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Vietnam

Ha Thi Dung, Kenji Nishio & Nirmalan Amirthanesan
MHM Vietnam

Approaches and developments

Vietnam’s legal framework for fintech and digital assets remains at an early stage of development, and its adoption of digital assets and fintech has been developing rapidly over the past decade, outpacing the lack of legal development.

Vietnam has been making efforts in recent years to improve its regulations in this area, introducing a number of initiatives to develop its legal framework to accommodate fintech and digital assets. Such initiatives include:

• In the case of digital assets, in 2017, the Prime Minister of Vietnam issued Decision No. 1255/QD-TTg approving a scheme to improve the legal framework on the management and handling of virtual assets, electronic money and virtual money. In 2020, the Ministry of Finance (“MOF”) also established a research group on digital assets and digital currencies under Decision No. 664/QD-BTC, to research and propose the content of a management policy and mechanism related to digital assets and digital money.

• In the case of digital securities, in relation to which Vietnam has not yet adopted any specific regulations, the Prime Minister of Vietnam issued Decision No. 242/QD-TTg approving a plan to restructure the securities market and insurance market by 2020 and a vision to 2025, under which the Prime Minister assigned to the MOF the task of issuing legal documents guiding, among others, robo-advisory activities. Under the Annex on Roadmap for Implementation of Solutions to Structure Market and Insurance attached to that Decision, the MOF would be responsible to research and issue guidelines on robo-advisory activities from 2018 to 2025. In 2020, given certain robo-advisors were operating on the Vietnamese securities market, the State Securities Commission of Vietnam also introduced a commission-level project to research the application of “robo-advisors” in the field of securities investment consultancy and recommend policies.

• In the case of cryptocurrencies and tokens, the Vietnamese Government has assigned the MOF to study international practice and experience to develop options for fundraising through initial coin offerings (“ICOs”). The State Bank of Vietnam (“SBV”), MOF and Ministry of Justice are also coordinating under a project to improve the legal basis for the management of virtual currencies in 2021–2025. The government has also tasked the SBV with developing and piloting the use of virtual currency on blockchain over 2021–2025.

Currently Vietnam does not have a sandbox initiative. A draft decree has been published setting out a sandbox mechanism for the fintech sector. The fintech solutions currently proposed to participate include solutions providing for credit extension via technology platforms, credit scoring, peer-to-peer (“P2P”) lending, open application programming
interface (“API”) and solutions applying innovative technologies such as blockchain and other fintech solutions in the banking sector (such as for savings and fundraising). The timetable for implementing this initiative is not yet clear. Once implemented, this initiative could help to further boost the fintech sector in Vietnam by improving regulation in this area.

In terms of personal data protection, in general, Vietnam currently does not have a comprehensive law regarding personal data protection. Regulations on personal data in Vietnam are scattered under various laws and regulations, including, among others:

- the Law on Cyberinformation Security: the subject of application of this law covers foreign entities directly involved in or related to cyberinformation security activities in Vietnam; and
- the Law on Cybersecurity: this law also has a broad scope of application and may be interpreted to cover the personal data processing of foreign entities.

These regulations stipulate general provisions on personal data protection, including the consent obligations and other requirements applicable to a data processor. A data processor is also generally required to establish and publish the measures it has implemented on processing and protecting personal information.

In 2021, a draft decree on personal data protection (“PDP Draft Decree”) was released for public opinion. The PDP Draft Decree is intended to be a comprehensive set of rules governing various aspects of data privacy protection. Besides the typical data protection obligations such as consent and notification, the PDP Draft Decree also proposed to introduce a number of new definitions and obligations such as: (i) a requirement to obtain approval from the Personal Data Protection Committee (“PDPC”) for cross-border personal data transfer; and (ii) a requirement to register with the PDPC before processing sensitive personal data. Nevertheless, there has not been any further update on the timeline for promulgation of the Draft PDP Decree, although we understand that it is intended to be issued within 2022.

**Fintech offering in Vietnam**

Vietnam has seen a surge in the development of applications providing on-demand services such as Grab, GoJek, MoMo and ZaloPay. Among these key market players, MoMo and Grab are the leading super applications, with a number of functions such as e-commerce, e-wallet services, gateway payment services, collection supporting services, and other intermediary payment services (“IPS”).

Grab focuses on transportation and delivery services. MoMo, which has a payment intermediary service licence issued by the SBV, provides a platform for certain financial products and services such as e-wallet services. To attract customers, MoMo has partnered with several banks in Vietnam to provide access to financial services (such as Golden Pocket, an investment offering by Finsight Joint Stock Company, and Postpaid Wallet, a consumer credit product by TP Bank) as an IPS. It has also developed a nationwide transaction point network for money top-up and locations which accept payments via MoMo in various sectors (such as Circle K, Ministop and FPT Shop).

The fintech services offering in Vietnam are becoming more diversified despite the lack of regulations. The following types of fintech services are becoming more popular in Vietnam:

**Digital IPS:**
- e-wallets;
- mobile money;
- collection and disbursement services;
- collection and disbursement support services;
• money transfer support services; and
• payment gateway services.

Lending and credit extensions:
• P2P lending;
• buy now pay later; and
• salary advance service.

Investments and fundraising:
• retail investments; and
• crowdfunding.

Digital assets:
• cryptocurrencies and cryptoassets; and
• non-fungible token (“NFT”) and blockchain games.

Other services:
• credit scoring;
• robo-advisors;
• digital banking activities; and
• insurtech.

Except for the IPSs which have been specifically regulated by Vietnamese law, the regulatory basis for other services is not yet settled. Investors have structured their businesses to mitigate legal risks in providing such services. Details of regulations and practical issues of each activity are elaborated in the section “Key regulations and regulatory approaches” below.

Regulatory and insurance technology

Vietnam has generally not developed any regulatory or insurance technology. In terms of regulatory technology, the SBV has issued Circular 16/2020/TT-NHNN (“Circular 16”) permitting Electronic Know-Your-Customer (“e-KYC”) processes (please see further below under “Key regulations and regulatory approaches”). Insurance technology may be developed under Decision No. 242/QD-TTg of the Prime Minister of Vietnam described above in section “Approaches and developments”.

Regulatory bodies

The key regulator in this sector include the SBV, which regulates the financial and banking system. Other regulators of importance include:
• the MOF, which is in charge of, among others, (i) researching and proposing the content of a management policy and mechanism related to digital assets and digital money; and (ii) issuing legal documents guiding, among others, robo-advisory activities;
• the Ministry of Public Security which oversees data privacy and cybersecurity;
• the Ministry of Information and Communication, and the Ministry of Science and Technology, which participate in researching and developing fintech standards; and
• the Ministry of Industry and Trade (“MOIT”) in relation to, among others, the notification or registration of websites, applications and e-commerce platforms.

Key regulations and regulatory approaches

There is no comprehensive regulatory framework for fintech or digital assets in Vietnam, and the regulatory framework depends on the nature of the underlying business of the provider.
Financial and non-financial services of a fintech company will be governed by applicable sectoral regulations based on the corresponding business lines in the Vietnam Standard Industrial Classification ("VSIC") promulgated by the Prime Minister of Vietnam and the commitments of Vietnam in international treaties.

Applicable regulations for certain services (and the classifications of certain services) remain unclear due to rapid changes in technology and business innovation outpacing regulation. For example, there has been considerable controversy as to whether Grab and other ride hailing companies should be treated as “science and technology” companies or transportation services companies. This controversy was finally settled under new regulations of the transportation services sector in 2020, which defined transportation businesses broadly to cover ride hailing companies.

**E-wallet and other payment services**

E-wallet services are classified as a type of IPS and are regulated by Decree 101/2012/ND-CP on non-cash payment issued by the Government of Vietnam on 22 November 2012 ("Decree 101") and Circular 39/2014/TT-NHNN on intermediary payment service issued by the SBV on 11 November 2014 ("Decree 39"). In order to provide e-wallet services, a non-bank service provider must (i) satisfy certain statutory technical, legal and personnel conditions, and (ii) obtain an IPS licence issued by SBV. In addition, an e-wallet account also needs to be linked to a payment account and/or debit card of the customer at a partner bank in order for e-wallet services to be provided.

E-wallet services may be used to:

- top-up the balance of the e-wallet using a linked payment account or debit card at a partner bank of the e-wallet service provider or other e-wallet accounts at the service provider;
- pay for goods and services;
- transfer money to another e-wallet account opened at the same service provider; and
- withdraw money from an e-wallet account and deposit it in a linked payment account or debit card at a partner bank of the e-wallet service provider, or withdraw it in cash at a transaction point.

Besides e-wallet services, it is common for an IPS provider to obtain an IPS licence from the SBV to provide one or more of the following: payment gateway services; payment collection support services; and electronic money support services.

**E-commerce platform**

It may be possible for fintech business to be viewed as an e-commerce platform services provider under Vietnamese law. For example, MoMo is registered in Vietnam as an e-commerce platform service provider. Such businesses are governed by Decree 52/2013/ND-CP on e-commerce ("Decree 52"), as amended by Decree 85/2021/ND-CP ("Decree 85"). Under these Decrees, an e-commerce platform services provider must comply with certain statutorily prescribed duties, including registering their website with the MOIT.

**Digital banking activities**

Digitalisation in both services and operation is a race between banks in Vietnam. However, there is no process to set up and operate a digital bank to provide all banking services. Fintech companies may not apply for a banking licence, and therefore typically (particularly in providing online payment services) partner with traditional banks to develop a “digital banking platform”.

Existing regulations applicable to banks in Vietnam, such as laws on credit institution, anti-money laundering and electronic transactions would be applicable to digital banking
activities also. However, such regulations were drafted with banks in mind, and may not always be appropriate to the circumstances of digital banking activities.

Circular 16 supports digital banking by allowing customer identification and verification to be conducted online and customers no longer have to visit physical branches in person to open bank accounts. Banks and foreign bank branches are required to formulate, promulgate and publish their procedures for online account opening through electronic KYC methods in accordance with the regulations, including but not limited to the regulations on anti-money laundering, electronic transactions and protection of the safety and confidentiality of clients’ information. In doing so, individual businesses have flexibility to decide the methods, forms and technologies they use to identify and verify a client, subject to meeting the prescribed minimum requirements. For instance, the SBV requires the adoption of technologies and procedures necessary for risk management and to store and manage the information or data used to identify clients.

Except for certain limited cases, the limit on transactions made from accounts opened using electronic KYC methods (which banks may set) must not exceed VND 100 million (approximately USD 4,350) per month per customer in aggregate.

In light of the recent, rapid rise in digital payment transactions, the SBV is developing new policies under the Fintech Sandbox Draft Decree for the deployment and application of technologies in online lending. However, a clearer framework with respect to the formation, operation and management of digital banks in Vietnam is required to improve digital banking offerings in Vietnam.

Money lending

P2P lending

There is no specific regulation of online lending in Vietnam. To the extent such activities constitute credit activities, a banking licence would be required from the SBV. Typically, fintech companies in this sector provide the technology to connect lenders and borrowers, which is considered a commercial transaction under the Civil Code 2015, rather than engage in lending themselves.

The risks of P2P lending activity have been noted by the SBV, which warned under Official Letter No. 5228/NHNN/CSTT dated 8 July 2019 that some companies had registered as financial consultancy and/or financial brokerage businesses to provide P2P lending services, and that this was not permitted by Vietnamese law. It warned that P2P lending activities may pose risks such as credit risk, information risk, money laundering risk and cyber security risk and advised credit institutions to:

- research and acknowledge the risks arising from P2P lending activities for its corporation;
- exercise caution in signing and implementing cooperation agreements with P2P lending providers to ensure co-operation;
- consider proposing to P2P lending providers to publish fully, transparently, and honestly information about cooperation and transaction contents; and
- ensure the cooperation, connection, and transaction between credit institutions and P2P lending providers is safe and efficient, protecting the legal rights of credit institutions and customers.

P2P lending is within the scope of the Fintech Sandbox Draft Decree, and may be permitted in accordance with that initiative if it is implemented.

Buy Now Pay Later and Wage Advance

There is no business line in the VSIC or under Vietnamese law that exactly or expressly
matches with the current scheme of buy now pay later or wage advance service. Buy now pay later and wage advance services can be provided in Vietnam as credit extension services which are banking activities, and therefore require a banking licence from the SBV (which is not feasible for fintech companies). These services also share some characters similar to other business lines in Vietnam. Accordingly, these services have been structured and modified to be provided under other business models and contractual arrangements in the market which fintech companies can deliver under the current regulations. Some service providers in Vietnam that offer these services include Kredivo, Atom, Fundiin and Reepay.

**Investments and fundraising**

There are no regulations at present on retail investments in Vietnam. That said, there are a number of mobile applications developed by funds management companies through structured business models and contractual arrangements aiming to raise investments from individual investors in Vietnam. Some examples of retail investment applications in the market include:

- App Timo Digital Bank which is backed by VinaCapital Fund Management Company;
- App Finhay which is backed by Thien Viet Fund Management Company; and
- App TCINvest which is a platform of the ecosystem of Techcombank.

Crowdfunding has been used for charity funds or charity programmes through applications or super applications in Vietnam. However, crowdfunding designed for innovative start-up projects have not become popular in Vietnam.

**Robo-advisors**

Currently no specific regulations of robo-advisors exists in Vietnam; however, a number of robo-advisors, such as TC Wealth, an online financial consultancy mobile application considered to be Vietnam’s first robo-advisor, operate in Vietnam. Since the development of TC Wealth, several other companies in Vietnam have also developed and applied robo-advisory tools serving their businesses in Vietnam, such as:

- **Power Rank** developed by MB Securities Joint Stock Company (“MBS”);
- **i-Broker and i-Invest** developed by BIDV Securities Joint Stock Company (“BSC”);
- **Investment Robot Adviser – IRA** developed by Tan Viet Securities Incorporation (“TVSI”); and
- **Finhay** developed by Finhay Viet Nam Joint Stock Company.

In general, such robo-advisors receive information and queries from customers, analyse their financial conditions and purposes and make recommendations on investments or purchases and provide general information on market trends. In the absence of specific regulation, such businesses may be registered with one or more of the following business lines depending on their business: uncategorised finance-assistant services; management consultancy; computer-related services; and market research and opinion polls.

**Cryptocurrencies/tokens**

Vietnamese laws neither recognises cryptocurrencies or tokens as a type of asset nor prohibits or restricts the holding or trading of cryptocurrencies as assets. As a result, no cryptocurrency trading platforms have been lawfully established in Vietnam, and there have been no lawful issues or sales of cryptocurrencies or tokens in Vietnam to raise funds.

Non-cash payment instruments not specified under Decree 101/2012/ND-CP of the Government dated 22 November 2012 on non-cash payment (such as cryptocurrencies) are illegal and may not be used in Vietnam. The SBV also expresses this view in its official letter No. 5747/2017/NHNN-PC, where it states that “cryptocurrency in general and
Bitcoin, Litecoin in particular are not currency and not a legitimate payment instrument in accordance with Vietnamese laws. The issuance, supply, and usage of cryptocurrency in general and Bitcoin, Litecoin in particular as either currency or payment instrument is prohibited”.

Cryptocurrencies and tokens are not considered securities under Vietnamese laws and thus ICO, initial blockchain offerings (“IBO”) and initial exchange offering (“IEO”) are not recognised in Vietnam. In June 2018, the SBV and the MOF responded to a query from a Vietnamese company by stating that the current legal framework does not permit fundraising activities through issuances of cryptocurrencies, and that it is not permissible to carry out activities relating to IBO and digital asset trading market. There has been no further development of the legal framework governing the issuance of cryptocurrencies and tokens since then.

**Play-to-earn games**

We are not aware of any entities in Vietnam established and licensed to provide NFT or blockchain gaming services. That said, Vietnamese individuals still access and use play-to-earn games offered by offshore games operators.

In general play-to-earn game services are subject to significant restrictions under Vietnamese law:

- they fall within the definition of online game service under Vietnamese law, and virtual currencies and virtual items used in such gaming services (such as in-game currencies and NFTs): (i) must be used only within the game according to the purposes presented in the documentation for that game; (ii) are not assets and must not be converted into money, payment cards, coupons or other items with value outside the game; and (iii) must not be traded between players; and

- there is also a risk of such services being considered unlawful gambling activities under the Penal Code 2015 of Vietnam, and there is recent reporting of convictions of individuals who organised online games which were found to constitute illegal gambling.

**Restrictions**

No foreign ownership limits apply to investors in IPSs (such as e-wallet services and gateway payment services) under Vietnam’s laws or treaties. We are aware of cases where foreign investors hold more than 50 per cent of the charter capital of e-wallet providers, including MoMo and VNPT Epay.

Similarly, no foreign ownership limits apply to e-commerce platform service providers under Vietnam’s laws or treaties, and we are aware of cases where foreign investors hold more than 50 per cent of the charter capital of e-commerce platform service providers, including Shopee and Sendo.

In terms of digital banking, up to 30 per cent ownership of the charter capital of commercial banks (both listed and unlisted banks) is permitted under Decree 01/2014/ND-CP. Moreover, the shareholding of any single foreign investor and its affiliates may not exceed 20 per cent of the charter capital of a Vietnamese credit institution. The Prime Minister can lift the limits on foreign shareholders’ participation in a Vietnamese credit institution, but only for the purpose of restructuring credit institutions facing financial difficulties or ensuring the stability of credit institutions. Foreign banks may alternatively open branch offices in Vietnam.

No applicable foreign ownership limits apply in relation to robo-advisors, but such limits may be introduced in future.
Cross-border business

Vietnam strictly controls foreign exchange ("FX") activities within its territory and in relation to the residents of Vietnam, which may impact cross-border fintech transactions. We briefly highlight below some FX restrictions:

- all payments and transactions conducted in Vietnam must be denominated and paid in Vietnamese Dong except for certain limited cases as provided in the FX regulations;
- remittances of foreign currency overseas are strictly regulated. The remitting bank will verify the documents submitted by its customer to ensure that the remittance is in accordance with the FX regulations and reflect the transactions entered into by the customer; and
- Vietnamese Dong can only be converted into foreign currency if the conversion is for a permitted transaction and there is supporting documentation for such transaction. Even if conversion is permitted, the SBV strictly controls the exchange rate between the US Dollar and Vietnamese Dong.
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Ha Thi Dung has 15 years of experience with local and foreign law firms inside and outside Vietnam. She is ranked by *Asia Law* as a notable practitioner. She began her career advising on bond deals (both straight bonds, convertible bonds and bonds with detachable warrants), syndicated loan transactions and project financings in Vietnam, before switching to practice more actively in M&A from 2010. She subsequently moved to Japan and worked for MHM’s Tokyo office from 2014–2018, focusing on M&A and project development. She has advised both foreign and domestic investors in M&A transactions in various sectors such banking, finance, real estate, energy, manufacturing, logistics, fintech, advertisement, and other services.

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