

Understanding the International Cooperation to Combat Money Laundering of Vietnam in ASEAN

Do Thi Ha¹

Pham Thi Hong Nghia²

Nguyen Thi Ngoc Yen³

Abstract

Money laundering is associated with various transnational organized crimes, including arms smuggling, illegal drug trafficking, terrorism, and so on. As a result, international cooperation with countries throughout the world and in the area, particularly the ASEAN region, is critical to preventing and combating money laundering. In May 2007, Vietnam joined and became the 34th member of the Asia Pacific Anti-Money Laundering Group (APG). However, international collaboration to combat money laundering in the ASEAN region has been insufficient. As a result, the article focuses on three main contents: a general overview of international cooperation activities to prevent and combat money laundering; an analysis of the current situation of international cooperation activities to prevent and combat money laundering of Vietnam in ASEAN; and some recommendations to improve the efficiency of international cooperation to prevent and combat money laundering of Vietnam in ASEAN.

Keywords: ASEAN, anti-money laundering, international cooperation

1. General understanding of international cooperation in prevention and combat of money laundering

1.1. Overview of prevention and combat of laundering money

The Cambridge Dictionary defines money laundering as follows: “*the crime of moving money that has been obtained illegally through banks and other businesses to make it seem as if the money has been obtained legally*” or “*the action of moving money which has been earned illegally through banks and other business, to make it seem to have been earned legally*”.⁴

According to the law of Vietnam, money laundering is understood as the actions of organizations and individuals in order to legalize the origin of property due to crime in Clause 1, Article 4 of the Law on the prevention of money laundering in 2012, including the acts are defined in the Criminal Code; assisting criminal organizations and individuals in escaping legal liability; possession of property if it is suspected that such property is due to crime at the time of receipt of the property to legalize the origin of the property.

Money laundering is the conversion of “*dirty money*” into “*clean money*.” Money laundering is defined in Article 3.1 of the United Nations Vienna 1988 Convention as:

the conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions”.

¹ Lecturer, Law Department, People’s Security Academy, Hanoi, Vietnam
Email: dtha1905@gmail.com

² Lecturer, Department of Law, People’s Security Academy, Hanoi, Vietnam; 2. PhD Candidate, School of Law, Vietnam National University, Hanoi, Vietnam
Email: hongnghiapt87@gmail.com

³ Lecturer, Department of Law, People’s Police Academy, Hanoi, Vietnam
Email: yenngoctxt@gmail.com

⁴ Cambridge Dictionary, < <https://dictionary.cambridge.org/dictionary/english/money-laundering> >, accessed 25 September 2022

The amount of money laundered globally in a single year is estimated to be 2 - 5% of global GDP, or \$800 billion - \$2 trillion in current US dollars. However, due to the covert nature of money laundering, estimating the actual quantity of money that moves through the laundering cycle is challenging. Crime proceeds, or dirty money, are camouflaged to conceal their criminal origins before being absorbed into the normal economy. The procedure cleans dirty money till it seems clean. Cleaning dirty money frequently, but not always, entails transporting it across national lines and integrating it into another economy. In the setting of increasingly current payment methods, the advent of anonymous virtual currencies, as well as ever exploding digital technology, is offering numerous opportunities for criminals to convert unlawful money into legal money.

As a result, financial crimes and money laundering activities are now carried out not only through money transfer channels, but also through commercial transactions hiding in goods trading activities, such as using dirty money to buy goods or sell agricultural products to other countries to earn clean money; or transfer money abroad, use that money to gamble abroad, and then transfer gambling money back to the country via remittance channels.

1.2. Overview of international cooperation in prevention and combat of money laundering in ASEAN

The following are the contents of international anti-money laundering cooperation: exchange of information and documents on money laundering prevention and combat; identification and blockade of assets of money laundering offenders; implementation of mutual legal assistance and cooperation in the extradition of money laundering criminals; and other cooperation contents on money laundering prevention and combat. The State Bank of Vietnam serves as a clearinghouse for information on money laundering prevention and combat exchanged with foreign money laundering prevention and combat agencies, as well as other foreign agencies and organizations.

Recommendations on international cooperation in the prevention of money laundering (mutual legal assistance and extradition) 179 Vietnam has applied for accession and has been recognized as an observer of the Egmont Group since 2010. 127 Recommendations FATF Recommendations 36 to 40 required States to provide the widest possible scope for rapid, effective and constructive international cooperation in investigation, prosecution and other proceedings related to money laundering, the source crime associated with money laundering (Recommendation 36). This Recommendation also requires States to ensure that the power of the competent authority requested in Recommendation 28 is always ready to participate in mutual legal assistance, if similar to the national legal framework, to be ready to assist. directly from international judges or domestic law enforcement agencies. In order to avoid duplication in law enforcement, it is necessary for countries to clearly define their jurisdiction to assist in bringing crimes before the Court in the event of crimes occurring in more than one country. International cooperation also includes the need for states to make every effort to provide mutual legal assistance (mutual legal assistance or extradition) even if the case lacks the character of a double crime (Recommendation 37). Countries must include money laundering on the list of extraditable offenses in order to extradite convicts (Recommendation 39). Recommendation 37, which states that when a request for mutual legal assistance or extradition for a double offense is made, this requirement must be met regardless of whether both countries classify the offense in the same criminal category or refer to it as the same criminal or not, as long as both countries criminalize the commission of the source crime. Vietnam was rated Partially Compliant with Recommendation 39 in MER 2009. The APG determined that Vietnam had a technical shortcoming in not extraditing its nationals. And, despite having fully reserved Article 6 on

extradition in the CIS, Vietnam has yet to receive a thorough report on the effective implementation of bilateral extradition agreements.

2. Analysis on practice of international legal cooperation on anti-money laundering of Vietnam in ASEAN

2.1. Current situation of money laundering in ASEAN

Money laundering is frequently pushed into countries and regions that lack the expertise, resources, competence, and legal structure to combat it successfully. Southeast Asia is a popular regional destination for money launderers. One of the areas where the risk of money laundering has increased the most is Southeast Asia. This region is made up of nations with various geographic, economic, cultural, political, and legal backgrounds, which have produced a number of distinctive elements that have aided the growth of money laundering.⁵

In recent years, ASEAN and its Member States have reaffirmed the value of more strong and effective international and regional cooperation in the fight against transnational crimes. When it comes to other cross-border crimes including trafficking offenses, corruption, and organized crime, money laundering is one of the most significant crimes in the region.

A significant step toward ASEAN cooperation in combating ML in particular and transnational crime in general is the 2004 signing of the Treaty on MLA in Criminal Matters. However, in reality, a variety of barriers have prevented ASEAN governments from processing MLA.⁶

A variety of tools have been created to support such cooperation. A set of guidelines on trafficking in persons, endorsed by the (ASEAN) Senior Officials Meeting on Transnational Crime (SOMTC) in 2007, provide detailed guidance to criminal justice practitioners on international cooperation as it relates to trafficking-in-persons cases. Instruments developed by other multilateral organisations such as the United Nations Convention against Transnational Organized Crime (UNTOC), the United Nations Convention against Corruption (UNCAC) and the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention).⁷

In ASEAN, all governments have their own AML legislative frameworks, but many of them fall short of meeting international standards.⁸ All ASEAN member states have joined the Asia/Pacific Group on ML (APG) as a result of the spread of the global AML framework, although only Singapore has been admitted as a member of the Financial Action Task Force (FATF). All nations have established Financial Intelligence Units (FIUs), which have grown to be crucial intergovernmental organizations in anti-money laundering (AML), particularly for analyzing suspicious financial activities and accumulating proof. One of the most important organizations in AML is the Egmont Group of Financial Intelligence Units. Unfortunately, three of ASEAN countries haven't complied with the demanding requirements of the Egmont Group FIUs (*Vietnam, Laos, Myanmar*). FIUs from seven of the ten ASEAN member states have joined the Egmont Group (*Brunei, Cambodia,*

⁵ Chat Le Nguyen, (2012), "Towards the effective ASEAN mutual legal assistance in combating money laundering", *Journal of Money Laundering Control*, Vol. 15 Iss 4 pp. 383 - 395
<<http://dx.doi.org/10.1108/13685201211265971>>

⁶ <<https://asean.org/our-communities/asean-political-security-community/rules-based-people-oriented-people-centred/treaty-on-mutual-legal-assistance-in-criminal-matters/>> accessed on 19 October 2022

⁷ <https://www.unodc.org/documents/human-trafficking/ASEAN_Handbook_on_International_Legal_Cooperation_in_TIP_Cases.pdf> accessed on 19 October 2022

⁸ Chat Le Nguyen, (2012), "Towards the effective ASEAN mutual legal assistance in combating money laundering", *Journal of Money Laundering Control*, Vol. 15 Iss 4 pp. 383 - 395

Indonesia, Malaysia, Philippines, Singapore, Thailand).⁹ Despite the strong commitment, there is a large gap between the political will and the actual implementation of regional cooperation in response to ML. There are few convicted cases on ML compared to the potential risks of the region.

2.2. Subjects involved in the fight against money laundering in ASEAN and its reaction

2.2.1. Global scale: United Nations

The first international convention to make money laundering illegal was the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. It included legal tools that countries may use. In April 2002, the International Convention to Combat the Financing of Terrorism went into effect. This calls for member states must take action to prevent individuals planning or participating in terrorist actions from abusing their financial systems. The United Nations Convention against Transnational Organized Crime (UNTOC) in 2003 and the United Nations Convention against Corruption (UNCAC) in 2005 followed this one. These conventions demand explicit commitments to prevent money laundering. States are required to provide national regulatory and oversight frameworks for banks and nonbank financial institutions as well as tools to prevent and catch money laundering in all its forms. State standards for client identity and records are also to be emphasized developing the ability to cooperate and exchange information at the national and international levels. Keeping and reporting suspicious transactions. The UNCAC Convention states that State Parties shall work to advance global, regional, sub-regional, and judiciary, law enforcement, and financial regulatory authorities working together bilaterally to combat money laundering. These three together make up the Global Program of the UN against Money Laundering, Crime Proceeds, and Terrorism Financing. The goal is for all states to pass legislation that will serve as a legal defense against money laundering and terrorism financing.

The UN provides states with the knowledge, resources, and skills necessary to establish legal frameworks and to investigate and prosecute complex financial crimes through its technical support programs.

For ASEAN, the United Nations plays the central role of coordinating the joint actions of nations, the center of international efforts to ensure peace and promote sustainable development. Over the past four decades, the ASEAN-UN relationship has become a model for cooperation between the UN and regional organizations. ASEAN-UN's Action Plan for the next phase 2021-2025 emphasizes the need to continue to devote more attention and resources to inter-sectoral coordination, peacekeeping and security, elevating sub-regional cooperation, narrow the development gap, develop sustainable human resources, ensure social justice, fight poverty and organized crime. The action plan contains the following paragraph:

*“1.1.17. Enhance cooperation and continue the sharing of information with the existing ASEAN-led mechanisms to address other regional traditional and non-traditional security issues such as maritime security including search and rescue, cybersecurity, cybercrime, people smuggling and trafficking in persons especially women and children, illicit trafficking of wildlife and timber, arms smuggling, money laundering and international economic crimes through the organisation of surveys and data development, research, workshops, seminars, training, and other capacity building activities for ASEAN.”*¹⁰

The focus of the United Nations has always been on attempts to cooperate with regions, sharing the duties and tasks of preventing transnational crimes in the context of the region's cordial

⁹ Financial Intelligence Units: Asia and Pacific <<https://egmontgroup.org/members-by-region/>> accessed on 19 October 2022

¹⁰ <<https://asean.org/wp-content/uploads/2021/09/ASEAN-UN-POA-2021-2025-final.pdf>> accessed on 19 October 2022

cooperative relationship. The UN has invested a lot of resources researching and developing its anti-trafficking strategy in the ASEAN region, but in the future, more focus needs to be placed on particular anti-money laundering strategies.

2.2.2. The Financial Action Task Force (FATF) and the FATF-style regional bodies (FSRBs)

The Financial Action Task Force (FATF) is a policy-making organization that strives to implement national reforms and develop political will to combat money laundering. The FATF is an intergovernmental organization that was founded in July 1989 by a Group of Seven (G-7) Summit in Paris to analyze and propose methods to prevent money laundering. At the time, the FATF included 15 states as well as an international organization. It presently has 37 members, but its standards are considerably more broadly accepted.

The FATF is the world's leading regulator of anti-money laundering (AML) and counter-terrorism financing (CTF). While it has 39 formal members and countries, it relies on the help of nine FATF-style regional bodies (FSRBs) to ensure that its policies are implemented globally.¹¹ The nine FATF-style Regional Bodies assist in the development and implementation of AML/CTF compliance policies and updates in every significant region of the world. The FATF's global standards are disseminated by FSRBs in order to help the 200+ nations under their authority understand and comply with the FATF's AML/CTF expectations.¹² The FSRB in Asia-Pacific is Asia/Pacific Group on ML (APG) with headquarter in Sydney.¹³

The four essential objectives of the FATF are to:

- 1. revise and clarify the global standards and measures for combating money laundering and terrorist financing*
- 2. promote global implementation of the standards*
- 3. identify and respond to new money laundering and terrorist financing threats*
- 4. engage with stakeholders and partners throughout the world*

The FATF has set international standards for combatting money laundering and terrorist financing. Terrorist finance, as outlined in the 40+9 Recommendations - that is, 40 first recommendations proposals, as well as nine unique recommendations, to combat terrorist financing.¹⁴

The Financial Action Task Force (FATF) on Anti-Money Laundering (AML) revealed a rise in Covid-19-related illicit activities in May 2020. The FATF has increased its scrutiny of nations that it believes are not doing enough to prevent money laundering, thereby limiting their ability to attract foreign direct investment. FATF released the list of jurisdictions being under increased monitoring are actively collaborating with the FATF to solve strategic gaps in their anti-money laundering, terrorist financing, and proliferation funding regimes. This list is frequently referred to as the "*grey list*" by others. When the FATF places a jurisdiction under increased monitoring, it signifies that the government has committed to resolving identified strategic shortcomings as soon as possible and within agreed-upon timeframes.

¹¹ FATF (2012), High-Level Principles for the relationship between the FATF and the FATF-style regional bodies, updated February 2019, FATF, Paris, France, <www.fatf-gafi.org/publications/fatfgeneral/documents/highlevelprinciplesfortherelationshipbetweenthefatfandthefatf-styleregionalbodies.html> accessed on 19 October 2022

¹² What are the 9 FATF-Style Regional Bodies (FSRBs)? <<https://www.sygna.io/blog/fatf-style-regional-bodies-fsrbs/>>

¹³ Asia / Pacific Group on money laundering <<http://www.apgml.org/>> accessed on 19 October 2022

¹⁴ <www.fatf-gafi.org/home/> accessed on 19 October 2022

In February 2020, Cambodia and Myanmar were the only two ASEAN countries on the FATF list of jurisdictions with strategic deficiencies subject to call for action.¹⁵

Despite their significant political commitment, Cambodia and Myanmar have failed to properly respond to ML. In June 2022, the “grey list” included ASEAN countries which are: Cambodia, Myanmar and Philippines.¹⁶

With the shortcomings of the legal framework and the limited effectiveness of implementation in practice, lack of synchronization across sectors and fields, Vietnam has been included in the enhanced review process after the Mutual Evaluation Report of the APG and fell under the FATF review process after this multilateral assessment report of Vietnam was published at the FATF Plenary Meeting in March 2022. In one year since falling into the FATF review process (March 2022 - March 2023), Vietnam will have to work regularly with the APG/FATF to overcome deficiencies under the increased monitoring process. strength of the APG, this period will be referred to as the “observation period”. After a year of observation, if Vietnam fails to show progress on the contents currently rated Low or Medium and does not meet the requirements for improving the regulatory framework, Vietnam will fall on the grey list.¹⁷

2.2.3. ASEAN Ministerial Meeting on transnational crime (AMMTC)

AMMTC is an annual high-level gathering of the chiefs of crime prevention agencies in ASEAN countries, and the most recent conference was held online for the 16th time due to the impact of the COVID-19 epidemic. The cause of money laundering in this forum is the issue of international cooperation in the prevention of transnational crimes, particularly dangerous criminal activities.

Established on the basis of the 1997 Manila Declaration on Transnational Crime, the AMMTC, attended by each ASEAN Member's Ministers in charge of Transnational Crime, is the main planning mechanism. AMMTC is the highest policy-making body on issues related to cooperation in preventing and combating transnational crimes in the region. Directly assisting the AMMTC is the ASEAN Senior Officials Meeting on Transnational Crime Prevention (SOMTC). This is a pre-organized event that is responsible for implementing policies and plans adopted at AMMTC and reporting results at AMMTC in the respective year.¹⁸

For Vietnam, identifying the risks and challenges of the criminal situation, over the past time, the Ministry of Public Security of Vietnam has strengthened the implementation of measures to prevent and fight to destroy many criminal lines... drugs, human trafficking and illegal migration, cyber and high-tech crime, terrorism and other transnational crimes and achieved many positive results. Minister of Public Security Vietnam – General To Lam affirmed that as an ASEAN member country, Vietnam is committed to actively and responsibly participating in ASEAN cooperation frameworks in general and cooperation in the field of transnational crime prevention and control, in particular. On behalf of the Vietnamese delegation, Minister To Lam suggested that, on the basis of building “*political trust*” in the fight against transnational crime and creating mutual trust, law enforcement agencies ASEAN should continue to strengthen and promote the effective and substantive implementation of cooperation programs and plans on transnational crime prevention and

¹⁵ <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>> accessed on 19 October 2022

¹⁶ <<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-june-2022.html>> accessed on 19 October 2022

¹⁷ Amend Anti-Money Laundering Laws: Full Legalization Of FATF Recommendation, <<https://quochoi.vn/tintuc/Pages/danh-sach-tin-tuc.aspx?ItemID=67598&CategoryId=0>> accessed on 19 October 2022

¹⁸ Police, <<https://cand.com.vn/Su-kien-Binh-luan-thoi-su/AMMTC-Co-che-hop-tac-bao-trum-ASEAN-trong-phong-chong-toi-pham-xuyen-quoc-gia-i589258/>> accessed on 19 October 2022

control in existing ASEAN multilateral cooperation mechanisms. Promote the exchange of information and share experiences in fighting with transnational criminal gangs in the region, especially crimes that always have potential increasing trends such as drug crimes, cybercrime. and crime using high technology...; actively coordinate in verifying, apprehending, receiving and extraditing wanted people within the framework of bilateral and multilateral cooperation.

Vietnam commit to continue to effectively implement action plans and work programs within the framework of ASEAN and between ASEAN and its dialogue partner countries. At the same time, actively study, promote negotiation, and sign bilateral cooperation documents on crime prevention and control in order to create a favorable legal corridor for the cooperation process such as "*Agreement on mutual legal assistance in criminal matters*", "*criminal extradition agreement*", "*Agreement on the transfer of persons sentenced to prison*".

Last but not least, Vietnam commits to continue to promote extensive cooperation with ASEAN's dialogue partner countries in priority areas such as cooperation in the prevention and combat of drug crimes, cyber and hi-tech crimes, and economic crimes as well as human trafficking. Organize training courses, conferences, seminars for law enforcement officers to maintain the support of dialogue partner countries in terms of both human resources and policies in dealing with common security threat.

AMMTC become the largest forum in the region for Vietnam and other ASEAN countries discussed together to evaluate the results of the fight against transnational crime in each country and study and promote cooperation in this field, contributing to security, peace and stability of the region.

2.2.4. The International Criminal Police Organization (INTERPOL)

In terms of enforcing the AML regime, INTERPOL has emerged as one of the most proactive international organizations. The resolution on measures to deal firmly and effectively with the system of illegal international financial transactions was passed by INTERPOL in 1991. This was followed by the resolutions on money laundering legislation, money laundering investigation, and international police cooperation, as well as money laundering statistics.¹⁹

Through the INTERPOL Global Communication System, member country police can interact with one another and have access to a vast criminal database system. The oldest and most widely used form of money laundering in the Asia Pacific region, alternative remittance networks, were thoroughly reviewed by INTERPOL along with the main characteristics of money laundering in Asia. Law enforcement agencies might utilize this examination as a beneficial resource when dealing with money laundering offenses in the area.

2.3. Current situation of international cooperation in prevention and combat of money laundering of Vietnam in ASEAN

2.3.1. Vietnam under the pressure of improving the legal framework for international cooperation in prevention and combat of money laundering

With the implementation of the Law on Anti-Money Laundering in 2012, Vietnam's financial system has seen some success and established a legislative framework for steadily increasing the effectiveness of this activity. However, the FATF changed its recommendations 11 times between 2012 and the present, and as of this assessment, Vietnam has fully complied with 13 of the 40 recommendations; the remaining 27 are classed as Partly Compliant or Non-Compliant.

Therefore, with the shortcomings of the legal framework and the limited effectiveness of enforcement in practice, lack of synchronization across sectors and fields, Vietnam has been included

¹⁹ INTERPOL, "Money Laundering" <<https://www.interpol.int/Crimes/Financial-crime/Money-laundering>>accessed on 19 October 2022

in the enhanced review process after Mutual Evaluation Report (MER) of the Asia-Pacific Anti-Money Laundering Group (APG) and fell under the FATF review process after this Vietnam MER was published at the FATF Plenary Meeting in March 2022.²⁰

Currently, there are a wide range of ways to launder money in Vietnam, including investing in real estate, operating under the cover of fictitious businesses, supplying finance, and brand-new schemes utilizing open technology. Utilizing contemporary technology to profit from the stock market, run an internet business undetected, invest in virtual or digital currency, etc. Meanwhile, the majority of suspicious indications are qualitative and not quite obvious. It is highly challenging to control because either these service providers have servers abroad or are contracted to run because of the problems with virtual assets and digital currency.²¹ For example, *Giang Kim Dat and Phan Sao Nam's* cases both involve the laundering of money through the purchase of homes and vehicles as well as transfers to family members for savings. In the "great case" of corruption that occurred at Vinashin, Giang Kim Dat asked his father (Giang Van Hien) to open numerous bank accounts to receive money from abroad in order to buy 40 luxurious villas, apartments, pricey cars, and land in prime locations in many large urban areas as well as abroad. This was done in order to conceal tens of millions of dollars in corrupt money.²²

The draft Anti-Money Laundering Law (amended) will be submitted to the National Assembly for comments and is expected to be approved according to the process of one session at the 4th session of the XV National Assembly (October 2022). One of the notable new points in the draft Law is the addition of regulations on risk assessment of countries, industries, and reporting objects on money laundering.

Vietnam is making great efforts to carry out activities to improve the legal framework on anti-money laundering from the most effective legal document, the Law, and then other legal documents.

2.3.2. Content of international cooperation in prevention and combat of money laundering of Vietnam

Regulations on information exchange in international cooperation on anti-money laundering are more clearly concretized than the Law on Anti-Money Laundering compared to the Law on AML in 2012 in the draft Law amending the Anti-Money Laundering Law submitted to the National Assembly in September 2022. Whereby, new regulations provide for international cooperation in anti-money laundering, including activities of identifying, blockading, sealing or confiscating assets of money laundering offenders; implementation of mutual legal assistance and cooperation in the extradition of money laundering criminals. In addition, other contents of international cooperation on anti-money laundering include:

i) Exchange of information and documents between anti-money laundering agencies, anti-money laundering agencies and competent authorities of other countries related to the prevention and combat of money laundering and source crimes of money laundering. money;

ii) exchange of information between the financial supervisory authorities of the ministries and the financial supervisory authorities of other countries on the prevention and combat of money laundering;

²⁰ FATF, Mutual Evaluation Report Vietnam 2022 <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/APG-Mutual-Evalutaion-Report-Vietnam-2022.pdf>> accessed on 19 October 2022

²¹ Congress of Vietnam <<https://quochoi.vn/tintuc/Pages/danh-sach-tin-tuc.aspx?ItemID=67598&CategoryId=0>> accessed on 19 October 2022

²² Institute of Legal Sciences and International Business (IBLA - Vietnam Bar Association), Identifying sophisticated money laundering techniques of criminals in some corruption economic cases <<https://phaply.net.vn/nhan-dien-nhung-chieu-thuc-rua-tien-dien-hinh-tu-cac-dai-an-kinh-te-tham-nhung-a240964.html>> accessed on 19 October 2022

iii) Exchange of information between the law enforcement agency and the competent authority of another country on the prevention and combat of money laundering.

From the above provisions of the draft law, the question that arises is judicial, administrative, or police aid in the exchange of information on allegedly irregular financial transactions? Perhaps it is time for Vietnam as well as other ASEAN countries to learn the model of establishing independent FIUs.

The significance of the FIUs in the fight against money laundering was widely recognised by FATF (Recommendation 29). These FIUs communicate with one another in order to carry out their duties. Nearly all of the international cooperation between FIUs occurs outside of the established framework for judicial cooperation in criminal cases. FIUs are frequently able to shed light on the context of questionable transactions through information sharing and are thus successful in putting the pieces of the metaphorical jigsaw puzzle together. Information can be exchanged on demand, voluntarily (i.e., at the initiative of the financial intelligence unit providing the information), or periodically.

Vietnam has recently approved the National Plan of Action on prevention and control of money laundering, terrorism financing and financing of the proliferation of weapons of mass destruction for the 2021-2025 period. In order to promote peace, stability, development, and integration, the plan's overarching goal is to create an effective mechanism against money laundering, financing of terrorism, and proliferation of WMDs. This will enhance Vietnam's standing in the international community and allow it to fulfill its obligations as an Asia-Pacific Group on Money Laundering member (APG). It is to the best of its abilities to protect the interests of the country, organizations, and people, so enhancing the stability of financial institutions, helping to maintain social security, safety, and order, and fostering economic progress. It therefore urges improving the legal framework and creating pertinent legal documents that correspond to domestic realities and meet international standards; improving the effectiveness of assessing risks of money laundering, financing of terrorism, and financing of the proliferation of nuclear weapons; enhancing inspection toward taking a risk-based approach; and continuing to strengthen investigation, prosecution, trials, and asset reclamation, especially in high-risk situations.

To this end, it's recommended to seek for technical assistance from the system of international banks to cooperate in combat of money laundering. For example, in the case of Thailand, the country has been provided a completed Action Plan for Technical Assistance for Promoting International Cooperation on Anti-Money Laundering and Combating the Financing of Terrorism by the Asian Development Bank. Five of the FATF recommendations - intensifying efforts for international cooperation - require help. Due to the nature, effective implementation of AML-CFT depends on strong international collaboration in the fight against money laundering and the financing of terrorism. The recommendations urge swift action to be done and urge mutual legal help to be provided as much as practicable, in response to demands from other nations (FATF recommendations 37 and 38). Promoting regional and global cooperation will undoubtedly have advantages. It is possible to gather knowledge, the most recent AML-CFT cases, and other pertinent information from the more developed nations. Thailand is said to have an important position to inform its bordering Mekong neighbors about its experiences in creating the legal and institutional frameworks for AML-CFT.

2.3.3. Mutual legal assistance, extradition and the problem of harmonisation of criminal laws in ASEAN

Mutual legal assistance (MLA) in criminal cases has historically been a process by which states seek and provide assistance in assembling evidence for use in criminal cases. It is carried out

through the diplomatic route upon receipt of letters rogatory. The universal definitions of mutual legal assistance and extradition provided by UNODC as follows:

*“Mutual legal assistance in criminal matters is a process by which States seek and provide assistance in gathering evidence for use in criminal cases. Extradition is the formal process whereby a State requests the enforced return of a person accused or convicted of a crime to stand trial or serve a sentence in the requesting State”.*²³

A wide spectrum of assistance beyond evidence gathering was required due to the increase in transnational crime and the rising demand for legal aid. In order to provide the necessary level and effectiveness of support, additional forms for MLA in criminal matters have been developed. Letters rogatory, MLA treaties, and interstate "police-to-police" or interstate "agency-to-agency" assistance are the main bases for MLA in criminal proceedings. MLA processing can be done in a formal or casual manner.

Similar to other criminal cases, ML has a legal foundation based on treaties, national laws, memoranda of understanding (MoUs) issued between states or interstate competent authorities, and the customary reciprocity principle. To process formal or informal MLA in ML cases, a state may depend on one or more of these basis. In Vietnam, the issue of international cooperation in identifying and blockade the assets of money laundering offenders is specified in Article 28 of Decree No. 116/2013/ND-CP. After the new Law is amended, this guiding decree will also change according to the new provisions of the Law.

The ASEAN Treaty on MLA on criminal matters refers to most of the objectives of mutual assistance in prevention, investigation and prosecution of ML. Many of the governments that are parties to this convention are hindered by their poor capabilities to combat ML and their incomplete, conflicting regulations. The main barriers that could prevent the execution of the ASEAN MLA Treaty in countering transnational ML include differences in how ML offenses are criminalized, how the predicate offense is covered, and confiscation laws. In fact, although all ASEAN states have criminalized ML offence, definition of ML and constituent elements of ML offence vary significantly.

The failure of the dual/double criminality requirement, which may be a reason for MLA refusal, is sometimes caused by discrepancies in the criminalization of ML offenses, such as with regard to the offense's constituent elements or the criminal culpability concept. According to the dual criminality criteria, the behavior that is the subject of the MLA request is illegal in both the state that is requesting it and the state that is being asked.

Other challenges include the lack of or inadequate asset confiscation laws in some states (such as Cambodia, Laos, and Vietnam), which impede the implementation of "preventive measures" and requests for international seizure. The lack of domestic asset confiscation legislation is a common justification for this kind of assistance when a state requests help locating, tracking, freezing, or seizing - known as "preventive measures" - and confiscating illegal proceeds from other states. The AML regime will undoubtedly be hampered by the insufficient cooperation in enforcing preventive measures and confiscating against the proceeds and instruments of crime. In particular, a lack of good tracing cooperation may make it difficult to find the sources and primary offenses of the illicit proceeds. Lack of reciprocal assistance in freezing, seizing, and confiscating illegal funds may make it easier for money transfers and other types of fund manipulation.

Additionally, various authority offices should actively participate in the international and regional organizations with the highest sense of cooperative responsibility in addition to the

²³ UNODC, Manual on Mutual Legal Assistance and Extradition<https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf> accessed on 19 October 2022

Vietnamese Government's efforts in international cooperation fighting transnational crime in general, money laundering in particular.

3. Recommendations

From the above analyses, there are a number of recommendation for improving the international cooperation in prevention and combat of money laundering as follows:

- Vietnam and other ASEAN countries should increase international cooperation in criminal investigation, prosecution, and extradition through signing international treaties on mutual legal assistance or establishing communication channels between law enforcement agencies. To enable the secure and rapid exchange of information on all elements of money laundering Vietnam, in particular, should state that non-extradition of political prisoners under Article 16 (paragraph 14) of the Palermo Convention is only applicable when the requesting country has "substantial grounds" which are relevant to the concerns of money laundering. In relations with a country with which Vietnam has not signed a treaty on mutual legal assistance, law enforcement should use all available means, including diplomatic channels, to request and receive legal assistance. Other countries must provide immediate and meaningful assistance based on the principle of reciprocity.

- In terms of harmonizing laws in ASEAN to prevent and combat money laundering and other transnational crimes, to make national criminal laws more consistent and to remove obstacles to collaboration in the fight against transnational crime, national criminal laws must be harmonized. Harmonization is a difficult and controversial process because it is often believed that national criminal law is influenced by one's economic, cultural, and political background. It is impossible to reconcile the entire body of national criminal legislation. However, the ASEAN members should prioritize harmonizing a few incomplete criminal laws for the sake of AML.

- Regarding the nature of collaboration, ASEAN nations could consider strengthening bilateral and group cooperation activities in the sphere of developing anti-money laundering legal regulations. Although cordial cooperation in ASEAN is a long-term aim, some nations with economies that are more challenging and stalled in keeping up with the area's overall development speed can opt out of the region. Countries with good cooperation conditions assist these countries in developing anti-money laundering cooperation regulations. International group cooperation aids in the resolution of obstacles and restrictions in bilateral relations, particularly in the development of trust, and in some situations can even aid in the reduction of mutual suspicion. In the context of increasing strategic competition among major powers, an open and personal type of discussion between leaders of countries in international group collaboration strengthens confidence among cooperators. The way of fighting money laundering in groups of two or three nations in the region does not have to go through burdensome work programs, satisfying the demand for rapid and timely resolution for the purpose of cash flow - the volatile object of the market.

- In terms of content, implementing international cooperation on anti-money laundering takes time and highly trained human resources in the domains of financial management, technology, and legislation. ASEAN countries must develop particular policies to attract professionals and scientists to engage in training programs, research initiatives, and to train scientific people resources in laboratory technology and methodologies. anti-money laundering, creating strong regional research groups, focusing on young scientific research groups.

- Vietnam and other ASEAN countries should consider further strengthening the role of the banking system in anti-money laundering activities. Financial institutions are subject to a number of requirements under preventive anti-money laundering procedures. The requirement to report

suspicious transactions is a serious intrusion into banking confidentiality, in contrast to the prior obligations, which violates the principle of not interfering in a customer's business.

- Last but not least, Vietnam and other ASEAN countries also need to improve the legal framework related to virtual assets from the experience in the world; Thereby, there are more comprehensive views on the necessity of completing the legal framework to prevent and combat money laundering in order to improve the efficiency of state management in this field as well as overcome the situation of cyber-crime using virtual assets as a tool to carry out money laundering.²⁴

Conclusion

In summary, the practice of international cooperation in prevention and combat of money laundering in ASEAN encounters a number of obstacles even though there is a primary legislative foundation for mutual legal assistance in countering money laundering among the ASEAN members. A sufficient level of harmonisation of their criminal laws relating to money laundering offenses, is vitally necessary to achieve the successful regional and international cooperation in anti-money laundering.

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²⁴ Completing the law on prevention and combat of money laundering through virtual assets <<https://thitruongtaichinhthiente.vn/hoan-thien-phap-luat-ve-phong-chong-rua-tien-thong-quua-tai-san-ao-40678.html>>

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