchange information and experiences relating to the prevention and combating of money laundering;
- d. Cooperate in the training and education of staff and officers of concerned agencies and institutions in relation to suspicious transactions, report analysis, investigation and prosecution of money laundering activities;
- e. Cooperate in organizing conferences and workshops on money laundering issues;
- f. Implement requests for legal assistance to investigate and deal with money laundering activities by foreign individuals and organizations in Vietnam and Vietnamese individuals and organizations abroad; and
- g. Provide resources, advice on anti money laundering methodology, technology and legal capacity building to prevent and combat money laundering.

## 2. Types and contents of cooperation

- a. Requests for cooperation shall be sent in writing with the signature of the authorized person and the seal of the relevant state authorities of the requesting State.
- b. Depending on the content of cooperation, the requests for cooperation should be sent to SBV via Anti Money Laundering Information Centre or to the Ministry of Public Security via Interpol office in Vietnam.
- c. In urgent cases, the requests for international cooperation may be sent by any available means of communication, provided that the requests shall be reconfirmed in writing as required by point a of Item 2 of this Article within the five following working days; and
- d. Requests for cooperation shall include the following information: name of the requesting organization and State, name of requested organisation, purpose, nature and any timing requirements concerning the requested assistance, details and identifying characteristics of the assets or criminals, any other information which might assist the implementation of the request and copies of evidence or final judgment of the relevant authorities of the requesting State.

### **Article 22:** Refusal of request for legal assistance

1- The Vietnamese relevant state authorities shall refuse a request for legal assistance in the following circumstances:

- a- The request is detrimental to national sovereignty, security or other important interests of Vietnam; or
- b- The request is not in accordance with international treaties or agreements which Vietnam signed or participated in; or Vietnamese laws;

2- The Vietnamese relevant state authorities shall be entitled to refuse a request for legal assistance in the following circumstances;

a- The request for assistance does not meet conditions set forth in Article 21 of this Decree; or  
b- The requested individual or organization has been convicted of or is being investigated or prosecuted for a money laundering crime under Vietnamese law arising from conduct which is the basis for the request;

3- The relevant state authorities of Vietnam shall inform the designated authorities of the requesting State of the reasons for refusal.

## **CHAPTER V**

### **REWARDS AND PENALTIES**

#### **Article 23. Rewards**

Individuals, agencies and organizations that have succeeded in preventing and combating money laundering may be rewarded in accordance with law.

#### **Article 24: Offences**

1. Criminal money laundering offences shall be dealt with in line with the Criminal Code of the Socialist Republic of Vietnam.

2. When an individual or organisation that has responsibilities under this Decree to prevent or combat money laundering fails to meet those responsibilities they shall, where the breach is not serious enough to be subject to the Criminal Code, shall be subject to administrative penalties as follows:

a- A official warning shall be issued in cases where there is no internal control and audit procedures to prevent money laundering; a failure to assign responsible officials to implement anti-money laundering measures; or failure to develop and apply know the customer and customer identification policies and procedures in accordance with this Decree;

b. A fine ranging from 5,000,000 dong (five million dong) to 15,000,000 dong (fifteen million dong) for the failure to report to the Anti Money Laundering Information Centre or the relevant state authorities as required by Article 12 of this Decree; failure to keep books, files or documents during the time required under this Decree; and failure to inform the Anti Money Laundering Information Centre or the relevant state authorities that books, documents, reports and files that have been sent to them are found to have contained false or incorrect information;

c. A fine of 10,000,000.00 dong ( ten million dong) to 30,000,000.00 dong (thirty million dong) shall be applied for informing the parties involved in the transaction about the existence of, or the content of, reports or information being provided in accordance with Article 12 of this Decree; and for delaying or not implementing, without proper reasons, a request from the Anti Money Laundering Information Centre or relevant state authorities; or

d. Additional penalties which may be applied include: temporary or permanent revocation of a license or certificate of practice; confiscation of means and instruments used in the violations in accordance with the provisions of the Ordinance on Administrative Sanctions.

4. Any official who abuses their authority and powers to violate the provisions of this Decree shall, depending on the nature and extent of the violation, be subject to penalties or criminal proceedings; and compensation for damages, if any, in accordance with law.

**Article 25.** Claims and denouncements

Claims and denouncements, and the resolution of claims and denouncements, concerning administrative decisions and action in connection with the application of penalties for violations of anti-money laundering regulations, shall be conducted in compliance with the Regulations on Claims and Denouncements.

**CHAPTER VI  
IMPLEMENTING PROVISIONS**

**Article 26:** Effective Date

This Decree shall be effective from 1 August 2005

**Article 27:** Responsibilities for implementation

- 1- The Governor of the State Bank and the Minister of Public Security shall be responsible for guiding the implementation of this Decree within their functions and responsibilities;
- 2- Ministers, Heads of ministerial organizations, Heads of governmental agencies, Chairmen of the People's Committees of provinces and the cities under the central government shall be responsible for the implementation of this Decree.

For the Government  
Prime Minister

2009

© Asia/Pacific Group on Money  
Laundering