

**REPORT**

**MONEY LAUNDERING AND TERRORIST FINANCING RISK  
ASSESSMENT FOR LEGAL PERSONS**

*(Enclosed with Official letter No.8203 /BKHĐT-ĐKKD dated 4 November  
2019 Ministry of Planning and Investment)*

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**A. INTRODUCTION**

1. In 2018, Vietnam conducted a National Risk Assessment (NRA), which covered nine key areas: 1) money laundering; 2) national vulnerability assessment; 3) banking sector vulnerability assessment; 4) securities sector vulnerability assessment; 5) insurance sector vulnerability assessment; 6) other financial institutions vulnerability assessment; 7) designated non-financial business of profession vulnerability assessment; 8) risk assessment on terrorism financing; and 9) financial inclusion product risk assessment.

The NRA did not examine the ML/TF risks of legal persons including non-profit organizations and legal arrangements.

**B. PURPOSE**

2. The purpose of this assessment is to identify the ML/TF risks associated with all types of legal persons in Vietnam whose establishment and operation is regulated by the Enterprise Law, with the exception of the TF risk of NPOs as that is the subject of a separate risk assessment. This risk assessment does not examine the risk posed by legal arrangements as it is outside the terms of reference.

3. In terms of data, this assessment established based on the data provided by competent authorities. Other information and statistics were based on internet sources and references, including international typologies and consultation with experts of the Asian Development Bank (ADB).

## **C. BACKGROUND**

4. FATF Recommendation 24 requires jurisdictions to, “*assess the money laundering and terrorist financing risks associated with different types of legal persons created in the country.*” This is stated in Interpretative Notes 24. 2 (d) and in the assessment methodology.

5. The FATF definition of a legal person:

*Legal persons refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.*<sup>1</sup>

## **D. LEGAL PERSONS**

6. The Vietnamese legal framework under the Law of Enterprises 2014 (Law on Enterprise) only provides for two types of shares: a) ordinary shares and b) preferred shares (with special rights). Bearer shares do not exist in the Vietnamese legal framework.

7. In Vietnam, there are two major types of legal persons: (a) commercial legal persons, and (b) non-commercial legal persons. This risk assessment focuses on commercial legal persons whose establishment and operation is regulated in the Enterprise Law. Commercial legal persons in Viet Nam covered in this assessment include: (a) multi-member limited liability companies (MLLC), (b) single-member limited liability companies (SLLC) , (c) joint-stock companies or shareholding companies (SC), (d) partnerships, and (e) private companies/sole proprietorships established and operating business under the Enterprise Law.

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<sup>1</sup>FATF Glossary, page 158.

**Table 1. Company forms.<sup>2</sup>**

<b>Single-member limited liability</b>	<b>Multi-member limited liability (Up to 50)</b>	<b>Joint-stock or shareholding</b>
<b>Investor</b>		
<ul style="list-style-type: none"> <li>➤ The sole investor may be an organization or an individual.</li> <li>➤ Cannot be listed.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Two or more investors (referred as ‘members’) who may be organizations or individuals.</li> <li>➤ The number of investors must not exceed 50.</li> <li>➤ Cannot be listed.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Three or more investors (no upper limit) who may be organizations or individuals. &gt;</li> <li>➤ May be a ‘public company’ (more than 100 shareholders or that has made a ‘public offer’ via mass media) and, therefore, subject to higher disclosure and other requirements of the Law on Securities.</li> <li>➤ Can be listed</li> </ul>
<b>Charter capital</b>		
<ul style="list-style-type: none"> <li>➤ Charter capital’ is the capital that the investor has contributed, or undertaken to contribute, within 90 days from the issuance of the</li> </ul>	<ul style="list-style-type: none"> <li>➤ Charter capital’ is the capital that the members have contributed, or undertaken to contribute, within 90 days from the issuance of Business</li> </ul>	<ul style="list-style-type: none"> <li>➤ Charter capital’ is divided into equal portions called shares, which must be paid up within 90 days from the issuance of Business Registration Certificate. In</li> </ul>

<sup>2</sup> Legal Guide to Investment in Vietnam, 2017) ([www.vietnamlaws.com](http://www.vietnamlaws.com)). Last view 9/19/19.

<p>Business Registration Certificate.</p> <ul style="list-style-type: none"> <li>➤ Cannot issue shares.</li> <li>➤ Subject to conditions, can issue bonds to raise capital, but not convertible bonds.</li> </ul>	<p>Registration Certificate.</p> <ul style="list-style-type: none"> <li>➤ Cannot issue shares.</li> <li>➤ Subject to conditions, can issue bonds to raise capital, but not convertible bonds</li> </ul>	<p>ordinary cases, each share has a par value of VND 10,000.</p> <ul style="list-style-type: none"> <li>➤ Must have ordinary shares and may have preference shares, including voting preference shares, dividend preference shares, redeemable preference shares and other types stipulated in the charter.</li> <li>➤ Subject to conditions, may issue bonds to raise capital, including convertible bonds</li> </ul>
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**Transfer of shares and capital contribution**

<ul style="list-style-type: none"> <li>➤ Where an investor transfers only part of the charter capital, SLLC must register for conversion into MLLC.</li> <li>➤ The new member must also be registered in the Business Registration</li> </ul>	<ul style="list-style-type: none"> <li>➤ An investor wishing to transfer all, or part of its capital contribution must first offer to sell such share of capital contribution to all other investors proportionally.</li> <li>➤ The transferor ceases to have member's rights and obligations</li> </ul>	<ul style="list-style-type: none"> <li>➤ Shares may be freely transferred (unless they are subject to certain limitations on founding shareholders in the first three years, or otherwise restricted under the charter or law).</li> <li>➤ Voting preference shares may not be transferred</li> <li>➤ The transfer of shares will be</li> </ul>
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<p>Certificate issued by the business registration office.</p>	<p>when the transferee is registered in the members' registry maintained by the company</p> <p>➤ The new member must also be registered in the Business Registration Certificate issued by the Business Registration Office.</p>	<p>completed on the date the new shareholder is registered in the shareholders' registry maintained by the company.</p>
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8. A partnership is an enterprise with at least two (2) partners as co-owners of a company who runs a business in a common name. They may not issue any kind of shares. A partnership's legal existence begins from the issuance date of the Certificate of Business registration<sup>3</sup>

9. A private company/sole proprietorship is an enterprise owned by a natural person who is responsible for its operation with all of his/her property. Like partnerships, a private company is not allowed to issue shares. An owner of private company must not concurrently be a business household owner or partner of a partnership. It is also not allowed to contribute capital to an establishment, buy shares or stakes in partnerships, limited liability companies or joint stock companies.<sup>4</sup>

10. All commercial legal persons or enterprises should be registered with the Business Registration Agency, as required by the Law on Enterprise 2014

11. By end 2018, a total of 537,830 commercial legal persons or enterprises were newly registered in Vietnam from 2014-2018. In the first 10 months of 2019, there were 114,456 new enterprises, up 4.4% compared to the same period 2018.

<sup>3</sup> Article 172. Chapter VI, Law on Enterprises

<sup>4</sup> *Ibid.* Article 183, Chapter VII

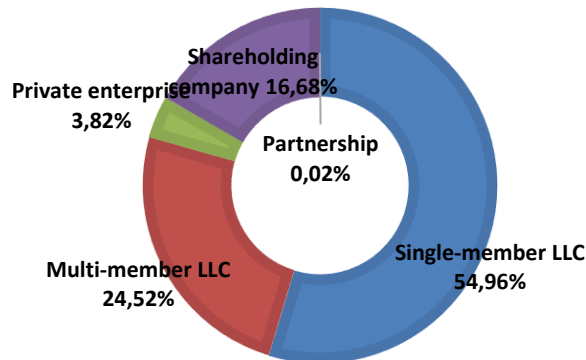
**Table 2: Number of newly established enterprises by type between 2014 and 2018**

Enterprise type	Number of newly established enterprises				
	2014	2015	2016	2017	2018
Single-member LLC	36,372	48,362	59,848	73,118	77,897
Multi-member LLC	20,452	25,060	27,685	29,389	29,287
Private enterprise/Sole proprietorship	5,970	5,345	4,295	3,133	1,820
Joint-stock/share holding company	12,034	15,971	18,256	21,197	22,255
Partnership	14	16	16	22	16
<b>Total</b>	<b>74,842</b>	<b>94,754</b>	<b>110,100</b>	<b>126,859</b>	<b>131,275</b>
<b>Total 2014-2018</b>	<b>537,830</b>				

12. Single-member limited liability companies account for 54.96% for the period 2014 – 2018 while 24.52% are multi-member limited liability companies. Joint stock companies (including those publicly listed on stock exchange) account for 16.68%. Private companies/sole proprietorship and partnerships account for combined percentage share of 3.84%.

**Chart 1**

## NEWLY-REGISTERED ENTERPRISES BY TYPE DURING THE PERIOD 2014-2018



13. The newly established enterprises were concentrated on some typical fields such as: Wholesale And Retail Trade; Repair Of Automobiles, Motorbikes And Other Motor Vehicles (around 34.4%); Construction (around 13.4%); Manufacturing (around 12.2%); and Professional, Scientific And Technical Activities (around 7.5%).

14. For enterprises established and operating business under the Law on Enterprises, each enterprise has a unique enterprise identification number created by the National Business Registration System which is part of the Certificate of Business Registration (Article 30 of Law on Enterprises). That identification number facilitates the timely access of the information regarding beneficial ownership. The information on enterprises covered by the Law on Enterprises are subject to registration under the Business Registration Agency.

15. Article 27 of the Law on Enterprises provides the procedures for business registrations; Article 28 regulates the issuance of the Certificate of Business Registration; Article 29 details the content of the Certificate of Business Registration. The Certificate of Business Registration requires that basic details of the legal person, including the address, legal representatives (for joint stock companies and limited liability companies), the partners (for a partnership), the owners of a private company, and the names of details of individuals or organizations who are members of limited liability companies. Clause 4, Article 27 also requires that the charter capital is included in the Certificate of Business Registration.

16. Article 33 regulates the publication of business registration information and stipulates that the enterprise must make an announcement on the National

Business Registration Portal. The announced information should contain all the information on the Certificate of Business registration and information on: business lines; list of founding shareholders and foreign shareholders in joint-stock companies. Clause 2, Article 34 of the Law on Enterprises provides that every legal person or natural person is entitled to request to the Business Registration Authority the information that must be announced by an enterprise as prescribed by law. Decree No.78/2015/ND-CP on business registration detailing business registration and Article 35 of the Decree provides a regime for on-line enterprises registration.

17. At National Business Registration Portal, a public user may search for the details of a company and their owners including information such as dates of birth, gender and official identification document number. Enterprise historical information is available for the last three years. The portal can also provide a list of enterprises in which a person founded and/or managed in the past 3 years.

18. A foreign investor is now defined as foreign nationals or organization established in accordance with foreign laws and conducting investment and business activities in Viet Nam. Any foreign investor establishing economic organizations in Viet Nam must follow a two tiered registration system: 1) Apply and obtain Investment Registration Certificate (IRC); 2) Apply for Business Registration Certificate (BRC).

19. Vietnam continues to attract increasing levels of foreign direct investment. As of 20 June 2019, there are 28,954 valid projects with total registered capital of US\$ 351.66 billion. Accumulated realized capital of FDI projects is estimated at US\$ 200.5 billion, accounting for 57% of total valid registered capital.

20. Non-commercial legal persons are those whose primary purpose does not involve seeking profits and whose profits may not be distributed to its members (Article 76 of the Civil Code). There are three types of non-commercial legal persons covered by specific special decrees:

- a. Decree No. 45/2010/ND-CP, enacted on July 1, 2010, defines the legal regime on the organization, operation and management of Associations;
- b. Decree No. 12/2012/ND-CP, enacted on June 1, 2012, defines the legal regime on the registration and management of the activities on International NGOs in Vietnam;



c. Decree No 30/2012/ ND-CP, enacted on June 1, 2012, defines the organization and operation of social Funds and Charity Funds;

d. Law on Science and Technologies;

e. Decree No. 08/2014/ND-CP dated 27 January, 2014 of the Government detailing and guiding the implementation of a number of articles of the Law on Science and Technologies;

f. Law on Religion and folk belief 2016;

g. Decree No.162/2017/NĐ-CP dated 30/12/2017 of the Government detailing a number of articles and the implementation of the Law on Religion and folk belief.

21. The TF risk of NPOs, which is not covered in this report, is the subject of a separate NPO risk assessment.

## E. METHODOLOGY

22. The methodology used follows the three key stages identified in the FATF guidance, of identification, assessment and evaluation.



23. Several key terms used throughout the assessment are defined below:

- **Threat** – People or activities with the potential to cause harm. Money laundering threats include predicate offences and criminals who commit them, while terrorist financing threats include those groups and individuals conducting terrorist activity.

- **Vulnerability** - Things that can be exploited by the threat. Vulnerabilities can also be reduced through mitigation.

- **Consequence** - The impact or harm that money laundering or terrorist financing may cause, including the effect of the underlying criminal and terrorist activity on financial systems and institutions.

- **Risk** - A function of threat, vulnerability and consequence. Inherent risks can be weighed against mitigating factors to assess net risks.

24. A three-tiered scale (High, Medium or Low) is used to determine the extent of ML threat and vulnerability of legal persons, before assessing the consequences and likelihood to determine ML/TF risks using the same three-tiered scale.

## **F. THREAT ASSESSMENT OF LEGAL PERSONS**

### **I. Threat Assessment methodology**

25. The Threat Assessment looks into the use of the legal persons as channel for money laundering and terrorism financing. The level of assessment is based on the following:

Level 1 – The likelihood of abuse is low.

Level 2 – The likelihood of abuse is medium.

Level 3 – The likelihood of abuse is high.

### **II. International lessons**

26. Internationally, based on numerous typologies and in the joint FATF-Egmont Report<sup>5</sup> on Concealment of Beneficial Ownership, criminals employ a range of techniques and mechanisms to obscure their ownership and control of illicitly obtained assets. Identifying the true beneficial owner(s) or individual(s) exercising control represents a significant challenge for prosecutors, law enforcement agencies, and intelligence practitioners across the globe. Many of the common mechanisms/techniques have been compiled by FATF in previous studies, including the 2014 FATF Guidance on Transparency and Beneficial

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<sup>5</sup> P22-25, FATF=Egmont Report Concealment of Beneficial Ownership, July 2018

Ownership. According to the FATF guidance report beneficial ownership information is commonly obscured through the use of:

- a. shell companies, especially in cases where foreign ownership is spread across jurisdictions
- b. complex ownership and control structures
- c. bearer shares and bearer share warrants unrestricted use of legal persons as directors
- d. formal nominee shareholders and directors where the identity of the nominator is undisclosed
- e. informal nominee shareholders and directors, such as close associates and family
- f. intermediaries in forming legal persons, including professional intermediaries.

27. Overall, the key techniques used by criminals to obscure beneficial ownership can be categorized within three broad methods:

a) **generating complex ownership and control structures** through the use of legal persons and legal arrangements, particularly when established across multiple jurisdictions.

b) **using individuals and financial instruments to obscure the relationship between the beneficial owner** and the asset, including bearer shares, nominees, and professional intermediaries, and

c) **falsifying activities** through the use of false loans, false invoices, and misleading naming conventions, false documents and personal papers.

### **III. Viet Nam's lessons**

28. The misuse of legal entities to hide a criminal beneficial owner or illicit source of funds had been reported by law enforcement as a feature of money laundering. The following are statistics provided by the Ministry of Public Security (MPS) on investigations of commercial legal persons established and operating business under the Law on Enterprises. The data is provided by Police Department of Economic crimes (competent authority responsible for investigation of predicate offences, a majority of which being related to commercial legal persons).

**Table 3a: Police investigations statistics**

Year	Starting commence procedural process of the entire police force for economic crimes		Number of cases proposed to be started commence procedural process by the entire police force for economic crimes		Starting commence procedural process of the Police Department for Economic crimes		Number of cases proposed to be started commence procedural process by the Police Department for Economic crime		Recovering assets of the Police Department for Economic crimes (VND billion)
	Cases	Accused persons	Cases	Accused persons	Cases	Accused persons	Cases	Accused persons	
2014	1,931	2,819	694	721	26	79	19	80	2,000
2015	2,023	3,154	841	895	37	64	39	241	2,095
2016	1,774	2,673	1,337	2,510	34	105	56	433	12,222
2017	1,611	2,293	984	2,307	26	208	57	377	21,803
2018	2,668	3,209	1,654	3,162	22	54	19	160	25,000
Total	10,007	14,148	5,510	9,595	145	510	190	1,291	63,120

**Table 3b: Police investigation statistics on legal persons by type**

Enterprise type	Single-member LLC	Multi-member LLC	Joint-stock/share holding company	Private enterprise/Sole proprietorship	Partnership
2014	Number of cases of starting	-	-	-	-

	<b>procedural process of the entire police force for economic crimes</b>					
	<b>Number of legal persons investigated by the entire police force for economic crimes</b>	656	1376	1001	95	0
	<b>Number of cases of starting procedural process of the Police Department for Economic crimes</b>	-	-	-	-	-
	<b>Number of legal persons investigated by the Police Department for Economic crimes</b>	16	45	26	6	0
<b>2015</b>	<b>Number of cases of starting procedural process of the entire police force for economic crimes</b>	-	-	-	-	-
	<b>Number of legal persons investigated by the entire police</b>	898	2236	1767	298	0

	<b>force for economic crimes</b>					
	<b>Number of cases of starting procedural process of the Police Department for Economic crimes</b>	-	-	-	-	-
	<b>Number of legal persons investigated by the Police Department for Economic crimes</b>	23	67	37	16	0
<b>2016</b>	<b>Number of cases of starting procedural process of the entire police force for economic crimes</b>	-	-	-	-	-
	<b>Number of legal persons investigated by the entire police force for economic crimes</b>	756	2017	1303	128	0
	<b>Number of cases of starting procedural process of the Police Department for Economic</b>	-	-	-	-	-

	<b>crimes</b>					
	<b>Number of legal persons investigated by the Police Department for Economic crimes</b>	25	55	30	11	0
<b>2017</b>	<b>Number of cases of starting procedural process of the entire police force for economic crimes</b>	-	-	-	-	-
	<b>Number of legal persons investigated by the entire police force for economic crimes</b>	585	1896	827	139	0
	<b>Number of cases of starting procedural process of the Police Department for Economic crimes</b>	-	-	-	-	-
	<b>Number of legal persons investigated by the Police Department for Economic crimes</b>	17	57	26	7	0
<b>2018</b>	<b>Number of</b>	-	-	-	-	-

<b>cases of starting procedural process of the entire police force for economic crimes</b>						
<b>Number of legal persons investigated by the entire police force for economic crimes</b>	1115	3084	2034	330	0	
<b>Number of cases of starting procedural process of the Police Department for Economic crimes</b>	-	-	-	-	-	
<b>Number of legal persons investigated by the Police Department for Economic crimes</b>	19	45	25	13	0	

According to the above-mentioned data, multi-member limited liability companies have the highest rate of investigation on legal persons conducted by the police force for economic crimes, accounting for 47.08%, followed by Joint-stock/ share holding companies with 30.62%, single-member LLCs account for 17.79%, private enterprises/ sole proprietorships account for 4.51%, partnership was not involved in any investigation.



29. Likewise, the following STRs on legal persons have been provided by the FIU i.e. the Anti-Money Laundering Department (AMLAD). These show 1,208 STRs were received for the period 2014 to 2018 which are related to 2,166 Vietnamese and 15 foreign organisations. Of these, 882 were disseminated to appropriate authorities, with 10 related to foreign legal persons.

**Table 4a: STRs on legal persons**

<b>Year</b>	<b>STRs received</b>	<b>Related Organizations</b>
<b>2014</b>	179	353
<b>2015</b>	211	739
<b>2016</b>	236	374
<b>2017</b>	288	349
<b>2018</b>	294	366
<b>Total</b>	<b>1,208</b>	<b>2,181</b>

**Table 4b: Details on legal persons involved in STRs by type**

<b>Year</b>	<b>Number of legal persons related to STR report</b>	<b>Joint-stock/share holding company</b>	<b>Single-member LLC</b>	<b>Multi-member LLC</b>	<b>Private enterprise/Sole proprietorship</b>	<b>Partnership</b>
2014	353	86	63	182	22	0
2015	739	173	135	399	32	0
2016	374	108	72	189	5	0
2017	349	95	53	198	3	0
2018	366	81	59	219	7	0

30. According to the statistics for the period 2014-2018 above, it can be seen that the number of suspicious transaction reports related to the multi-member limited liability companies is the highest (accounting for 54.4 %), followed by joint-stock/share holding company (24.9%), single-member limited liability companies (17.5%) and private enterprise/sole proprietorship (3.2%).

31. The MPS has been able to provide general feedback from their investigations of legal persons. Based on MPS investigations, the major abuse has been of multi-member LLCs and to a higher extent than joint-stock/share holding companies and single-member LLCs. There has been limited cases of other legal persons. This is broadly consistent with international typologies. For Vietnam therefore, the vulnerabilities are the use of individuals through nominee arrangements to obscure the relationship between the beneficial owner and the asset, including in the use of complex ownership and control structures. Nominee arrangements appear to be in the form of close associates such as employees, and not necessarily family members. As noted bearer shares are not accepted in Vietnam and the use of **gatekeepers** is less common.

32. The nature of the ML threat is both domestic and international given the transboundary nature of the key crime threats for Vietnam based on the NRA. These crime types would also invariably involve organized, and transnational crime groups.

33. As of June 20, 2019, major investors into Viet Nam include: Korea with total registered capital of US\$ 64.55 billion (accounting for 18.4% of total investment capital). Japan is ranked second with US\$ 57.9 billion (accounting for 16.5% of total investment capital), followed by Singapore and Chinese Taiwan and Hong KongTinh.

34. On potential international threats to legal persons, based on available statistics during the period 2014-2018, foreign investors primarily engage in multi-member (2 members and above) limited liability companies.

**Table 5: Foreign ownership (individuals/organisations)**

Legal Entities	No. of foreign
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	<b>individuals/organizations making capital contribution</b>
Joint-stock/share holding company	5,400 (12.29%)
Single-member Limited Liability Company	14,944 (34.01%)
Multi-member Limited company	23,593 (53.7%)
<b>Total</b>	<b>43,937</b>

35. Korea, China and Japan ranked the three source countries for foreign ownership in Vietnam with the rate of foreign ownership being 25.6%, 17.76% and 11.37% respectively.

**Table 6.**  
**Top Five Jurisdictions with the greatest number of foreign controls and owners**

<b>Legal Entities</b>	<b>No. of foreign individuals/organizations making capital contribution</b>	<b>Percentage</b>
<b>Korea</b>	<b>11248</b>	<b>25.6</b>
Single-member LLC	4484	10.2
Multi-member LLC	5763	13.12
Joint-stock/share holding company	1001	2.28
<b>China</b>	<b>7804</b>	<b>17.76</b>
Single-member LLC	2396	5.45
Multi-member LLC	4595	10.46
Joint-stock/share holding company	813	1.85
<b>Japan</b>	<b>4994</b>	<b>11.37</b>
Single-member LLC	2189	4.98
Multi-member LLC	2062	4.69
Joint-stock/share holding company	743	1.69
<b>(Chinese) Taiwan</b>	<b>3052</b>	<b>6.95</b>
Single-member LLC	307	0.7
Multi-member LLC	2367	5.39
Joint-stock/share holding	378	0.86

company		
Singapore	2662	6.06
Single-member LLC	1256	2.86
Multi-member LLC	908	2.07
Joint-stock/share holding company	498	1.13

36. Countries and jurisdictions with high legal risks and being monitored by FATF account for 0.34% of the total number of countries and jurisdictions having individuals and organizations contributing capital to enterprises in Viet Nam.

**Table 7. High-Risk and monitored Jurisdictions based on FATF <sup>6</sup>**

Legal Entities	No. of foreign individuals/organizations making capital contribution	% of Total
Sri Lanka	45	0.1
Single-member LLC	7	0.01
Multi-member LLC	37	0.08
Joint-stock/share holding company	1	0.002
Campuchia	44	0.1
Single-member LLC	11	0.03
Multi-member LLC	21	0.05
Joint-stock/share holding company	12	0.03
Yemen	17	0.04
Single-member LLC	4	0.009
Multi-member LLC	12	0.03
Joint-stock/share holding company	1	0.002
North Korea	21	0.05
Single-member LLC	14	0.03
Multi-member LLC	5	0.01
Joint-stock/share holding company	2	0.005
Panama	7	0.01
Single-member LLC	5	0.01
Multi-member LLC	1	0.002

<sup>6</sup> List excludes terrorism-identified jurisdictions, i.e. Syria, Iran and Pakistan.

Joint-stock/share holding company	1	0.002
Ghana	6	0.01
Single-member LLC	1	0.002
Multi-member LLC	5	0.01
Bahamas	4	0.009
Multi-member LLC	4	0.009
Ethiopia	4	0.009
Single-member LLC	1	0.002
Multi-member LLC	3	0.006
<b>Total</b>	<b>148</b>	<b>0.34</b>

37. Countries and jurisdictions with high TF risks account for 1.67 of the total number of countries and jurisdictions having individuals and organizations contributing capital to enterprises in Viet Nam.

**Table 8. Top 5 Terrorism-Identified Jurisdictions based on 2017 Global Terrorism Index**

Legal Entities	No. of foreign individuals/organizations making capital contribution	% of Total
Iraq	9	0.02
Single-member LLC	2	0.004
Multi-member LLC	7	0.01
Afghanistan	26	0.06
Single-member LLC	5	0.01
Multi-member LLC	19	0.04
Joint-stock/share holding company	2	0.004
Nigeria	549	1.25
Single-member LLC	30	0.07
Multi-member LLC	519	1.18
Cộng hòa Ả Rập Syria	5	0.01
Single-member LLC	1	0.002
Multi-member LLC	4	0.009
Pakistan	146	0.33
Single-member LLC	37	0.08
Multi-member LLC	107	0.24

Joint-stock/share holding company	2	0.004
<b>Total</b>	<b>735</b>	<b>1.67</b>

38. Jurisdiction of non-resident customers: For the period 2013 to 2018, the AMLD received thirteen (13) requests for information from foreign organizations related to legal persons. Seven (7) requests were received from Korea and four (4) from Japan. This observation is consistent with the country source of foreign investors and major trading partners.

#### **IV. Threat rating**

39. Based on international and Vietnam experiences as described above, the following ML assessment is provided in the table below. Overall, the threat is more domestic in origin rather than foreign, and primarily focused on Joint-stock/share holding companies and multi-member LLCs. There are very limited links to high risk jurisdictions or offshore centers e.g. Cayman Islands, Panama (seven companies). Overall, Vietnam is not considered an attractive jurisdictions for company establishment given regulatory requirements including identification of company founders, foreign investment restrictions and language as English is not the first language in Viet Nam.

**Table 9. ML Threat rating**

	<b>Score</b>	<b>Rating</b>
<b>(1) potential use as front companies (2) use of corporate structure and representative directors (3) other abuse of corporate structure such as falsifying activities</b>		
Single-member LLC	2	Medium
Multi-member LLC	2	Medium
Private enterprise/Sole proprietorship	1	Low
Joint-stock/share holding company	2	Medium
Partnership	1	Low
<b>Overall average score</b>	<b>1.6</b>	<b>Medium</b>

40. For TF, given there has been no instances of conviction, investigations or intelligence related to a legal person, including for NPOs, the threat is rated low.

## **G. VULNERABILITY ASSESSMENT OF LEGAL PERSONS**

### **I. Vulnerability assessment methodology**

41. The following are indicators to assess the vulnerability of legal persons:
- a. *Volume*. Assesses the frequency and financial size of the legal person compared to other legal persons in the country. In terms of volume, single-member limited liability companies and multi-member limited liability companies have the highest number of registrants and thus are more exposed. This is followed by joint-stock companies.
  - b. *Beneficial owners – bearer shares*. Assesses the existence of bearers, effectiveness of mitigating measures and available global and local statistics of abuse by money launderers/terrorist financiers.
  - c. *Beneficial owners –foreign controls and high-risk jurisdictions*. Assesses the extent of non-resident ownership of legal persons, effectiveness of mitigating measures and available global and local statistics of abuse by money launderers/terrorist financiers. This factor also assesses the *jurisdictions of non-resident customers*, particularly those from high risk jurisdictions.
  - d. *Beneficial owners – complex/opaque ownership*. Assesses the extent of complex/opaque ownership, effectiveness of mitigating measures and available global and local statistics of abuse by money launderers/terrorist financiers.
  - e. *Beneficial -Nominee arrangements*. Assesses the extent of nominee arrangements persons, effectiveness of mitigating measures and available global and local statistics of abuse by money launderers/terrorist financiers.
  - f. *Adequacy, accuracy and timeliness of information in beneficial ownership*. Assesses the timeliness, adequacy and accuracy of beneficial ownership information held by the company registry, financial institutions and DNFBPs and other sources.

### **II. International lesson**

42. The joint FATF-Egmont report identified a range of characteristics which allows legal persons to be exploited by criminals to conceal beneficial ownership. Many of these include the use of shell, shelf, and front companies and the construction of complex chains of ownership. The three key related vulnerabilities are bearer shares, nominee shareholders or directors and complex ownership structures.

### **III. Vietnam's lessons**

43. As mentioned, the Vulnerability Assessment considers the regulatory oversight, internal controls such as procedures and practices of the sector, and other operational controls in place as described below:

44. Regulatory Controls: The Law on Enterprise has no regulation on bearer shares and on legal arrangements. Therefore, there is no basis to assume nominee arrangements do exist, either formally through contractual agreements or informally through family members or close associates. The Law on Enterprise permits also both legal person and natural person ownership, including for single person limited liability company.

45. Vietnam's Law on Enterprise regulates that enterprises have to register at business registration agencies the information on their owners (members, founding shareholders, owners of private enterprises/sole proprietorship, partners of partnerships) and enterprise managers (board of directors, director general, supervisory board, member of supervisory board). However, joint stock companies have greater regulatory requirements particularly those listed on the stock exchange (s) There is reasonable enforcement by the company register of registration or incorporation requirements.

46. Data on enterprises' violations of administrative regulations:

In the period of 2014-2018, 1,330 enterprises were punished due to violations of administrative regulations in the field of business registration with the total fine value being VND 12,925,655,000. Statistics of localities show that joint-stock/share holding companies and multi-member limited liability companies are the two types of enterprises with the highest rate of violations being respectively



48% and 46.6%. These two types of businesses account for nearly 95% of the total number of enterprises violating regulations nationwide

Regarding types of violations, there are 57 different types of violations with total of 444 incidents. Some of the most common offence such as: failure to register amendments to business registration content within the time-limit prescribed by law, failure to submit financial statements, declaring inaccurate and dishonest information in business registration dossiers, failure to register for amendments in case of not contributing enough charter capital as registered, not affixing the name of the enterprise at the head office, and failure to contribute enough capital as registered.

No.	Type of violation	Number of incidents	(%)
1	Failure to register amendments to business registration content within the time-limit prescribed by law	120	27%
2	Failure to submit financial statements within the time-limit prescribed by law	44	10%
3	Declaring inaccurate and dishonest information in business registration dossiers	35	8%
4	Failure to register for amendments in case of not contributing enough charter capital as registered	28	6%
5	Failure to affix the name of the enterprise at the head office	25	6%
6	Failure to contribute enough capital as registered.	25	6%
7	Failure to publish business registration content on the National Business Registration Portal	22	5%
8	Failure to notify business registration agencies on the timeline and duration for business suspension	14	3%
9	Late notification of amendments to business registration content from 91 days and above past the deadline.	14	3%
10	Failure to comply with the time-limit for publishing business registration content on the National Business Registration Portal	12	3%

11	Failure to make capital contribution at the registered timeline.	10	2%
12	Failure to register at business registration agencies the changes in operation location of the enterprise	8	2%
13	Failure to establish the registry of members	7	2%
16	Other violations	80	18%
	<b>Total</b>	444	100%

47. Given foreign ownership is significant, trong số đó, 25.6% of the foreign investors are Koreans, 17.76% are Chinese, 11.37% are Japanese and foreign nationals from high-risk jurisdictions account for 2% of the investors <sup>7</sup>, it may be challenging to identify the ultimate beneficiary owners based in these jurisdictions, even with the mandatory requirement to have an authorized legal representative of the company resident in Vietnam.

48. Financial institutions and DNFBPs: Under the AML law, there are CDD requirements including beneficial ownership. However there is no effective risk-based supervision of FIs, and no AML/CFT supervision of lawyers, notaries, accountant or company formation service providers.

49. Legal persons are subject to regulations under the following legal documents on Business Registration:

- (a) Enterprise Law dated 26 November 2014
- (b) Law on Tax Administration dated 29 November 2006
- (c) Decree No.78/2015/NĐ-CP of the Government dated 14 September, 2015
- (d) Law on Credit Institutions dated 16 June 2010

50. Article 33 of the Law Enterprises provides for that information is timely accessible to individuals and organisations and in most cases beneficial ownership information is correct, but in some cases, nominee arrangements or complex

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<sup>7</sup> Afghanistan, DPRK, Pakistan,....

structures were used to obscure beneficial ownership which delayed the identification of the natural person.

51. Based on the above criteria, the vulnerability of the various categories of legal persons in Vietnam are rated using the following scale:

- Level 1 – The level of vulnerability is low.
- Level 2 – The level of vulnerability is medium
- Level 3 – The level of vulnerability is high

**Table 10. Vulnerability rating**

	<b>Volume</b>	<b>Beneficial owners – bearer shares<sup>8</sup></b>	<b>Beneficial owners – foreign ownership/ High risk jurisdictions</b>	<b>Beneficial owners – complex / opaque ownership</b>	<b>Beneficial - Nominee arrangements</b>	<b>Adequacy, accuracy and timeliness of information in beneficial ownership</b>	<b>Overall Average Vulnerability<sup>9</sup></b>
One-member Limited Liability Company	3	1	2	1	2	2	1.3
Multi-member Limited company	3	1	3	3	3	3	2.7
Private Company/ sole	1	1	1	1	1	1	1

<sup>8</sup> Potentially via overseas ownership from countries that allow bearer shares

<sup>9</sup> If pass mid-point of score, then rated the next level e.g. 2.5 is high.

proprietorship							
Joint-stock company	2	1	2	3	3	3	2.3
Partnership	1	1	1	1	1	1	1
	<b>1.7</b>						

## H. CONSEQUENCES OF OCCURENCE

52. There are variable consequences depending on the category. Overall, it is rated medium. The criteria and rating is provided in Table 11 below:

**Table 11. Consequences**

1 (Low)	2 (Medium)	3 (High)	score
ML has minimal impact on a company's reputation, financial performance, operations, potential customers and/or innocent individuals connected to the company.	ML has moderate impact on a company's reputation, financial performance, operations, potential customers and/or innocent individuals connected to the company.	ML has significant impact on a company's reputation, financial performance, operations, potential customers and/or innocent individuals connected to the company.	<b>3</b>
ML has minimal impact on the reputation of the company register, Vietnam's global image and bilateral relationships.	ML has moderate impact on the reputation of the company register, Vietnamese economy and community.	ML has a significant impact on the reputation of the company register, Vietnamese economy and community.	<b>2</b>

ML causes minimal damage to Vietnam’s efforts to fight prevent money laundering and deprive criminals of the proceeds of crime.	ML causes moderate damage to Vietnam’s efforts to fight prevent money laundering and deprive criminals of the proceeds of crime.	ML causes significant damage to Vietnam’s efforts to fight prevent money laundering and deprive criminals of the proceeds of crime.	<b>2</b>
<b>Overall rating</b>			<b>2.3</b>

53. The overall rating for consequences is medium. While the impact on the actual company and associated people/customers is high, the impact on AML efforts is rated medium.

**I. OVERALL RISK**

**I. ML risk**

54. Given the threat, vulnerabilities and consequences are all rated medium, the risk for legal persons for all categories are rated medium. Private company/sole proprietorship and partnerships are rated low ML risk.

**Table 12. ML risk rating**

<b>Legal persons</b>	<b>Threat Rating</b>	<b>Vulnerability Rating</b>	<b>Consequences</b>	<b>ML risk</b>
One-member Limited Liability Company	Medium	Medium	Medium	Medium
Multi-member Limited company	Medium	High	Medium	Medium
Private Company/sole proprietorship	Low	Low	Medium	Low
Joint-stock	Medium	High	Medium	Medium

company				
Partnership	Low		Medium	Low
<b>Overall average score</b>	Medium	Medium	Medium	Medium

**II. TF risk**

55. Given there have not been any investigations, prosecutions or intelligence on the abuse of legal person for TF and the NRA rated TF as low, for legal persons, the threat is rated low, and vulnerabilities and consequences are also rated medium based on the preceding analysis. However, the likelihood of a TF risk event is low, so overall, the TF risk rating for legal persons is rated low for TF risk.

**J. NON-PROFIT LEGAL PERSONS**

56. The TF risk of NPOs is the subject of a separate NPO risk assessment. To a limited extent, this risk assessment assessed the ML risk of NPOs. Given there have not been any investigations, prosecutions or intelligence on the abuse of NPOs for ML, the threat is rated low, and vulnerabilities and consequences are also rated medium based on the analysis in the NPO risk assessment, and the conclusions in this report. Overall, NPO legal persons are rated low for ML risk. Fraud, theft and use of NPOs for taxation avoidance are the primary threats facing the NPO sector based on international typologies..

**K. RECOMMENDATION**

57. Authorities should develop a sound understanding of the potential abuse of legal persons for money laundering, particularly those concealing beneficial ownership through nominee ownership or control to hide beneficial ownership.

**L. CONCLUSION**

58. Considering the level of Threat (medium) and Vulnerability (medium), the overall risk of commercial legal persons in Vietnam is medium for ML and low for TF. For non-commercial legal persons i.e. NPOs, the ML and TF risks are low.

**M.RISK MITIGATION ACTION PLAN**

## **I. Objective**

- Complete regulations on establishment, management of businesses and investment in Vietnam to meet international standards on anti-money laundering and counter terrorist financing.

- Control and mitigate risks of money laundering and terrorist financing identified in the report on money laundering and terrorism financing risk assessment for legal persons.

- Provide inputs to the mutual evaluation of the Asia-Pacific Group on Money laundering (APG) on anti-money laundering and counter terrorist financing 2019-2020.

## **II. Action plan**

1. Review and study amendments, supplements to the Law on Enterprises and the Law on Investment regarding regulations on corporate governance, regulations on investment in order to meet FATF recommendations on ML/TF.

- Leading/host agency: Legislation Department, Central Institute for Economic Management

- Coordinating agencies: Agency for Business Registration, Foreign Investment Agency, Department of Economic Zones Management.

- Timeline: 2020

2. Disseminate and introduce results report on money laundering and terrorism financing risk assessment for legal persons to agencies under the Ministry of Planning and Investment, Departments of Planning and Investment of provinces and centrally-run cities, individuals, organizations and enterprises.

- Leading/host agency: Agency for Business Registration

- Timeline: regular task

3. Organise capacity building and training for business registration staff and investment registration staff related to ML/TF.

- Leading/host agency: Agency for Business Registration

- Coordinating agencies: Foreign Investment Agency, Legislation Department, Central Institute for Economic Management

- Timeline: regular task, primary task in 2020

4. Direct Departments of Planning and Investment of provinces and cities in strengthening cooperation and exchange of information between business registration agencies and law enforcement agencies in order to proactively prevent crime in general and money laundering and terrorist financing in particular.

- Leading/host agency: Agency for Business Registration

- Coordinating agencies: Foreign Investment Agency, Legislation Department, Central Institute for Economic Management

- Timeline: 2020

5. Direct Departments of Planning and Investment of provinces and cities to improve the effectiveness of inspection, examination and supervision, ensuring that business compliance with provisions of the Enterprise Law, ensuring accuracy, adequacy and timeliness of information about managers, owners and founding shareholders of enterprises.

- Leading/host agency: Agency for Business Registration

- Coordinating agencies: Departments of Planning and Investment of provinces/cities

- Timeline: 2020

6. Publish and/or issue internal warnings on the National Business Registration System the United Nations Security Council's list of organizations and individuals related to money laundering, terrorist financing according to the list provided by police agencies, courts to actively collect information on money laundering and terrorist financing crime.

- Leading/host agency: Agency for Business registration

- Coordinating agencies: Departments of Planning and Investment of provinces/cities

- Timeline: regular task, primary task in 2020.



7. Continue to expand data connection and information sharing between the National Business Registration System and information systems of ministries, branches and localities via the National Government Service Platform; upgrade the National Business Registration System to ensure quick and timely aggregation and sharing of statistics.

- Leading/host agency: Agency for Business Registration

- Coordinating agencies: Departments of Planning and Investment of provinces/cities

- Timeline: 2020

8. Direct Departments of Planning and Investment of provinces/cities to review, standardize data, update information in the database on business registration.

- Leading/host agency: Agency for Business Registration

- Coordinating agencies: Departments of Planning and Investment of provinces/cities

- Timeline: regular task./.

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