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Criminalization and prosecution of money laundering in Vietnam: addressing shortcomings to strengthen commitments with the European Union

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Abstract: In 2023, Vietnam was added to the Financial Action Task Force and the European Union's grey list due to specific deficiencies in its anti-money laundering framework, particularly in the criminalization and enforcement of money-laundering offences. This article undertakes a comparative analysis of Vietnam's legal framework against international standards to identify existing limitations. Drawing upon statistical data and case studies, it examines the gaps in the prosecution of money-laundering offences. This research distinguishes itself by integrating European Union standards into the analysis, identifying previously unreported issues, while providing a comprehensive examination of the underlying causes of current challenges. Based on these insights, the paper proposes reforms to strengthen Vietnam's criminalization and prosecution of money-laundering offences, thereby facilitating the country's removal from the grey list.

Keywords: *criminal offences, European Union, money laundering, prosecution, Vietnam*

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1. Introduction

In 2012, Vietnam and the European Union (EU) entered into the *Framework Agreement on Comprehensive Partnership and Cooperation*, recognizing money laundering (ML) as a significant concern. As part of this partnership, Vietnam committed to strengthening its anti-money laundering (AML) framework in line with international standards, particularly to facilitate trade and financial cooperation under the *EU–Vietnam Free Trade Agreement*. However, its placement on the Financial Action Task Force (FATF) and EU "grey list" in 2023 has raised concerns over compliance risks, increased due diligence requirements for financial transactions and potential regulatory countermeasures that could affect Vietnam's economic ties with the EU (FATF, 2024; 'Commission delegated regulation (EU) 2024/163', 2024).

This article evaluates Vietnam's AML framework against the FATF and EU standards, identifies legal and enforcement gaps and proposes necessary reforms. Using the latest international standards as a benchmark, it analyzes shortcomings in Vietnam's AML regulations, supported by statistical data and case studies. It then analyzes the causes of these deficiencies and proposes solutions to strengthen Vietnam's AML legal framework and enforcement mechanisms, aiming to facilitate its removal from the grey list while reinforcing trust and cooperation with the EU.

2. The criminalization of money laundering in Vietnam and its shortcomings

Vietnam first criminalized ML in its second *Penal Code* (*PC*) *1999*, through the standalone offence of "legalizing the proceeds of crime". However, no prosecutions were recorded in the decade following the enactment of the offence. In 2009, substantial amendments were introduced to the *Penal Code*, including renaming the offence to 'money laundering' and revising its constituent elements. The 2015 enactment of the third *PC*, currently in force, further refined the ML provisions to address the challenges associated with securing successful prosecutions. These revisions were specifically intended to align national provisions with international standards and facilitate legal cooperation in combating transnational ML (Government of Vietnam, 2015). Despite these efforts, persistent enforcement gaps remain. Table 1 outlines the main policy changes and the corresponding enforcement outcomes.

Table 1: Policy changes and enforcement outcomes in money laundering in Vietnam (Source: Minh, 2017; Ngọc, 2018; Supreme Court, no date.)

Period	Version of the *Penal Code*	Policy change	Enforcement outcome
1999–2009	***Penal Code 1999***	First criminalization of ML as “legalizing the proceeds of crime”.	No prosecution due to vague offence elements and limited capacity.
2009–2017	***Amended Penal Code 1999***	Renamed to “money laundering” and revised offence elements.	**2 cases**, enforcement hindered by evidentiary barriers and limited capacity.
2018–2024	***Penal Code 2015***	Further revision of the offence elements, removed conviction dependency on predicate offences.	**6 cases**, enforcement improvements, although challenges remain.

2.1 Predicate offences and related problems

Proceeds of crime are central to ML offences, as the essence of ML lies in disguising the illicit origin of criminal proceeds and presenting them as legitimate (FATF, 2023). Thus, the object of ML offences is property obtained through the crimes, commonly referred to as predicate offences.

The scope of predicate offences has been a critical issue in AML efforts. Over time, international instruments have progressively broadened this scope. The FATF (2023) recommends the broadest application of predicate offences. In contrast, the *Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* or *the Warsaw Convention* adopts a narrower approach, limiting predicate acts to a specific list (Article 9(4)). Meanwhile, Council directives 2018/1673 and 2024/1226 promote wider application, with the latter mandating that violations of Union’s restrictive measures qualify as predicate offences (‘Directive 2018/1673’, 2018, para. 37).

In Vietnam, since the inception of ML criminalization, the offence applies to proceeds from all crimes in the *PC*, including minor offences. This broad application has two key implications.

First, it significantly increases the volume of cases requiring investigation. Given that Vietnam’s courts reported 58,436 criminal cases in 2024 (Supreme

Court, 2024), enforcement agencies must assess whether any of these cases involve ML. This is particularly problematic because ML investigations require extensive financial analysis, forensic accounting, and inter-agency coordination, even when the underlying offence involves small sums (Nguyễn, 2015; Dương, 2011). As Canadian scholar Norm Keith (2018) has noted, "specialized and detailed investigations for ML can drain resources where the amount is small", highlighting the risk of diverting enforcement efforts away from more serious financial crimes. Alternative approaches to mitigate this burden are discussed in the recommendations section of this paper.

Second, ML is characterized as a constructed or auxiliary offence, as it "does not cause any primary new harm" (Nguyen, 2013). It was developed as a legal tool to strengthen measures against organized crime (van Dijck, 2006; Keith, 2018; UNODC, 2004). Notably, under the *PC 2015*, offenders may face harsher penalties for ML than for predicate offences, even when the monetary amounts involved are identical. Given the auxiliary nature of ML, this raises concerns about proportionality.

Prosecutors may be reluctant to pursue ML charges in cases involving a minor predicate offence, as it could appear disproportionate and difficult to justify in court. Moreover, enforcement agencies may prioritize higher-value cases. An analysis of convicted cases suggests that ML is predominantly associated with large-scale financial and corruption crimes, which may further contribute to underprosecution in cases involving small-scale predicate offences.

2.2 Proceeds of crime and associated problems

An important issue in the criminalization of ML is the definition of the term "proceeds of crime". The *Convention against Transnational Organized Crime* or *the Palermo Convention* defines this term broadly, encompassing various forms of illicit property obtained directly or indirectly through or derived from the commission of a crime. It further provides a comprehensive definition of property, including "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets" (*Palermo Convention*, Article 2(e)(d)).

Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism or *the Warsaw Convention* (Article 1(a)) adopts an even broader approach, defining proceeds of crime as "any economic advantage derived from or obtained, directly or indirectly, from criminal offences". According to its *Explanatory Report*, this definition was intentionally designed "to be as broad as possible" based on the consensus among experts that depriving offenders of any economic advantage gained from their criminal activities was essential (Council of Europe, 2005).

In Vietnam, the *PC 2015* stipulates that the object of ML offences includes money and property. This provision presents notable issues. First, under the *Civil Code 2015* (Article 105), property is defined as "objects, money, money-valuable papers, and property rights". This definition implies that money is a type of property that makes the *PC 2015*'s provision awkward and inconsistent.

To guide application, the Supreme Court adopted a broader interpretation of this term to cover different forms of porperty and legal instruments evidencing ownership or interests in such property ('Council resolution 03/2019', 2019, Article 2(2)). However, ambiguity exists in Vietnam's definition, particularly concerning whether the law encompasses indirect funds gained from the offence rather than those directly derived from criminal conduct (APG, 2022).

The omission of indirect property in the definition of proceeds of crime weakens asset tracing, as launderers often convert or transfer illicit assets to conceal their origins. This complicates the prosecution of ML offences, where evidence is crucial (Vu, 2024). It also undermines Vietnam's compliance with international treaties, which mandate the seizure of both direct and indirect criminal proceeds (*Palermo Convention*, Article 12; *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* or *the Vienna Convention*, Article 5). Consequently, foreign jurisdictions may hesitate to cooperate with Vietnam in cross-border asset recovery. The *Anti-Money Laundering Law 2022* (Article 3(2)) recently broadened the definition to include property obtained indirectly through criminal acts. However, as this provision is newly introduced, its practical application remains uncertain.

Furthermore, virtual assets have become a critical concern in the fight against ML. The FATF (2023) strongly recommends that states implement regulations to mitigate ML risks associated with virtual assets. 'Directive 2018/1673' (2018, Article 2(2)) underscores the importance of regulating virtual currencies by expanding the definition of property to include electronic or digital assets. The EU has introduced a comprehensive regulatory framework for the digital economy (Masoura and Malefaki, 2023;

Chochia, Kerikmäe and Skvarciany, 2023; Göksal, Solarte-Vásquez and Chochia, 2024), while courts in various jurisdictions increasingly recognize cryptocurrencies as property (Justice Jackman, 2024; Riley, 2021; Astrakhantseva and Astrakhantsev, 2021).

However, Vietnam continues to face significant challenges in this area. The *AML Law 2022* does not address virtual assets, leaving a critical gap in the regulatory framework. Without a legal framework to define virtual assets and their associated risks, authorities struggle to monitor, detect and prosecute ML activities that involve cryptocurrencies and other digital assets. This regulatory gap not only exposes vulnerabilities in the financial system but also places Vietnam at odds with FATF's Recommendation 15, which requires countries to regulate virtual asset service providers and implement risk-based measures. As a result, Vietnam's AML efforts remain incomplete, limiting its ability to effectively combat ML involving digital financial technologies.

2.3 Constituent elements of money-laundering offence and related problems

Article 3(1)(b) of the *Vienna Convention* and, subsequently, Article 6(1) of the *Palermo Convention* require Member States to criminalize specific ML activities. The FATF (2023) recommends that parties adopt these conventions in their efforts to criminalize ML. In the EU, the *Warsaw Convention* further mandates Member States to establish ML offences with identical constituent elements of the *actus reus* ('wrongful conduct') and *mens rea* ('guilty mind'). Thus, the provisions of these conventions are widely recognized as international standards for defining the elements of ML offences.

However, in transforming these standards into domestic legislation, Vietnam has adopted a different approach to defining the elements of ML offence. The *PC 2015* (Article 324(1)) categorizes the elements of this offence into three distinct groups: (1) direct or indirect participation in financial, banking or other transactions to conceal or disguise the illicit origin of money or property obtained from criminal conduct; (2) using money or property from criminal conduct in business activities or operations; and (3) concealment or misrepresentation of information regarding the origin, nature, location, movement, or ownership of money or property obtained from criminal conduct.

2.3.1 Analysis of the *actus reus* for money-laundering offence under the *Penal Code 2015*

Compared with international standards, Vietnamese domestic law exhibits notable deficiencies in defining the *actus reus* of ML offence. The FATF observed that "it is not clear that all forms of transfer and conversion are covered, as required by the Conventions, including transfer, sending or delivery, transportation, transmission, altering" (APG, 2022).

In addition to the list of specific categories of transactions linked to ML, such as financial and banking transactions, the *PC 2015* introduces the broad, undefined term "other transactions", creating interpretive ambiguity. To clarify, the Supreme Court provides examples, including casino operations, prize-winning games and antiquities trading ('Resolution 3/2019', 2019, Article 4(2)). Yet, the provision does not explicitly encompass actions like "transfer, sending, delivery, transportation, transmission, or alteration" of crime proceeds.

Furthermore, the Supreme Court suggests that "other transactions" extend beyond financial or banking activities ('Resolution 3/2019', 2019, Article 4(2)). This interpretation raises concerns under the *ejusdem generis* rule, which dictates that general terms following specific descriptors should be construed within the same category (*Virginia Law Review*, 1916). Thus, as "other transactions" follow financial and banking transactions, its scope should likely be limited to similar activities within this domain.

The ambiguity surrounding the broad term "other transactions" and the inconsistent interpretation by the Supreme Court undermine the clarity and comprehensiveness of Vietnam's ML legislation. To align domestic law with international standards, a more precise definition of an *actus reus* is necessary to ensure adherence to global conventions.

2.3.2 Analysis of the *mens rea* for money-laundering offence under the *Penal Code 2015*

The *PC 2015* represents a significant step forward in facilitating ML prosecutions. The Code lowers the threshold of culpability by shifting from the requirement of actual knowledge regarding the illicit origins of the laundered property to a standard where the perpetrator needs only reasonable grounds to believe that the property was derived from criminal activity. This revision aligns comparably with similar legal standards in other jurisdictions, where ML offenders may be held liable if they knew, reasonably foresaw (or should have known), willfully ignored or reasonably suspected that the property was the proceeds of crime (IMF, 2011; Natterer, 1997).

According to the Supreme Court, the *mens rea* of ML offences can be sufficiently established if the perpetrator becomes aware, through public media, that another individual has committed the predicate offence ('Resolution 3/2019', 2019, Article 2(4)(b)). Furthermore, the Court illustrates that a public official's spouse accepting unexplained wealth far exceeding legitimate income without questioning its source demonstrates reasonable grounds to believe the property is criminally derived ('Resolution 3/2019', 2019, Article 2(4)(c)).

In cases involving registered property, the Court has clarified that individuals who receive property without proper registration at an abnormally low price ought to know that the property originates from criminal activity ('Resolution 3/2019', 2019, Article 2(4)(d)). This interpretation significantly lowers the evidentiary threshold required to establish the *mens rea* for ML offence. By broadening the scope of circumstances under which reasonable belief can be inferred, the Court's interpretation enhances the enforceability of AML provisions while aligning them with practical realities.

3. Shortcomings in the prosecution of money-laundering cases

3.1 Limited conviction of money laundering compared to predicate offences

Between 1 January 2018, the effective date of the *PC 2015*, and 31 December 2024, a total of 323,104 criminal cases were adjudicated (Supreme Court, 2024). Given the vast number of cases, this analysis focuses on predicate offences explicitly addressed in the *Vienna* and *Palermo Conventions*, specifically drug-related crimes and corruption offences.

During the specified period, data from the Supreme Court indicates that 31,787 cases involved prosecutions for illegal trading and transportation of narcotics. There were 1,060 cases of embezzlement and abuse of office to appropriate property. Collectively, the total number of predicate offences involving drug-related and corruption crimes amounted to 32,847 cases. In stark contrast, the database recorded only six ML cases during the same period. It is important to note that not all cases are recorded on the official website of the Supreme Court for some reasons, such as state secrets or information not yet made public, the release of which could harm national security ('Resolution 03/2017', 2017, Article 3). Additionally, statistical data on cases are categorized according to principal offences, which means that ML convictions may not be reflected in the statistical data if ML is not the principal offence. However, the strikingly low number of ML convictions is particularly notable, given that most of these cases were prosecuted between 2022 and 2024, despite ML having been criminalized for over two decades.

According to the findings of the State Bank of Vietnam (2024) from the National Risk Assessment for 2018–2022, illegal drug trading and corruption are high-risk predicate offences, making ML offences nearly inevitable. However, a review of the six ML judgments reveals that none involved predicate offences related to drug trafficking or corruption. This disconnect presents a substantial gap between high-risk predicate offences and the actual enforcement outcomes. The significant disparity highlights the pressing need to effectively address the under-prosecution of ML offences.

Several factors contribute to this discrepancy. Vietnam's economy remains heavily reliant on cash, complicating efforts to trace financial transactions linked to ML. Additionally, sophisticated laundering methods further hinder enforcement (*Vietnam Investment Review*, 2017). The absence of specialized investigative units for ML cases, combined with the fact that ML is still a relatively new offence, has left law enforcement agencies in the process of developing expertise in its identification and prosecution (*VietnamPlus*, 2018). These challenges collectively explain the significant gap between the prevalence of predicate offences and the low number of ML prosecutions.

3.2 Non-conviction of corporate legal persons for predicate and money-laundering offences

Among the six ML cases, no convictions of corporate legal persons were recorded. This situation reflects the concerns of the Asia/Pacific Group (APG), particularly the lack of provisions establishing criminal liability for legal persons in predicate offences (APG, 2022).

In several particularly serious cases involving thousands of victims, such as the Truong My Lan (2024) and Alibaba (2022) cases, where the principal offences committed with the participation of legal persons, only individuals were convicted. Specifically, in the Alibaba case, the court found that the principal perpetrator had established various companies to commit fraud ('Judgment No. 607/2022/HS-ST', 2022). Similarly, in the Truong My Lan case, the perpetrators fraudulently appropriated victims' property by issuing bonds through various shareholding companies without providing charges over the companies' assets ('Judgment No. 504/2024/HS-ST', 2024). The absence of corporate liability in these cases stems from a gap in the *PC 2015*, which does not impose criminal responsibility on legal persons for fraud and embezzlement.

While the *PC 2015* establishes criminal liability for legal persons, non-conviction cases have been observed despite evidence indicating their involvement. In the Alibaba case, the perpetrator laundered the proceeds through a network of 22 companies he had established ('Judgment No. 607/2022/HS-ST', 2022). In the Truong My Lan case, the perpetrators laundered significant proceeds of crime through bond transfer transactions involving five shareholding companies ('Judgment No. 504/2024/HS-ST', 2024). None of the companies implicated in these financial transactions or business operations faced prosecution.

The absence of prosecutions against legal persons for ML, including the cases mentioned above, can be attributed to several factors. First, the criminal liability of legal entities was introduced only in the *PC 2015* and came into force in 2018, resulting in limited judicial experience and a lack of precedents. Additionally, inconsistencies between criminal law, criminal procedure law and commercial law regarding coercive measures applicable to corporate suspects hinder effective prosecution. Further challenges arise from the absence of specialized investigative units and inadequate inter-agency coordination, both of which weaken enforcement efforts (Đỗ, 2023).

3.3 Shortcomings in prosecuting self-laundering

Vietnam's *PC 2015* (Article 324) explicitly criminalizes self-laundering. However, despite the clear legal provision, there have been instances where individuals implicated in predicate offences, who directed or incited others to launder criminal proceeds via financial or banking transactions, have avoided prosecution.

For example, in the Le Minh H (2022) case, the defendant perpetrated cyber fraud. Following the fraud, the defendant facilitated the laundering of the illicit proceeds by proposing to others that they assist in laundering the funds in exchange for a 30% fee of the laundered amount ('Judgment No. 248/2022/

HS-PT', 2022). While the defendant did not directly engage in the *actus reus* of ML, his actions, in inciting and directing others to participate in the laundering process for commission, fall within the definition of complicity as provided in Article 17 of the *PC 2015*. Despite this, the defendant was prosecuted solely for fraud.

This case highlights a broader concern regarding the application of AML provisions in Vietnam, suggesting the need for a more comprehensive approach to prosecuting individuals who, while not directly involved in the laundering process, nonetheless orchestrate or facilitate its execution. Failure to prosecute such individuals undermines the overall effectiveness of the legal framework. A stronger application of complicity laws would align Vietnam's approach with the FATF (2023) recommendations on self-laundering offences, ensuring that all individuals involved in the laundering process, whether directly or indirectly, are held accountable.

4. Conclusion and recommendations

The above analysis highlights significant challenges in the *PC 2015* regarding the criminalization of ML and its enforcement. Addressing these challenges is essential to meeting the FATF recommendations and facilitating Vietnam's removal from the increased monitoring list. Strengthening the legal framework and its implementation would also enhance the effectiveness of combating ML offences, thereby fostering a stable and transparent environment that promotes foreign cooperation and investment, particularly with the EU.

4.1 Enhancing the criminalization of money laundering

Regarding ML criminalization for all types of predicate offences, which risks straining enforcement capacity, it is recommended that a threshold be introduced (Nguyễn, 2015). Drawing on the FATF recommendations and the EU legal framework (FATF, 2023; *Warsaw Convention*, Article 9(4)), Vietnam could consider establishing a threshold for the laundered amount as an effective solution. Alternatively, if a threshold is introduced for predicate offences, such as requiring that the minimum penalty for the predicate offence be more than six months of imprisonment, this would necessitate additional evidence concerning predicate offences, potentially complicating the prosecution process. Instead of focusing predominantly on predicate offences, greater attention should be directed towards prosecuting ML offences themselves.

Furthermore, this recommendation addresses the proportionality problem. As discussed, an ML conviction does not require a prior conviction for a predicate offence. This creates a situation where predicate offences may not be prosecuted due to the threshold values of the property involved. However, an ML conviction can still be achieved, leading to a proportionality issue, as ML offences are auxiliary in nature. Establishing a threshold for the laundered amount would help resolve this issue.

To address the shortcomings in Vietnam's *PC 2015* concerning the *actus reus* of the ML offence, Article 324(1) should be amended to encompass all forms of transfer and conversion of proceeds of crime. It is recommended that Vietnam avoid limiting the provision to specific types of transfer or conversion, such as financial or banking transactions or business activities. Instead, the *PC 2015* should adopt the language used in the *Vienna* and *Palermo Conventions* to define the constituent elements of the ML offence. This approach ensures a comprehensive and internationally aligned legal framework to address ML activities.

The gaps in the regulation of virtual or crypto assets involved in criminal activities highlight the need for a comprehensive legal framework in Vietnam, encompassing both civil and criminal law. However, in the short term, the revision of Vietnam's *AML Law 2022* offers a potential solution. Drawing on the EU's experience in this area ('Directive 2018/1673', 2018, Article 2(2)), the definition of proceeds of crime under Article 3(2) of this *Law* should be revised to include electronic or virtual assets. While maintaining the core elements of the original definition, the revised definition could read as follows:

> Proceeds of crime refer to property obtained directly or indirectly from the commission of a criminal offence, including income, yields, interest or profits generated from property acquired through criminal conduct and extending to assets in any form, including electronic or virtual property.

4.2 Enhancing prosecution in money laundering

Regarding Vietnam's shortcomings in prosecuting ML offences alongside predicate offences, it is important to note that the FATF (2023) has emphasized the need for parallel financial investigations. For Vietnam, mandating parallel financial investigations in all cases involving high-risk predicate offences, such as fraud, drug trafficking and corruption, is essential for identifying and prosecuting associated ML offences. These investigations enable authorities to address not only the predicate offences but also the illicit financial flows linked to them, ensuring that ML activities are detected and disrupted. Parallel investigations also enhance the capacity of law enforcement to uncover broader financial networks and schemes used to conceal criminal proceeds. Establishing clear procedural guidelines for conducting such investigations would improve their consistency and effectiveness, bringing Vietnam's enforcement efforts in line with international standards.

To address the significant shortcomings regarding the non-conviction of legal persons in predicate and ML offences, Vietnam should develop specialized training and capacity-building programmes for law enforcement and judicial officers to enhance their ability to investigate and prosecute corporate legal persons. These programmes should focus on the complexities of corporate criminal liability, particularly in relation to predicate and ML offences, and provide practical guidance on applying these concepts in cases involving corporate structures. By improving familiarity with corporate liability mechanisms, the judiciary will be better equipped to hold companies accountable for their role in criminal activities.

To address the shortcomings in prosecuting self-laundering due to the failure to apply complicity provisions, Vietnam must strengthen enforcement in cases where individuals facilitate or orchestrate ML without directly engaging in laundering acts. A key recommendation is for judicial and law enforcement authorities to emphasize the application of complicity laws under the *PC 2015*. Prosecutors should actively identify instances of complicity in ML, where individuals may not directly launder proceeds but play a crucial role in its execution, such as by directing, inciting or assisting others in committing the offence. Strengthening the application of these provisions would ensure that all participants in the laundering process, including those who facilitate or orchestrate it for financial gain, are held accountable.

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