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LEGAL UPDATES
March 2023



NEW LAW ON ANTI-MONEY LAUNDERING



Picture from: <https://www.indiafilings.com/learn/prevention-of-money-laundering-act/>

Money laundering has become a global problem that causes negative impacts on all areas of each country. As an effort to advance money security and national financial safety, on 15 November 2022, the National Assembly of Vietnam adopted the new Law No. 14/2022/QH15 on anti-money laundering (“**New AML Law**”) which represents certain innovative points in comparison with the former Law on Anti-money Laundering No. 07/2012/QH13. The New AML Law takes effect from 1 March 2023.

The New AML Law also aims at detecting, preventing, and dealing with suspicious money laundering, and hence also sets out various measures which must be complied by organizations and individuals engaging in financial services and non-financial services and those who have transactions with such organizations and individuals.



Picture from: <https://sanctionsanner.com/knowledge-base/anti-money-laundering-aml-49>

Reporting obligations and reporting entities

The New AML Law continues to impose reporting obligations on businesses that provide certain financial services as well as non-financial services but with necessary adjustments to cope with the current situation.

Accordingly, the New AML Law officially mentions payment intermediary service providers as the subject matter of reporting obligations. Entities engaging in “securities brokerage”, “management of securities investment funds”, and “management of investment capital portfolios” are also considered as reporting entities from 1 March 2023.

As for non-financial entities, the reporting obligations shall apply to those conducting prized gaming businesses, real estate businesses (except for real estate leasing and real estate consultancy), precious metals/stones dealers, accountant services, notary services, legal services, services of establishing, managing and running an enterprise, provision of directorship and secretary services to a third party and legal arrangement services.

On the other hand, “portfolio management”, “cash or securities management for other organizations and individuals” and “investment activities related to life insurance” businesses are no longer subject to reporting obligations pursuant to the New AML Law.

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Generally, in case where a reporting entity suspects or has reasonable grounds to suspect that a transaction is related to money laundering or in case where there is a large transaction, it shall report its suspicions or such large transactions to the competent authorities. Concurrently, the New AML Law also sets out guidance for enabling the reporting entities to identify suspicious transactions or large transactions.

Know-Your-Customer activities

Concurrently with the reporting obligations, the New AML Law also requires the reporting entities to conduct Know-Your-Customer (KYC) activities on customers being Vietnamese citizens, foreign individuals having one citizenship (whether they reside in Vietnam or not), foreign individuals having multiple citizenships, stateless individuals and organizations.



Picture from: <https://vietnambiz.vn/thau-hieu-khach-hang-know-your-client-kyc-la-gi-20200409163945617.htm>

It should also be noted that reporting entities can collect and verify KYC information from the official public database, relevant authorities or via qualified third parties. However, the reporting entities will still be responsible for KYC information from such sources.

Money-laundering-risks assessment



Picture from: <https://www.conciliunglobal.net/global-insights/case-study-anti-bribery-and-corruption-policies-and-procedures/>

Reporting entities shall assess money laundering risks and annually report to the State Bank of Vietnam (SBV) and other competent authorities. The money laundering risk assessments shall be used for establishing the money laundering risk control frameworks by reporting entities which cover, among others, classification of customers based on risk levels (i.e. low, average or high risk) and the respective measures applicable for customers at each risk levels.

AMENDMENTS TO REGULATIONS ON BANK GUARANTEE



Picture from: <https://vakilsearch.com/blog/bank-guarantee-types/>

The State Bank of Vietnam has recently released Circular No. 11/2022/TT-NHNN (“Circular 11”) regarding bank guarantee. Coming into force from 1 April 2023, Circular 11 will replace Circular No. 07/2015/TT-NHNN and Circular No. 13/2017/TT-NHNN.

The new Circular, while negating the no-longer-suitable provisions, confirms certain key provisions under the previous Circulars such as compliance with foreign currency regulations, compliance with banking limits or compulsory use of Vietnamese in guarantee agreements. On the other hand, the new Circular 11 is also expected to address inadequacies of the current legal framework as well as help resolve the recently practical problems.



Picture from: <https://www.idfcfirstbank.com/finfirst-blogs/beyond-banking/what-is-the-impact-of-it-on-the-banking-sector>

Restrictions on bank guarantee for bonds issuance.

The new Circular 11, while continues to emphasise that bank guarantee will not be permitted for bonds issued for purpose of restructuring debts, supplements that bank guarantee will also not be permitted for bonds issued for purpose of capital contribution, capital acquisition or capital increase.

E-guarantee

As one of the new initiatives to complete Vietnam's legal framework for digital banks, Circular 11 for the first time introduces the e-guarantee activities.

Accordingly, a bank can choose to provide a guarantee via electronic means provided that it meets the minimum requirements for technologically-based information processing, information security and safety. Credit institutions and branches of foreign banks may themselves decide on methods, forms and technologies and bear all risks.

It should be noted that there is a limit in terms of value of each guarantee commitment issued in case of using electronic Know-Your-Customer (eKYC), which is VND4 billion for each individual and VND45 billion for each organization. There are some specific exceptions to such limits, such as clients having digital signatures as prescribed by law or clients being a credit institution.

Tightening regulations on guarantee for off-plan real estate

Compared to the former regulations, Circular 11 seems to tighten the conditions for commercial banks to provide guarantee for future houses.

Specifically, for the purpose of this business, the establishment and operation license (or the amendments thereto) of a bank must record the guarantee activities. Also, this commercial bank is not subject to prohibition, restriction, termination or suspension from providing guarantee for future houses.

Nevertheless, any commercial bank, who is not allowed to provide bank guarantee for future houses due to dissatisfaction with conditions under Circular 11, is still obliged to fulfil any agreements or commitments which it has entered into until the relevant guarantee obligations are fulfilled. No modifications to such agreements or commitments are allowed unless they do not cause any change in the beneficiary rights of the buyer and they comply with this Circular 11.

Circular 11 also elaborates terms and conditions, validity and rights and obligations of commercial banks, developers and buyers where a guarantee is granted over future houses.



Picture from: <https://www.spaceandplace.ae/sell/>

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