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1. FINTECH MARKET

1.1 Evolution of the Fintech Market

Whilst Vietnam went through much economic turbulence in 2020 because of the COVID-19 pandemic, for the fintech sector, the pandemic presented an opportunity as the increase in distance commerce came hand in hand with an increase in the use of cashless payments and e-finance.

To meet demands, pursuant to Decision 2617/QĐ-NHNN, the State Bank of Vietnam (SBV) has proposed policies on five fintech-related key issues to create a legal framework for fintech companies in Vietnam, including:

- Project “Application of Blockchain technology in the field of finance –banking in Vietnam”;
- Project “Managing Bitcoin and other crypto currencies in Vietnam”;
- Project “Research and management of mobilization and P2P lending based on high technology”;
- Project “Solutions for developing electronic customer identifiers (eKYC) in financial-banking services in Vietnam” (specifically, eKYC is acting as the first step for digital banks in Vietnam); and
- Project “Researching open application interfaces (Open API) to apply in the field of finance –banking in Vietnam.”

Furthermore, in May 2020, the Ministry of Information and Communications and the State Bank submitted to the prime minister a decision on pilot implementation of using a telecom account to pay for other small value services (Mobile Money). Most recently, on 9 March 2021, The prime minister promulgated Decision 316/QĐ-TTg to allow a pilot of Mobile Money in two years (from the time the first enterprise is approved to conduct the pilot). The results of the pilot implementation of a Mobile Money service are a practical basis for competent authorities to review, formulate and issue official legal regulations for the provision of Mobile Money services in Vietnam.

The most interesting developments to watch out for in the next 12 months are reports from authorities researching on the ability to issue digital currencies as a fiat currency; and a regulatory sandbox for fintech planned to be piloted from 2021 in seven fintech segments: payment, credit, peer-to-peer (P2P) lending, eKYC, Open API, innovative technology application solutions such as blockchain, and other services supporting banking operations (credit scoring, saving, crowdfunding, etc).

Lastly, there is going to be a Draft Decree replacing the Decree on non-cash payment likely be published in 2021.

From the current draft, it is visible that there will be various enhancements of the legal framework on payment intermediaries service, bank cards and bank accounts, following Directive No 22/CT-TTg.

2. FINTECH BUSINESS MODELS AND REGULATION IN GENERAL

2.1 Predominant Business Models

The main business models that currently predominate, both for new and legacy players, are divided into two groups that have a legal basis and a non-legal basis.

Models with Specific Legal Regulations

The SBV has revised the current legislation to support credit institutions and banks applying new technologies during their operation, including guidance in cashless payment, intermediary services in a number of articles of Circular 39/2014/TT-NHNN amended and supplemented by Circular 23/2019/TT-NHNN, and the adoption of remote verification process, namely e-KYC, newly recorded in Circular 16/2020/TT-NHNN.

Regarding insurance technology, the legal framework has not yet been developed; however, for the first time, insurance enterprises are allowed to grant Electronics Certificates of compulsory insurance for civil liability of motor vehicle owners according to Decree 03/2021/NĐ-CP.

Amongst these, Mobile Money is the one with the most development and spotlight since a pilot implementing Mobile Money in Vietnam has just been approved by the prime minister pursuant to Decision 316/QĐ-TTg, marking a bold step for the development of payments using telecommunication accounts in Vietnam. Currently, there are three major Vietnam telecoms eligible to apply for permission to participate in the pilot: Viettel, VNPT and Mobifone.

Models without Legal Regulations, Yet Are on Research to Improve the Legal Framework

The activities of P2P lending, open application program interfaces (Open API), crowdfunding, blockchain, digital banking and mobile payment solution (like Samsung Pay) are currently not governed by specific regulations in the Vietnamese legal system; however, these fintech models are still applied in practice provided they do not contravene general law (for instance, fintech companies operating P2P lending or blockchain platforms are only obliged to obtain an enterprise registration certificate). The SBV is carrying

out research to develop a legal framework to regulate these models.

2.2 Regulatory Regime

Currently, except for certain areas, notably e-wallet and payment intermediaries services, the fintech legal framework in Vietnam is still in its infancy, with only directions from the prime minister giving general directions and giving principles, and without any clear and hard legal instruments. The areas that have a clear legal framework with guidelines to implement in practice are as follows.

EKYC

Decree No 87/2019/ND-CP amending and supplementing a number of articles of Decree 116/2013/ND-CP guiding the Law on Money Laundering Prevention and Control and Circular No 16/2020/TT-NHNN dated 16 December 2020 on amendments to circular No 23/2014/TT-NHNN dated 19 August 2014 on providing guidelines for opening and use of checking accounts at payment service providers has provided regulation on the implementation of eKYC. It now allows the bank to decide whether or not to meet with customers for the first time when performing transactions related to new technology. Banks have responded to this in very rapid terms. However, the intermediary that is employed to verify the client's identity shall be selected in accordance with regulations of the Law on anti-money laundering. For example, OCB Bank was ready to immediately deploy eKYC when the SBV officially approved the application of eKYC. It is known that OCB is also implementing the project of identity verification with OCR technology, facial recognition technology, information verification by internal data systems and partners through API in the process. TPBank is another strong player in this field.

Nevertheless, in order to be able to effectively implement eKYC, one of the essential conditions is to have a national data system. According to the prime minister's direction, the Ministry of Public Security has to basically complete the construction of the National Data Center on Population and issue identification numbers to citizens by 1 December 2020; and it shall complete the entire project before 30 April 2021.

Mobile Money

On 9 March 2021, prime minister approved the two-year-pilot application of Mobile Money, which allows the use of mobile phone credit to pay for small-value goods and services under Decision 316/QĐ-TTg. The most significant difference compared to e-wallets is that the Mobile Money service does not require a bank account to use and pay like e-wallets. In return, a maximum transaction for each Mobile Money account is VND10 million per month for all transactions –

including withdrawals, transfers and payments – while the e-wallet limit is ten times higher than this number: VND100 million a month. Mobile money will only be applicable for domestic transactions and will not be available for cross-border services.

To be eligible to participate in the pilot, businesses need to have (i) licences to provide intermediary e-wallet payment services, or (ii) licences to establish a public mobile terrestrial telecommunications network using radio frequencies or have subsidiaries with permission from the parent company to use telecommunications, network and data infrastructure.

The first licence does not impose a limitation on capital contribution of a foreign-invested enterprise. However, to obtain the second licence, a foreign investor must enter into joint ventures with licensed telecommunication service providers in Vietnam and the capital contribution must not exceed 49% of the legal capital of the joint venture according to the WTO commitments. Thus, a foreign-invested enterprise will be eligible to perform a Mobile Money pilot in Vietnam if it only holds a maximum of 49% of the joint venture's capital with a licensed telecommunications service provider in Vietnam. There are three carriers that have announced their to participation in the pilot in Vietnam: Viettel, VNPT and Mobifone.

P2P Lending

The activities of P2P lending and blockchain are currently not governed by specific legislations in Vietnam. However, in practice, fintech companies operating P2P lending or blockchain platforms are still obliged to comply with the regulations of general laws such as the Civil Code, the Law on Investment and the Law on Enterprise. Particularly, fintech companies usually obtain enterprise registration certificates with general business lines of supporting for financial services that have not yet been classified to conduct their business under the Law on Investment, and the lending interest rate in civil transactions through P2P lending shall be agreed by the parties, but must not exceed 20% per year of the loan under the Civil Code 2015.

According to the new Draft Decree providing for a controlled testing mechanism (sandbox) for fintech activities in the banking sector in 2020, P2P lending is part of a two-year pilot for fintech regulatory sandbox activity. For P2P lending companies operating in the market before the pilot is deployed, they must register to operate in accordance with the regulations of the new pilot mechanism, otherwise they will be suspended.

However, due to the absence of a specific legal framework, the SBV is still confused with assessing dossiers submitted to apply for the specific business line of P2P lending, which consequently are usually pending or refused.

Mobile Payment Solution

A mobile payment solution is a solution to support customers in card payment activities through a card acceptance device (POS) at a merchant, not an intermediary payment service. The players providing this service must have responsibilities for compliance with regulations of laws on foreign exchange management, personal data protection, privacy, security of documents, card information, card transactions and accounts of cardholders and prudential measures in the card usage.

Sandbox Mechanism

The Draft Decree providing for a controlled testing mechanism (sandbox) for fintech activities in the banking sector by the SBV has been repeatedly consulted with ministries and branches. However, the cautiousness of the parties has made the Draft Decree incomplete. Facing this situation, the experts estimated that not until mid-2021 may the official testing mechanism for the new sandbox be issued and enforced.

2.3 Compensation Models

Compensation models vary from business to business and vertical to vertical.

Regarding the models that have been indicated in laws, the fee charged for customers on payment intermediary services is governed by Decree 101/2012/ND-CP, which sets forth that the providers of services must fix and post their service charges on their discretion. In the case of unpredictable banking activities, the State Bank of Vietnam shall provide a mechanism for determining the charges for payment services and charges for payment intermediary services. In reality, up to now, the SBV has not officially interfered in service charges for payment intermediary services.

Regarding the models that have not yet been officially recognised in the legislation, such as P2P lending or Mobile Money, there are no strict rules on imposing service fees to charge customers. For example, Mofin is an application of a P2P lending platform. Unlike most of its competitors, Mofin claims it “does not apply interest rates on loans” but instead charges a fixed fee of VND100,000 for any loan of between VND1 million and VND5 million.

2.4 Variations between the Regulation of Fintech and Legacy Players

Currently, there is no clear and hard legal framework on fintech enterprises, hence it is not yet plausible to compare the difference in regulations on these two subjects.

2.5 Regulatory Sandbox

A sandbox was first introduced in Decision No 999 / QD-TTg dated 12 August 2019 on Approving the scheme on promotion of the model of sharing economy as the testing mechanism for new policies for the development and application of new technologies to the sharing economy model. The regulation essentially enables limited-time testing of novel platform-provisioning activities and respects the novelty and creativity of the technology business.

Recently, the new law on investment has created room to recognise investment in a sandbox, specifically Article 21 of the Law on Investment 2020 recognises that “New forms of investment and types of business entities prescribed by the Government’s regulations” is a form of investment legally recognised. This has been interpreted to include a sandbox and is a welcoming change for investors. Also, The Ministry of Planning and Investment has submitted to the prime minister to issue Decision No 2289/QD-TTg dated 31 December 2020 on the National Strategy on the Fourth Industrial Revolution to 2030 in order to effectively utilise new opportunities for fintech enterprises community.

It is estimated that the draft Decree on Sandbox will be submitted to the government in mid-2021.

2.6 Jurisdiction of Regulators

With respect to intermediary payment services, under Decree 101/2012/ND-CP, the SBV will grant or revoke licences for these services and supervise the operation of such players.

In terms of other new fintech activities, in Vietnam, to carry out new regulations needs co-ordination between ministries. Based on current draft regulations, the fintech industry participants are generally regulated by the following main regulators with their objectives.

State Bank of Vietnam:

The unit is in charge of co-ordinating research, building a licensing mechanism, monitoring and management of fintech business activities, and acting as the focal point receiving the document application pilot for fintech business operation. The SBV will also handle problems arising in the implementation and technical review of the operation mechanism to grant licensing documents.

The Ministry of Information and Communication

The Ministry of Information and Communication is the focal point for research and development of the fintech standard. It helps grant a Certificate of technical eligibility to operate and store information of fintech; and comment on the application for a pilot licence for fintech operation related to technical standards.

The Ministry of Planning and Investment

The Ministry of Planning and Investment is the focal point in studying and building conditions on charter capital and ownership structure conditions for companies operating a fintech business.

The Ministry of Science and Technology

The Ministry of Science and Technology comments on the application documents for fintech relating to technical standards and co-ordinates with the Ministry of Information and Communication to research and develop a set of technical standards, and review the operating mechanism of the fintech models proposed by enterprises to issue a Certificate of Technology Eligibility and Technology Solutions.

The Ministry of Public Security, the Ministry of Finance, and the Ministry of Industry and Trade

The ministry's obligations are to co-ordinate with the SBV to consider and give opinions on the application file for a pilot licence for fintech operations.

2.7 Outsourcing of Regulated Functions

Many banks also use many outsourcing services, such as consulting, financial technology and secret customer service testing services.

Circular 13/2018/TT-NHNN of the State Bank of Vietnam regulates the internal control system of commercial banks and branches of foreign banks, clearly explaining: "Outsourcing is the commercial bank/foreign bank's branch (hereinafter referred to as the client) making an agreement in writing (an outsourcing contract) on hiring another enterprise, credit institution or foreign bank's branch (hereinafter referred to as the contractor) to carry out one or multiple activities (including data processing or some steps of the business process) in the bank's stead, in accordance with the law."

Therefore, commercial banks must have the principle agreement of outsourcing contracts to protect the ownership, keep confidential the information in databases and customer information, and the right to terminate the outsourcing contract. The contracts with an outsourced party must have a plan to maintain operations and at least include (i) loss of

important documents and databases, (ii) there is a breakdown in the information technology system and (iii) force majeure events.

2.8 Gatekeeper Liability

Fintech providers are mainly liable as gatekeepers in the area of anti-money laundering (AML) and anti-terrorism. Many fintech providers are in the area of providing intermediary payment services, issuance of mobile or electronic money (which will be considered payment intermediaries services under the current draft regulation), and the provision of e-banking/financial services and are therefore subject to the Vietnam Law on Anti Money Laundering and Decree 101/2012/ND-CP on payment intermediaries businesses. For these subjects, they are subject to a plethora of duties to collect information, carry out KYC, reporting to authorities and, most importantly, to screen for suspicious and high-value transactions and then report to the SBV if the authenticity and purpose of those transactions are in doubt.

The subjects are also obliged to report to a specialised authority on anti-terrorism (as well as the State Bank) if they discover transactions to blacklisted persons or that the parties in the transactions are related to terrorism or terrorist organisations.

2.9 Significant Enforcement Actions

The authors are not aware of any significant enforcement actions taken by the regulator for the main verticals.

2.10 Implications of Additional, Non-financial Services Regulations

The three types of non-financial service laws with the most implications are those on data protection, cybersecurity, anti-money laundering and electronic transactions.

Regarding anti-money laundering, on 14 November 2019, the government issued Decree No 87/2019/ND-CP amending and supplementing a number of articles of Decree No 116/2013/ND-CP detailing the implementation of some articles of the Law on anti-money laundering, in which, it is determined that the organisation providing the intermediary payment service must apply measures to prevent and combat money laundering as for financial institutions specified in Clause 3, Article 4 of the Law on anti-money laundering.

Regarding data protection and cybersecurity, fintech businesses are subject generally to the Law on Cyberinformation Security 2015 as controllers of personal data. They are therefore subject to a plethora of duties in relation to their collection, storage and usage of data, including requirements to collect information only when consented to by

the data subject, use data collected only within the scope of consent, and have the duty to have adequate systems in place to protect the collected data. Naturally, they also have the obligation to ensure confidentiality of the collected data. Specific obligations for payment intermediaries and financial institutions (such as banks or credit companies) are also provided under Article 23 of Decree 101/2012/ND-CP and Article 14 of the Law on Credit Institutions 2010 respectively.

Regarding the law on electronic transactions, the greatest implications of the law are regarding the recognition of e-contracts and regulation of e-signatures. The latter is especially specific, in which legacy players that are parties that accept e-signatures are subject to certain obligations, including to take necessary measures to verify the reliability of an e-signature before accepting it, and to take necessary measures to verify the legal validity of an e-certificate and limitations with respect to the e-certificate in the event that such e-certificate is used to certify an e-signature.

2.11 Review of Industry Participants by Parties Other Than Regulators

In practice, for certain fintech providers in the payment intermediaries sector, there are specialist consultants whose reports are required to be submitted together with the licensing dossiers. These include specialist technical consultants who carry out the technical acceptance report of the fintech providers' system for the regulators' review, and penetration test service providers for reviewing the fintech providers' system safety.

2.12 Conjunction of Unregulated and Regulated Products and Services

Currently, there is no regulation to categorise unregulated/regulated products and services in Vietnam.

3. ROBO-ADVISERS

3.1 Requirement for Different Business Models

There are no regulations on robo-advisers yet. The current legal framework for legacy players includes provisions on investment advice, provided exclusively by humans. However, this does not mean that robo-advisers are restricted.

3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers

Robo-advisers are mainly developing in the securities brokerage market. In Vietnam, Techcom Securities is the first company that has developed a robo-adviser with the TCWealth tool. With every financial plan, TCWealth will detail the flow of money, giving an overview of the financial

condition of each individual based on basic information, such as monthly income, time to invest and risk appetite.

3.3 Issues Relating to Best Execution of Customer Trades

From an investor's perspective, the biggest advantage when using a robo-advisor is the absolute compliance with the desired rate of return as well as the rate of risk that the investor has set out.

A robo-advisor is completely unaffected by emotions like a traditional consultant. The "robot consultant" recommendations are based on 100% logic according to the prepared algorithm. This helps not to create a conflict of interest like a traditional brokerage model.

On the side of a securities company, whilst most of the robo-advisor products today are free for customers to experience, they just stop at providing consulting recommendations. In the future, it is assumed that robo-advisers will be able to place orders directly on behalf of customers. On the positive side, robo-advisers can largely replace the work of traditional brokers and beneficiaries as investors.

The widespread use of a robo-advisor not only creates a change in the investment method, but also poses a great challenge to traditional brokers.

Now, if only providing simple services with unrivaled capabilities, traditional securities brokers will be replaced by investment advisory robots.

4. ONLINE LENDERS

4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

In Vietnam, lending activities can be classified into:

- Lending activities of credit institutions, which are regulated by Law on Credit Institutions, Circular 39/2016/TT-NHNN and relevant laws; and
- Lending activities of non-credit institution lenders, which are regulated by the Civil Code.

Regarding loans provided by credit institutions, the basic eligibility requirements for a loan are set out for individuals and legal entities without difference under Article 7 of Circular 39/2016/TT-NHNN. From the legal perspective, there are almost no differences between provisions of loans for specific types of borrowers except that (i) small and medium-sized enterprises and (ii) enterprises operating in some eco-

conomic fields and sectors (such as agriculture development, sectors applying high technology, etc) enjoy incentives on loan interests as directed by the SBV over periods of time according to Article 13 of Circular 39/2016/TT-NHNN and Decision 1730/QĐ-NHNN dated 12 December 2016. From the business aspect, most credit institutions only provide online lending for small unsecured personal loans at present (with respect to consumer loans provided by finance companies, under Article 3.1 of Circular 43/2016/TT-NHNN, the total outstanding balance of consumer credit owed by a customer to that finance company is not greater than VND100 million).

In terms of loans provided by non-credit institution lenders, through emerging P2P lending and online lending platforms and applications, non-credit institution lenders can now easily provide loans online. Vietnamese laws have not developed the legal framework for the P2P lending and online lending activities; however, Article 8 of Law on Credit Institutions prohibits non-credit institution lenders from conducting banking activities, including providing loans regularly and professionally. Generally, lenders and borrowers participating in such platforms are individuals, and the loans to be provided are small consumer loans with no different conditions for different borrowers. Most fintech companies only play the role of intermediaries establishing environment and connecting online lenders to borrowers, without directly providing the loans.

4.2 Underwriting Processes

For the loans to be provided by credit institutions, lenders have the duty to carry out assessment of loan applications and a customer's ability to satisfy loan requirements as prescribed by Article 17 of Circular 39/2016/TT-NHNN. In the course of such assessment, the credit institution can use the internal credit rating system associated with information available at the National Credit Information Center of Vietnam and other communication channels.

Regarding online loans from non-bank lenders, the laws do not provide specific requirements on the underwriting process. Presently, many fintech companies are applying various underwriting solutions using scorecards, transaction history data, assessment from professional rating service providers, artificial intelligence and big data, etc on their P2P lending platforms.

4.3 Sources of Funds for Loans

Under the Law on Credit Institutions, the sources of funds for a loan include the following:

- lender-raised capital;
- taking deposits;

- issuing certificates of deposit, treasury bills and promissory notes;
- borrowing capital from the State Bank; and
- borrowing capital from credit institutions, financial institutions.

In which, according to Article 108.1 and Article 112.1 of the Law on Credit Institutions, finance companies and finance leasing companies are not allowed to take deposits from individuals to fund their loans.

With respect to loans provided by non-credit institution lenders, the laws are currently silent on the sources, but specific regulations on these matters are expected to be issued in the near future. In practice, most non-bank online loans on P2P platforms come from individuals' investment money.

4.4 Syndication of Loans

The procedures for arrangement of loan syndication are currently provided in Circular 42/2011/TT-NHNN and can be summarised as follows:

- the customer sends the proposal for loan syndication to credit institution;
- the credit institution issues an invitation for loan syndication to other credit institutions;
- the invited institutions review and reply in writing to accept or refuse to participate in the loan syndication; and
- based on the reply of the invited institutions, the credit institution that acts as a head in the arrangement shall convoke meetings of members to discuss matters relating to the provision of loan syndication.

It should be noted that Circular 42/2011/TT-NHNN only governs the provisions of syndicated loans by credit institutions to customers.

With respect to online lending, syndication of loans have not taken place in both the banking and non-banking sectors. However, pool lending might be implemented in P2P lending platforms/applications in the near future.

5. PAYMENT PROCESSORS

5.1 Payment Processors' Use of Payment Rails

At present, payment transactions in Vietnam are processed through several payment systems, including (i) the payment system operated and managed by the SBV, including electronic/paper clearance and interbank electronic payment systems (IBPS), (ii) the bank card switching and clearing

system, (iii) the securities clearing and settlement system (currently being operated by the Bank of Investment and Development of Vietnam, or BIDV), and (iv) the internal and bilateral payment systems operated and managed by credit institutions. With respect to international payment transactions, they are processed through international SWIFT and Western Union remittance services.

Under Article 25 of Decree 101/2012 /ND-CP, only providers of payment services (which are banks and other credit institutions) can organise and operate internal payment systems. Intermediary payment service providers (including payment processors) use existing payment rails and do not create or implement a new one.

5.2 Regulation of Cross-Border Payments and Remittances

International payments are regulated by laws on foreign currency management and international agreements on payments to which Vietnam is a signatory, as provided in Article 3 of Decree 101/2012/ND-CP. Under the Ordinance on Foreign Exchange Control, cross-border payments are basically classified into two main groups: (i) current transactions and (ii) capital transactions. Each type of transaction is subject to specific requirements, but all of them must be made via an authorised credit institution.

6. FUND ADMINISTRATORS

6.1 Regulation of Fund Administrators

Fund administrators who are the outsourced service providers carrying out the administrative functions for a fund are generally not regulated under Vietnamese law. Nevertheless, under Circular 212/2012/TT-BTC guiding the establishment, organisation and operation of a fund management company, fund management companies are only allowed to authorise (i) a depository bank or (ii) the Security Depository Center (currently Vietnam Securities Depositories, a state-owned company as well as the only post-trading infrastructure organisation of Vietnam's stock market) to carry out activities of fund administrators. With respect to open-end funds, under Circular 183/2011/TT-BTC, supervisory banks are also allowed to provide fund administration services. Both depository banks and supervisory banks are (i) commercial banks who register their securities-related activities with the State Securities Commission of Vietnam, and (ii) highly regulated by the Law on Credit Institutions, the Law on Securities and associated regulations.

6.2 Contractual Terms

In terms of the contractual terms that should be imposed on fund administrators to assure performance and accuracy, Vietnamese laws do not set out specific requirements or guidance on this matter. However, the duty to perform with due care and diligence is commonly concerned in practice.

7. MARKETPLACES, EXCHANGES AND TRADING PLATFORMS

7.1 Permissible Trading Platforms

With regard to financial instruments, in Vietnam, only domestic securities trading markets – Ho Chi Minh Hanoi Stock Exchange (HNX) and Hanoi Stock Exchange (HSX) – are permissible under the laws. Both HSX and HNX manage and operate platforms for the trade of listed stocks, bonds and exchange-traded fund certificates, but the difference is in requirements for listing (HSX has higher standards). HNX also operates a separate trading system for public companies' stocks that have not been qualified for listing, which is called Upcom. In addition, listed close-end fund certificates and covered warrants are traded through HSX's system, while HNX is currently handling derivatives transactions.

Vietnamese laws do not have specific regulations on the trading platform of other financial instruments and digital assets. Accordingly, the legality of such marketplaces is unclear. At present, foreign exchanges (FOREX) or other trading platforms for cryptocurrency or other digital assets can be considered spontaneous and illegal by the state authorities.

7.2 Regulation of Different Asset Classes

Under the Civil Code, an asset is defined including objects, money, valuable papers and property rights, and is classified into immovable and movable assets. In general, Vietnamese laws do not have different regulatory regimes for different classes of assets. However, with respect to cryptocurrency and other digital assets, it is still unclear whether they can be considered "assets" under Vietnamese laws due to contradictory views on this matter as well as a lack of guiding regulations.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

Vietnam is in the period known as the "golden population structure", which means the majority of the population are young, dynamic people who are highly adaptable to new technology. As a result, investment in cryptocurrency in Viet-

nam has grown relatively fast. Nevertheless, Vietnam still lacks a legal framework for cryptocurrency as well as digital assets (see **7.2 Regulation of Different Asset Classes**) even though it has made several efforts to regulate this space. As an example, in Decision 1225/QĐ-TTg dated 21 August 2017, the prime minister approved a project to complete the legal framework for the management of digital assets and related activities. The due date for proposed amendments or legislative documents on cryptocurrency is August 2018 but it has never been met.

Currently, cryptocurrency is considered an illegal means of payment in Vietnam under Decree No 80/2016/ND-CP. In addition, due to recent crypto-related frauds causing million of US dollars of damages to investors, the authorities have started to be concerned about the negative effect of the emergence of cryptocurrency exchanges. On Directive 10/CT-TTg dated 11 April 2018, the prime minister requested relevant authorities to strengthen the management of crypto-related activities and initial coin offerings (ICOs). Pursuant to this Directive, the SBV issued Directive 02/CT-NHNN dated 13 August 2018, which requires credit institutions and providers of intermediary payment services not to provide payment services or conduct other activities related to cryptocurrency transactions for customers due to “the risks of money laundering, financing of terrorism, fraud and tax evasion”. Regardless of the above, to keep up with the Industrial Revolution 4.0, the SBV is studying the capability for the issuance of digital currency, which might be put under control of the government as fiat currency according to Decision 2617/QĐ-NHNN dated 28 December 2018.

7.4 Listing Standards

Regarding listing standards, the Laws on Securities and associated regulations set out clear standards for stocks, bonds and other eligible securities to be listed on the stock exchanges (HNX and HSX) or to be registered in a centralised trading system (Upcom). Vietnamese laws have not established standards for the listing of cryptocurrency or other digital assets (due to the lack of a legal framework; see **7.2 Regulation of Different Asset Classes** and **7.3 Impact of the Emergence of Cryptocurrency Exchanges**).

7.5 Order Handling Rules

With respect to the stock market, under Article 3.3 Circular 203/2015 /TT-BTC, each stock exchange is responsible for issuing regulations on trading for the trading systems/platforms it manages after getting approval from the State Securities Commission. Such regulations provide the order handling rules applicable to the applicable system, such as kinds of trading orders, confirmation or rejection of orders, content of orders and principles on matching orders (prior-

ity on price or time). Vietnamese laws have not established order handling rules for the trade of cryptocurrency or other digital assets (due to the lack of a legal framework; see **7.2 Regulation of Different Asset Classes** and **7.3 Impact of the Emergence of Cryptocurrency Exchanges**).

7.6 Rise of Peer-to-Peer Trading Platforms

Peer-to-peer trading platforms have not been recognised under the laws of Vietnam, and many of them are being considered spontaneous and illegal (see **7.1 Permissible Trading Platforms**). However, as the rise of these platforms in the economy is inevitable, the government is studying the mechanism for the implementation of P2P lending activities on a pilot basis. Accordingly, a regulatory document providing (i) the activities of P2P lending platforms, (ii) the lenders allowed to participate in the platforms, (iii) the conditions for the establishment of a company operating P2P lending platforms and (iv) other matters related to the activities of such platforms is expected to be issued in the near future.

7.7 Issues Relating to Best Execution of Customer Trades

Under the Law on Securities and Circular 210/2012/TT-BTC:

- securities firms have the duty to execute a customer’s orders quickly and accurately, and must prioritise the execution of customers’ orders before their own orders; and
- fund management firms have the duty to act for the best interests of customers.

In the absence of regulations applicable to cryptocurrency and other digital assets, best execution of customer trades relating to the trade of digital assets has not been recognised under Vietnamese laws.

7.8 Rules of Payment for Order Flow

In Vietnam, securities firms that are trading members will place orders directly on the stock exchange for account holders.

7.9 Market Integrity Principles

Article 4 of the Law on Securities provides the basic principles for the securities market’s activities and operations, including “fairness, publicity and transparency”. For the purpose of ensuring market integrity and preventing market abuse, Article 9 of the Law on Securities also sets out prohibited acts, including disclosing misleading information, insider trading, exploiting the market to create sham supply or demand, or other acts to manipulate securities prices. The market integrity principles have not been provided by the laws for the trade of cryptocurrency and other digital assets

(due to the lack of a legal framework; see **7.2 Regulation of Different Asset Classes** and **7.3 Impact of the Emergence of Cryptocurrency Exchanges**).

8. HIGH-FREQUENCY AND ALGORITHMIC TRADING

8.1 Creation and Usage Regulations

High-frequency and algorithmic trading, known as HFT, is a form of algorithmic transaction with high and fast turnaround speed that uses powerful computer programs to execute a large number of transactions in less than a second. In Vietnam, the term “HFT” is new in the market, but it has recently become more popular with the development of science and technology, thus, some professional investors in the field of securities have started to pay more attention to transactions using modern technology such as algorithmic trading, HFT trading in finance and securities sectors. Relating to this kind of transaction, the Ministry of Finance issued Decree 203/2015/ND-CP guidance for trading on the securities market, which was expected to attract new trading tools such as algorithmic trading, program trading and high-frequency trading in the Vietnamese stock market by allowing investors to place both buy and sell orders at one time, for intraday transactions. However, there is no regulation in the Vietnamese laws that directly regulates high-frequency trading as of December 2020.

8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity

Under Decree 95/2018/ND-CP, a “market maker” is only recognised as an organisation selected by the Ministry of Finance to exercise rights and perform obligations in the issuance and trading of government debt instruments in the domestic market. Accordingly, the prerequisites to register as a market maker are that the applicant shall be a commercial bank or a securities company that is duly established and has operated under the laws of Vietnam for at least three years. Moreover, its owner’s equity reported on duly audited financial statements must be not lower than the minimum charter capital prescribed by relevant laws (VND3,000 billion for a commercial bank; VND10–165 billion for a securities company). The last requirement, as stated in Decree 95/2018/ND-CP, is that the applicant must have purchased and traded government debt instruments on the primary and secondary market with the quantity prescribed by the Ministry of Finance in each period.

As such, Vietnamese law only regulates market makers within the scope of government debt issuance and trading,

and has not yet issued regulations on market makers in a broader sense.

8.3 Regulatory Distinction between Funds and Dealers

Before it expired on 3 March 2020, Decree 144/2003/ND-CP distinguished between two definitions: “Securities investment fund” and “Agent for a securities issue”. In fact, according to the applicable laws, a securities investment fund is recognised as a fund formed from investors’ contributed capital for the purpose of earning profits from the securities investment, though such investors do not have the right to daily control of the fund’s investment decisions, while an agent for a bond issue is recognised as one method of issuing a corporate bond, thus, only securities companies, credit institutions and financial institutions are allowed to provide bidding. Pursuant to Vietnamese laws on securities (including the current laws and the Law on securities that came into effect on 1 January 2021), “securities” comprise shares, bonds and some other assets. As such, regulations on a securities investment fund and agent for a bond issue are engaged in many legal documents, but the most striking similarity between these two types is for profit purposes, while the difference is securities investment funds can be used to invest in other assets such as real estate, while bond issuers are only allowed to issue corporate bonds with a term of one year or more.

8.4 Regulation of Programmers and Programming

As mentioned above, high-frequency and algorithmic trading is expected to bring many profits. The main advantage of high-frequency trading is that it improves market liquidity and eliminates previous small buy-sell spreads. This has been proven by adding fees to high-frequency transactions, resulting in an increase in the bid-ask spread. Therefore, exchanges are encouraging companies to develop algorithms to help increase market liquidity. However, in Vietnam, regulations on the programming and algorithm creation have not been provided to date.

9. FINANCIAL RESEARCH PLATFORMS

9.1 Registration

Currently, in Vietnam, there are no financial research platforms that are developed and operating.

9.2 Regulation of Unverified Information

There are no regulations relating to this sector to date.

9.3 Conversation Curation

There are no regulations relating to this sector to date.

10. INSURTECH

10.1 Underwriting Processes

Insurtech is gradually entering the Vietnamese insurance market through investments with traditional insurance companies. Although it has not brought about many changes, it will be an important premise for traditional insurance companies to catch up with the 4.0 general trend of the world.

Securities undertaking is also one of the main activities that insurtech aims to operate in the near future. Under the current laws, securities underwriting is one of the business operations of securities companies, which is a commitment with an issuing organisation to carry out procedures before the securities offering. The commitment shall be made as an undertaking to buy whole or part of the securities amount of the issuing organisation for resale or to buy the amount of unsold securities of the issuing organisation, or to help the issuing organisation in distributing securities to the public.

To issue underwriting in the form of firm commitment, a securities company must have been licensed to conduct securities underwriting operations and meet the requirement of total value of all contracts, and not being under control and special control for the three months preceding the time of signing the underwriting contract.

Generally, the securities undertaking process consists of four steps:

- analyse and evaluate issue possibilities;
- prepare documents for registration of a public offering;
- distribution of stock; and
- stabilise and regulate the market.

The applicable laws of Vietnam do not provide specific regulations on the underwriting process, thus the detail is often issued by each issuance-underwriting organisation.

10.2 Treatment of Different Types of Insurance

Based on the object of insurance, all types of insurance are divided into two groups: life and non-life insurances, both mainly regulated under the Law on insurance business 2020.

Life insurance means a class of insurance provided to cases where the insured is alive or dead, while non-life insurance means a class of property, civil liability and other insurances other than life insurance. Depending on the object,

field and scope of the insurance, different types of insurance are treated differently. However, from the point of view of insurtech, there are no specific regulations on this treatment as of December 2020.

One bright spot in the roadmap to digitise legal documents of administrative procedures in Vietnam is the introduction of Electronics Certificates of compulsory insurance for civil liability. Particularly, from 1 March 2021, motor vehicle owners could be granted an Electronics Certificate of compulsory insurance for civil liability of motor vehicle owners according to Article 6 of Decree 03/2021/ND-CP. In which case, the insurance enterprise is allowed to actively design the Electronics Certificate, but it must comply with the provisions of the Law on Electronic Transactions and its guiding documents. Currently, in Vietnam, there are only a few large and reputable insurance companies – such as Military Insurance MIC, VietinBank Insurance, PVI Insurance – that are capable of applying electronic certificates to their management. As this is the first time Electronics Certificates have been recorded in Vietnam's legal system, they may open up opportunities for collaboration between traditional insurance companies and fintech companies in the future.

11. REGTECH

11.1 Regulation of Regtech Providers

Regtech providers are not specifically regulated in Vietnam. Depending on the activities, however, they may become subject to data protection requirements. Nevertheless, the Vietnam government is showing signs of opening towards the adaption of regtech. In Decision 149/2020/QĐ-TTg, the prime minister especially set developing the legal framework for adoption of e-KYC as a mission for the government to achieve by 2025 (with forward looking until 2030).

11.2 Contractual Terms to Assure Performance and Accuracy

Financial service firms often impose contractual requirements on the provider to (i) ensure confidentiality (many times providers must sign a non-disclosure agreement before gaining any access to information, or prohibition on cloud storage of the financial service firm information), (ii) compliance with data protection and storage, and (iii) consistency with the financial services firm system (eg, core banking system). It is often required that the technology provider transfer collected customer data to a financial services firm's internal server.

Often these provisions arose out of regulation necessity (such as financial services firms being required to ensure confidentiality with their customers).

12. BLOCKCHAIN

12.1 Use of Blockchain in the Financial Services Industry

Banks and payment service intermediaries companies experimented with implementing blockchain technology in interbank money transfer transactions as early as 2018. In Vietnam, in July 2018, NAPAS co-operated with three banks –VietinBank, VIB and TPBank –to successfully test interbank money transfer using blockchain after four weeks of implementation. Recently, blockchain technology has been experimented with by financial institutions (including HSBC and BIDV) successfully in lending transactions, including trade finance transactions by letters of credit. TPBank, another Vietnamese bank, successfully implemented blockchain technology (RippleNet) in its international money transfer transactions to ensure immediate delivery, notice and full transparency.

12.2 Local Regulators' Approach to Blockchain

Currently, there is no clear legal framework in Vietnam on blockchain, including for blockchain-based currencies such as bitcoin. Nevertheless the general understanding is that such currencies are prohibited from use as a financial instrument. The SBV has issued Directive No 02/CT-NHNN in 2018 towards financial services providers, prohibiting the provision of services in relation to these currencies. It is also a crime under Vietnamese law to provide, use or issue these currencies.

However, the government has actively studied using a sandboxing mechanism for blockchain as a small-scale testing platform with a selected number of monitored service providers. On 12 August 2019, the prime minister proposed the implementation of a sandbox mechanism with new technologies through Decision 999 / QĐ-Tg. In early January 2020, the government's Resolution No 01 / NQ-CP on the implementation of the 2020 socio-economic development plan set out the task of issuing sandboxes for financial technologies, including setting goals, allocating resources and building criteria for selecting businesses to join the sandbox.

12.3 Classification of Blockchain Assets

Blockchain assets/blockchain currencies are not listed as a recognised financial instrument and have been expressly prohibited by the SBV.

12.4 Regulation of “Issuers” of Blockchain Assets

No issuers of blockchain assets legally exist in Vietnam as the use of these blockchain currencies is prohibited in Vietnam.

12.5 Regulation of Blockchain Asset Trading Platforms

Blockchain assets trading platforms are banned in Vietnam.

12.6 Regulation of Funds

No funds are allowed to invest in blockchain assets in Vietnam.

12.7 Virtual Currencies

According to Article 6.1 and 6.2 Decree 80/2016/ND-CP on amendments to the government's Decree No 101/2012/ND-CP dated 22 November 2012 on non-cash payments: “Non-cash payment instruments in payment transactions (hereinafter referred to as payment instruments), including: Cheques, payment orders, collection orders, bank cards and other payment instruments as prescribed by the State Bank.”

Also, “Illegal payment instruments are payment instruments not included in Clause 6 of this Article.”

Therefore, both virtual currencies and blockchain assets are prohibited in Vietnam.

12.8 Impact of Regulation on “DeFi” Platforms

In Vietnam, there is not yet a clear legal framework on decentralised finance (DeFi; more commonly known as P2P lending) in Vietnam. Despite there being considerably widespread P2P lending companies operating in Vietnam, their legal status is currently not recognised by the government. The SBV has only gone so far as to recommend financial services enterprises to take care in providing P2P lending services, be aware of the risks in P2P Lending and to be wary in co-operating with P2P lending service providers.

13. OPEN BANKING

13.1 Regulation of Open Banking

Currently, there are no legal regulations in Vietnam on open banking; however, this may change in the future. Indeed, the Vietnamese government is actively promoting competent agencies to develop a legal framework on open banking.

Indeed, the Governor of the State Bank has established a Steering Committee for Fintech in accordance with Decision No 328/ D-NHNN dated 16 March 2017. One of the core tasks of the Committee is the researching, building connec-

tions and sharing data through open APIs. This is a start and could result in potential developments in open banking in the foreseeable future.

13.2 Concerns Raised by Open Banking

No information is available in this jurisdiction.

LNT & Partners is a market-leading full-service, independent law firm based in Vietnam, which focuses on advisory and transactional work in the areas of corporate and M&A, real estate, infrastructure, and banking and finance, as well as complex and high-profile litigation and arbitration matters. The firm is among Vietnam's most prominent, having represented a wide range of multinational and domestic clients, including Fortune Global 500 and well-known Vietnamese listed companies. LNT has set a high benchmark for providing highly innovative and

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