

Major Changes of Law on Anti-Money Laundering 2022

Legal Update | April 2023

This Update highlights the following key points:

- ▶ Reporting entities
- ▶ Customer due diligence (also known as KYC)
 - ▶ KYC information
 - ▶ Foreign Politically Exposed Person (Foreign PEP)
 - ▶ Correspondent banking relationship
 - ▶ Supervision of a number of special transactions
- ▶ Money-laundering risk assessment from the reporting entity
- ▶ Client classification
- ▶ Types of transactions must be reported
 - ▶ Report on high-value transactions
 - ▶ Report on suspicious transactions
- ▶ Time limit for reporting
- ▶ Provisional measures
- ▶ Storage of customers' data

On 1 March 2023, Law No. 14/2022/QH15 on Anti-money Laundering (AML Law 2022) came into effect and replaced the Law on Anti-money Laundering No. 07/2012/QH13 (AML Law 2012). AML Law 2022 implements the recommendations of the Financial Action Task Force (FATF) and Decision No. 941/QĐ-TTg of the Prime Minister on the national action plan on anti-money laundering, terrorism financing and financing for proliferation of mass-destruction weapons. This Law Alert focus on the key updates of AML Law 2022.

Some key points are presented and analyzed below:

1. Reporting entities

Reporting entities refer to companies and individuals that have obligations to conduct measures against anti-money laundering and comply with other obligations as required by AML Law.

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AML Law 2022 supplements reporting entities to those who provide (i) payment intermediary services, (ii) securities brokerage and (iii) investment fund and portfolio management. The Government is now allowed to stipulate newly arising activities with money laundering risks of the reporting entities that have not yet been included in the AML Law 2022 after obtaining the consent of the Standing Committee of the National Assembly. This point is a notable change of the AML Law 2022 to ensure the coverage of arising activities in the future.

2. Customer due diligence

▶ KYC information

Unlike AML Law 2012, AML Law 2022 regulates the types of customers for whom reporting entities must carry out customer due diligence in a broader manner, including:

- ▶ Vietnamese citizens
- ▶ Foreign individuals residing in Vietnam with only one nationality
- ▶ Non-resident foreign individuals with only one nationality
- ▶ Individuals with dual or multiple citizenships
- ▶ Stateless individuals
- ▶ Organizations

One remarkable change of AML 2022 is that the reporting entities are allowed to rely on a third party to implement KYC verification provided that such third party satisfies all conditions set out under the new law. In this case, the reporting entities remain ultimately responsible for the collection, updating and verification of the customer identification.

▶ Foreign Politically Exposed Persons (Foreign PEPs)

Under AML Law 2022, Foreign PEPs refer to people who hold high-level positions in a foreign body or institution or international organization.

Unlike AML Law 2012, reporting entities are now required to prepare the list of Foreign PEPs by themselves instead of only relying on the list announced by the State Bank of Vietnam (SBV). AML Law 2022 also sets out more requirements that reporting entities must apply against the Foreign PEPs and its related persons before establishing a business relationship with them.

▶ Correspondent banking relationship

In the case that the reporting entity, which is a bank, establishes a counterpart relationship with another bank (respondent bank) to provide banking, payment and other services, such reporting entity must:

- ▶ Collect information about the respondent bank
 - ▶ Assess the implementation of the respondent bank's anti-money laundering measures
 - ▶ Understand the respondent bank's anti-money laundering responsibilities in the field in this correspondent relationship
- ▶ **Supervision of a number of special transactions**

The AML Law 2022 stipulates that the reporting entities must issue policies and regulations to identify and assess the level of money laundering risk before providing new products and services; products and services that adopt innovative technology and take measures to reduce money laundering risk.

The AML Law 2022 inherits the provisions of the AML Law 2012 on special transactions that the reporting entities must conduct. Also, it supplements that the reporting entities must apply strengthening measures, check the information and purpose of the transaction, in case of doubt, must review the suspicious transaction report and may refuse the transaction.

3. Money-laundering risk assessment from the reporting entity

AML Law 2022 supplements a new regulation under which reporting entities must conduct their own money-laundering risk assessment (ML Assessment) and update it annually. The ML Assessment results must be reported to the SBV and other relevant competent authorities. The timeline for this report obligation shall be 45 days from the date of completion for the reporting entity being an individual, or from the date of obtaining internal approvals for the reporting entity being an organization. Besides, ML Assessments results must be circulated within the internal system of the reporting entities.

4. Client classification

Bases on the ML Assessments results, reporting entities are required to develop a risk management process for money laundering. This risk management process shall include the classification of the reporting entities' customers based on their low, medium or high levels of money laundering risks. Each level will be subject to different requirements for KYC measures.

5. Types of transactions must be reported

Similar to AML Law 2012, under AML 2022 reporting entities are obliged to report to the SBV when conducting high-value transactions and suspicious transactions.

- ▶ **Report on high-value transactions**

AML Law 2022 requires reporting entities to report high value transactions, which are conducted in cash or foreign currencies in cash, to the SBV. The threshold of high value transaction that must be reported has yet to be stipulated by the Prime Minister. According to the draft decision on AML high value transaction, the transaction-reporting threshold is expected to be kept at VND300 million (approx. USD12,800) under Decision 20/2013/QĐ-TTg dated 18 April 2013 by the Prime Minister.

► **Report on suspicious transactions**

AML Law 2022 clarifies cases in which reporting entities must report to the SBV, including:

- Upon learning that the transaction was carried out at the request of the accused, the defendant or the convicted person and there are reasonable grounds to suspect that the assets in the transaction are assets owned or derived under the ownership and control of the accused, the defendant, or the convicted.
- Having reasonable ground to suspect that the property involved in a transaction is related to the money laundering based on suspicious signs of the transaction.

AML Law 2022 continues to stipulate basic suspicious signs and specific suspicious signs with some amendments to the suspicious signs in banking, life insurance business and securities sectors.

6. Time limit for reporting

AML Law 2022 has new regulations on the time limit of reports as follows:

Transaction	Time limit under AML Law 2012	Time limit under AML Law 2022
High value transactions and electronic money transfer transactions in form of electronic data	Daily report	Report within 1 working day from the date of arising transaction
High value transactions and electronic money transfer transactions in form of written report	Report within 2 working day from the date of arising transaction	
Suspicious transaction	Maximum of 48 hours from the time of the transaction generated	3 working days from the arising date of suspicious transactions or within 1 working day from the date of detecting suspicious transactions

Suspicious transaction requested by the customer with signs related to crimes	Immediately report	24 hours from the time of detection
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7. Provisional measures

For the sake of preventing AML activities, in some cases as required by law, provisional measures are required to be applied by reporting entities themselves or at the request of the competent authorities. The provisional measures include (i) postponement of transactions and (ii) sealing of assets, freezing of assets or accounts or seizing of assets.

Regarding the transaction postponement, AML Law 2022 regulates cases where reporting entities must apply this measure in a broader manner, including:

- ▶ It has a ground to suspect or discover that the parties involved in the transaction are in the Black List.
- ▶ It has reasons to believe that the transaction required to be performed related to the criminal activities.
- ▶ It is required by the competent state agencies to postpone the transaction.

8. Storage of customers' data

AML Law 2022 provides a non-exhaustive list of documents that reporting entities shall maintain, which includes (i) KYC materials, (ii) analysis and evaluation results, (iii) materials related to customers and transactions that must be reported and (iv) reports on transactions.

The retention time limit for the above documents is 5 years.

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