VIETNAM

Law and Practice

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1. FINTECH MARKET

1.1 Evolution of the Fintech Market

Under the impact of COVID-19, 2021 created momentum for the digitalisation of society. The increase in distance commerce came hand in hand with an increase in the use of cashless payments and e-finance. The pandemic has thus accelerated the process of global digital transformation, creating a premise for the strong rise of the fintech sector.

To meet demands, from 2018, pursuant to Decision 2617/QD-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.”

As of November 2021, the SBV had licensed 46 intermediary payment service providers, the majority of which offer e-wallets, payment gateways and support for collection and payment. Furthermore, in 2021, the SBV approved VNPT, Mobifone and Viettel to pilot a mobile money service. The pilot implementation period is two years. The results of the pilot implementation of a mobile money service will offer 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 development to watch out for in the next 12 months is a regulatory sandbox for fintech 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, crowd funding, etc).

In addition, a draft decree replacing the Decree on non-cash payment is likely to be published in 2022. From the current draft, it is expected that there will be various enhancements of the legal framework on payment intermediary services, bank cards and bank accounts, following Directive No 22/CT-TTg.

Last but not least, the Ministry of Information and Communications has collected opinions and prepared a draft for a Law on Digital Technology Industry, which is expected to specify types of digital assets to be protected; ie, cryptocurrencies, non-fungible tokens (NFTs), videos, images and social media accounts.

2. FINTECH BUSINESS MODELS AND REGULATION IN GENERAL

2.1 Predominant Business Models

The main business models that predominate, 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 on 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 processes, namely eKYC, newly recorded in Circular 16/2020/TT-NHNN. In addition, the application of eKYC is expected to be strengthened by the issuance of Decision No 34/2021/QD-TTg, providing for e-identification and e-authentication of Vietnamese citizens and foreigners in Vietnam based on the National Population Database, the Citizen Identification Database and the National Immigration Database.

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

Amongst these models, mobile money has the most development and the biggest spotlight since a pilot implementing mobile money in Vietnam has been approved by the Prime Minister pursuant to Decision 316/QĐ-TTg, marking a bold step for the development of payments using telecommunications accounts in Vietnam. Three major Vietnamese telecoms companies have been approved by the SBV for the pilot implementation of mobile money: Viettel, VNPT and Mobifone.

Models without Legal Regulations
Vietnam is in the process of developing a legal framework for insurtech. Changes are contained in the draft Law on Insurance Business (amended), which encourages the application of information technology in the insurance sector. Specifically, the Law will supplement a specific section regulating the application of information technology in insurance business. This will include general principles of information technology application by insurance businesses, requirements with which they will have to comply, and the provision of insurance products online.

The activities of P2P lending, open API, crowdfunding, blockchain, digital banking and mobile payment solutions (such as Samsung Pay) are 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
Except for certain areas, notably e-wallet and payment intermediary services, the fintech legal framework in Vietnam is still in its infancy, with only directions from the Prime Minister giving guiding 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 the Prevention of Money Laundering 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 have provided regulation on the implementation of eKYC. They now allow banks to decide whether to meet custom-
ers 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 the regulations of the Law on the Prevention of Money Laundering. By now, most Vietnamese banks have effectively implemented eKYC solutions and generally received positive feedback from customers. For example, VPBank, the first bank to implement eKYC in Vietnam, has built a comprehensive biometrics technology platform, combined with artificial intelligence (AI) technology and e-signatures, allowing customers to open a payment account fully online within five minutes.

Nevertheless, to be able to effectively implement eKYC, one of the essential conditions is to make use of the national data system. On 8 November 2021, Deputy Minister Vu Duc Dam signed Decision No 34/2021/QD-TTg stipulating e-identification and e-authentication based on the National Population Database, the Citizen Identification Database and the National Immigration Database. Accordingly, individuals may register for a unique e-identification account in the electronic identification and authentication system and declare their e-identity information. In order to activate the account, individuals must also provide their phone number or email address.

Based on the system, the Ministry of Public Security (MPS) will provide an e-identification service and an e-authentication service to organisations and individuals. For the e-identification service, the MPS will collect, create and assign an e-identity to an individual, and manage such e-identities. For the e-authentication service, the MPS will verify and certify that an e-identity user is the e-identity holder, which helps to save time, money and human resources to authenticate customer information. On 20 June 2021, four commercial banks signed an agreement to exploit the citizen identification data with the MPS.

Mobile Money
On 9 March 2021, the Prime Minister approved a two-year-pilot programme for mobile money, which allows the use of mobile phone credit to pay for small-value goods and services under Decision 316/QD-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, as with 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 amount: 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:

• licences to provide intermediary e-wallet payment services; or
• 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 telecommunications 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 been licensed to pilot mobile money, two of which have put mobile money services into use: VNPT and Viettel. Mobifone is also scheduled to join the non-cash payment field as soon as possible.

P2P Lending
The activities of P2P lending and blockchain are not governed by specific legislation in Vietnam. However, in practice, fintech companies operating P2P lending or blockchain platforms are obliged to comply with the regulations of general laws such as the Civil Code 2015, the Law on Investment 2020 and the Law on Enterprises 2020. Particularly, fintech companies usually obtain enterprise registration certificates with general business lines of supporting 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.

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

However, the absence of a specific legal framework causes confusion for the SBV in assessing dossiers submitted to apply for the specific business line of P2P lending, which consequently are usually pending or refused.

Mobile Payment Solutions
A mobile payment solution supports customers in card payment activities through a card acceptance device at a merchant, not an intermediary payment service. The players providing this service must have responsibilities for compliance with the 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 SBV’s Draft Decree providing for a controlled testing mechanism (sandbox) for fintech activities in the banking sector has been repeatedly consulted with ministries and branches. However, the cautiousness of the parties has rendered the Draft Decree incomplete.

Recently, the SBV issued an Implementation Plan for the implementation of Decision No 1813/QD-TTg of the Prime Minister on approving the Project on development of non-cash payment in Vietnam in the period of 2021–2025. Accordingly, the SBV will develop, and submit to the government for promulgation, a Decree on a mechanism for controlled testing of fintech activities in the banking sector.

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 at their discretion. In the case of unpredictable banking activities, the SBV 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.

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 government issued Resolution 100/NQ-CP approving the proposal to develop a Decree on a Regulatory Sandbox for Fintech activities in the banking sector. The SBV is assigned to assume the prime responsibility for, and co-ordinate with relevant ministries and agencies in, formulating the decree with a view to facilitating business activities, ensuring financial stability, and protecting the interests of consumers. The draft decree is expected to be submitted to the government in early 2022.

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 corresponding objectives.

State Bank of Vietnam
The unit is in charge of co-ordinating research, building a licensing mechanism, monitoring and managing 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 Communications
The Ministry of Information and Communications is the focal point for research and development of fintech. It helps grant a certificate of technical eligibility to operate and store fintech information, and comments on applications for
a pilot licence for fintech operations 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 Communications to research and develop a set of technical standards, and review the operating mechanism of the fintech models proposed by enterprises regarding the issuance of 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 ministries’ obligations are to co-ordinate with the SBV to consider and give opinions on applications filed 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 SBV 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:

- loss of important documents and databases;
- a breakdown in the information technology system; and
- 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 intermediary services under the current draft regulation) and the provision of e-banking/financial services, and are therefore subject to the Vietnamese Law on the Prevention of Money Laundering and Decree 101/2012/ND-CP on payment intermediary businesses. For these subjects, they are subject to a plethora of duties to collect information, carry out KYC, report to authorities and, most importantly, 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 SBV) 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 and 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 the same measures to prevent and combat money laundering as for financial institutions specified in Clause 3, Article 4 of the Law on the Prevention of 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 and 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.

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
There is no regulation to categorise unregulated/regulated products and services in Vietnam.

2.13 Impact of AML Rules
The Vietnamese Law on the Prevention of Money Laundering imposes obligations on entities carrying out a number of activities, including those that (i) provide payment services; (ii) issue instruments of assignment, credit cards, debit cards, money orders or electronic money; and/ or (iii) provide insurance services and investment operation related to life insurance; activities that may be considered fintech in nature. The main obligations for these enterprises would include:

- customer identification and information collecting (KYC process); and
• reporting of suspicious transactions.

Customer identification and information collecting are highly detailed, and include detailed regulations on cases where customer identification is required, the type of customer information to be collected and identified, and measures to verify customer identification information; classifying customers based on risk factors. The enterprise will consequently have to apply appropriate anti-money laundering measures, corresponding to the risk levels of customers. There are also special obligations regarding politically exposed persons.

Regarding reporting responsibilities, the Law specifically stipulates the reporting responsibilities of subjects when performing various types of large-value transactions (ie, more than VND300 million), suspicious transactions and large-value electronic money transfers. In addition, the Law sets out basic suspicion signs, and creates a legal basis for reporting subjects to identify suspicious transactions in order to take necessary anti-corruption measures.

The Law is due for an update, which may come in the upcoming years, and may cover many other subjects in the field of fintech.

3. ROBO-ADVISERS

3.1 Requirement for Different Business Models

There are no regulations on robo-advisers. 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.

Following Techcom Securities, Ho Chi Minh Security Company (HSC) has presented an HSC online investment advisory toolkit, which supports customers by identifying the market, analysing the performance of businesses, and advising on investment in underlying securities and derivatives.

3.3 Issues Relating to Best Execution of Customer Trades

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

A robo-adviser is completely unaffected by emotions, unlike 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, as in the case of a traditional brokerage model.

On the side of a securities company, whilst most of the robo-adviser 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-adviser 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 unrivalled 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 the 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 the provisions of loans for specific types of borrowers except that (i) small and medium-sized enterprises and (ii) enterprises operating in some economic fields and sectors (such as agriculture development and sectors applying hi-tech) 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/QD-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 cannot be 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 P2P lending and online lending activities. However, Article 8 of the 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 the environment and connecting online lenders to borrowers, without directly providing the loans. However, there are some fintech companies that directly provide online loans to borrowers in the form of salary advances based on the labour contract of the borrower, such as WeWay and VuiApp. Accordingly, borrowers may request a fintech company to provide a salary advance. By the end of the month, the employer, instead of paying a salary to the borrower, will pay to the fintech company.

4.2 Underwriting Processes

For 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
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, AI 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 SBV; and
• borrowing capital from credit institutions and financial institutions.

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 the 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 a 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 provision of syndicated loans by credit institutions to customers.

With respect to online lending, syndication of loans has not taken place in the banking or 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:

• the national payment system operated and managed by the SBV, including electronic/paper clearance and interbank electronic payment systems (IBPS);
• the bank card switching and clearing system;
• the securities clearing and settlement system currently being operated by the Bank of Investment and Development of Vietnam (BIDV); and
• 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 (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:

• current transactions; and
• 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
Under the Law on Securities, fund administrators are allowed to conduct management of securities investment funds, stock portfolio management or securities investment consulting as specified in their licence for establishment and operation of securities business.

Fund administrators that are outsourced service providers carrying out the administrative functions for a fund are generally not regulated under Vietnamese law. Nevertheless, under Article 12.1 of Circular 99/2020/TT-BTC guiding the operation of securities investment fund management companies, fund management companies are only allowed to authorise (i) a depository bank, (ii) a supervisory bank or (iii) the Vietnam Securities Depository and Clearing Corporation (VSDCC, formerly Vietnam Security Depositories, or VSD) to carry out the activities of fund administrators. Depository banks and supervisory banks are:

• commercial banks that register their securities-related activities with the State Securities Commission of Vietnam; and
• highly regulated by the Law on Credit Institutions, the Law on Securities and associated regulations.

6.2 Contractual Terms
To ensure that fund administrators operate transparently and effectively, Vietnamese laws set out various obligations regarding the operation and transactions of fund administrators. However, 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. In practice, the duty to perform with due care and diligence is a common factor.

7. MARKETPLACES, EXCHANGES AND TRADING PLATFORMS

7.1 Permissible Trading Platforms
With regard to financial instruments, in Vietnam, only domestic securities trading markets – the Vietnam Stock Exchange (VNX), the Hanoi Stock Exchange (HNX) and the Ho Chi Minh Stock Exchange (HSX) – are permissible under the laws. The VNX has recently been established on the basis of restructuring the operating HNX and HSX. In particular, the VNX, which owns 100% of the charter capital of the HSX and HNX, currently
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plays the role of supervising and managing the other two stock exchanges.

Currently, the HSX and HNX operate platforms for the trading of listed stocks, bonds and exchange-traded fund certificates, but the difference is in requirements for listing (the HSX has higher standards). The 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 closed-end fund certificates and covered warrants are traded through the HSX’s system, while the HNX handles derivatives transactions.

However, the types of securities traded on the HNX and HSX will be restructured for the purpose of specialisation. In particular:

• no later than 30 June 2025, the HSX will be the only trading market for listed shares, fund certificates and covered warrants, and shares of registered organisations; and
• no later than 31 December 2022, the HNX will be the only trading market for bonds and derivatives transactions.

Vietnamese laws do not have specific regulations on the trading platforms of other financial instruments and digital assets. Accordingly, the legality of such marketplaces is unclear. At present, foreign exchanges and 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 as 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.

On 15 June 2021, the government issued Decision 942/QD-TTg, which, among others, directed that the SBV begins working on a pilot project for virtual currencies based on blockchain technology. The Ministry of Finance (MOF) also formed a group conducting an in-depth study of cryptocurrencies to close the gap between technologies and legislation. In addition, the Ministry of Information and Communications has collected opinions and prepared a draft for a Law on Digital Technology Industry. According to the summary report of comments for the draft of the Law on Digital Technology Industry, digital assets such as cryptocurrencies, NFTs, videos, images and social media accounts are expected to be recognised, with the ownership protected. Moreover, the draft also sets out a sandbox mechanism on the purchase, sale and exchange of digital assets; mechanisms to manage the purchase, sale and transfer of digital assets; and measures to protect and ensure the interests of organisations and individuals that create, develop and own digital assets on digital environments, especially cross-border platforms. The draft has been submitted to the government and transferred to the National Assembly for inclusion in the 2023 plan.

Nonetheless, at the time of writing, a defined legal framework for virtual assets, including cryptocurrencies, remains absent.

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 Vietnam has grown relatively fast with the emergence of exchanges (eg, Binance, BitcoinVn, Remitano). 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/QD-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 was August 2018 but it was not met.

Cryptocurrency is considered an illegal means of payment in Vietnam under Decree 80/2016/ND-CP. In addition, due to recent crypto-related frauds causing millions of US dollars of damages to investors, the authorities have started to be concerned about the negative effect of the emergence of cryptocurrency exchanges.

In Directive 10/CT-TTg dated 11 April 2018, the Prime Minister requested the 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 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/QD-NHNN dated 28 December 2018.

7.4 Listing Standards
The Laws on Securities and other associated regulations set out clear listing 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 of Circular 120/2020/TT-BTC, the VNX is responsible for issuing regulations on trading for the trading systems/platforms it manages. Such regulations provide the order handling rules applicable to the relevant system, such as kinds of trading orders, confirmation or rejection of securities transactions, change or cancellation of orders and principles on matching orders (priority on price or time). Securities firms (ie, members of securities trading markets) are responsible for checking the validity and legitimacy of the investor’s trading orders before inputting orders into the securities trading system.

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
Although the growth of peer-to-peer trading platforms has received a great deal of attention from the authorities, these platforms have not been recognised under the laws of Vietnam. 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 for (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 its guiding regulations:

• 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. Brokerage service fees paid by account holders to securities firms relating to purchases or sales of listed and registered shares, funds certificates, and covered warrants shall be limited to a certain amount per transaction or to a percentage based on the total transaction value.

7.9 Market Integrity Principles
Article 5 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 12 of the Law on Securities also sets out prohibited acts, including disclosing false or 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 transactions with a 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, professional investors and the authorities in the field of securities have started to pay more attention to transactions using modern technology such as HFT in finance and securities sectors.

On the last day of 2020, the MOF issued Circular 120/2020/TT-BTC providing guidance for trading on the securities market, which allows investors, among others, to place buy and sell orders at one time, for intraday transactions. However, there has been no regulation in the Vietnamese laws that directly regulates high-frequency and/or algorithmic trading as of January 2022.
8.2 Requirement to Register as Market Makers when Functioning in a Principal Capacity

Under Decree 95/2018/ND-CP, a “market maker” is recognised as an organisation selected by the MOF 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 not be lower than the minimum charter capital prescribed by relevant laws (VND3 trillion 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 minimum quantity prescribed by the MOF in each period.

As such, Vietnamese laws only regulate market makers within the scope of government debt issuance and trading, and lawmakers have not yet issued regulations on market makers in a broader sense.

8.3 Regulatory Distinction between Funds and Dealers

Due to the lack of regulations on HFT, there is no such regulatory distinction provided for the funds and dealers engaging in HFT.

8.4 Regulation of Programmers and Programming

Due to the lack of regulations on HFT, there is no such regulation on programmers and programming involving the development and creation of trading algorithms and other electronic trading tools.

9. FINANCIAL RESEARCH PLATFORMS

9.1 Registration

A few financial research platforms have emerged in Vietnam’s market. Given that official regulations governing these platforms have not been issued, companies operating the platforms may only need to register appropriate business lines without obtaining any other sub-licences or approvals from authorities. For participants, in order to use the research platform, they just need to register with a platform provider to create an account and no registration with authorities is required.

However, if the activities of these platforms may include personal information collection and processing, under the recent draft regulation on personal data protection, the processing of “sensitive” data (if any) and the transfer of personal data might be subject to registration with the relevant authority.

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.
For their underwriting processes, insurtech companies usually use big data, AI technology with chatbots, the internet of things, blockchain technology and augmented reality (AR) technology.

As with many other sectors of the economy involving technology, insurtech activities have not been governed by any official legal framework in Vietnam. Instead, depending on the service provided, the insurtech company may be subject to a specific set of legislation. Insurtech involved in insurance underwriting is mostly subject to regulations on data protection.

Specifically, under the Law on Cyberinformation Security, data (i) must be acquired only with adequate and explicit consent from data subjects and (ii) must be used only for the pre-stated purposes. Data collectors must also implement ample technical measures to ensure the security of the data they collected.

Although still under development, the recent draft regulation on personal data protection provides that the processing of data classified as “sensitive” and the transfer of personal data might be subject to registration with the relevant authority. Under this draft, financial standing and data related to the mental and physical health of data subjects, among others, which are usually reviewed in underwriting processes, are classified as sensitive data.

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 insurance, both mainly regulated under the Law on Insurance Business and its guiding regulations.

Life insurance is 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 insurances other than life insurance. Depending on the object, field and scope of the insurance, different types of insurance are treated differently. However, there are no specific regulations on insurtech at the time of writing.

One bright spot in the roadmap to digitise legal documents of administrative procedures in Vietnam is the introduction of electronic certificates of compulsory insurance for civil liability. Particularly, from 1 March 2021, motor vehicle owners could be granted an electronic 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.

There are a few large and reputable insurance companies in Vietnam – such as Cathay Insurance, Military Insurance MIC, VietinBank Insurance and 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 insurtech companies.

11. REGTECH

11.1 Regulation of Regtech Providers

Regtech providers are not specifically regulated in Vietnam. Depending on their activities, however, they may become subject to a variety of requirements, including data protection. Nevertheless, the Vietnamese government is showing signs of being open towards the adoption of regtech.
For example, in Decision 149/2020/QD-TTg, the Prime Minister specifically set developing the legal framework for the adoption of eKYC as a mission for the government to achieve by 2025 (forward looking until 2030). The SBV and the Minister of Finance subsequently issued regulations explicitly allowing banks, branches of foreign banks in Vietnam, and funds management companies to conduct eKYC.

11.2 Contractual Terms to Assure Performance and Accuracy
Financial service firms often impose contractual requirements on the provider to:

- ensure confidentiality (providers must often sign a non-disclosure agreement before gaining access to information, or there is a prohibition on cloud storage of the financial services firm’s information);
- comply with data protection and storage rules; and
- be consistent with the financial services firm system (e.g., the core banking system).

It is often required that the technology provider transfers 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 the confidentiality of their customers).

12. BLOCKCHAIN

12.1 Use of Blockchain in the Financial Services Industry
Banks and payment service intermediary companies experimented with implementing blockchain technology in interbank money transfer transactions as early as 2018. In July 2018, the National Payment Corporation of Vietnam co-operated with three banks – VietinBank, VIB and TPBank – to successfully test interbank money transfers using blockchain after four weeks of implementation.

Blockchain technology has been applied in international payments in the Vietnamese market since 2019, beginning with the first letter of credit (L/C) transaction of HSBC’s Vietnamese branch via Voltron. Following HSBC, five Vietnamese commercial banks – BIDV, HDBank, Vietinbank, MBBank and Vietcombank – had tested the blockchain application in five L/C transactions as of the end of February 2021. After a trial period, MBBank officially put it into operation and became Vietnam’s first joint-stock commercial bank to commercially deploy L/C services using blockchain technology. Vietcombank, another Vietnamese bank, also successfully implemented blockchain technology in its digital bank to improve the user experience for its VCB Rewards programme.

12.2 Local Regulators’ Approach to Blockchain
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 issued Directive No 02/CT-NHNN in 2018 regarding 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 select number of monitored service providers. According to Decision 942/QD-TTg dated 15 June 2021 of the government, the SBV, as the focal point of pilot research on the use of virtual money based on blockchain technology, has sent its proposals.
to the government on this issue. Previously, the Prime Minister issued Decision 2117/QD-TTg dated 16 December 2020 promulgating a list of prioritised technologies for research, development and application to actively participate in Industrial Revolution 4.0, including blockchain. In addition, according to the plan for digital transformation of the banking industry by 2025, with a vision to 2030 under Decision No 810/QD-NHNN dated 11 May 2021 of the SBV Governor, the use of virtual money based on blockchain technology is still being studied by the SBV.

12.3 Classification of Blockchain Assets
Blockchain assets/blockchain currencies are not listed as recognised financial instruments 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 blockchain currencies is prohibited in Vietnam.

12.5 Regulation of Blockchain Asset Trading Platforms
Blockchain asset 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 1.1 of Decree 80/2016/ND-CP on amendments to the government’s Decree No 101/2012/ND-CP: “Non-cash payment instruments in payment transactions (hereinafter referred to as payment instruments) include: 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.”

Accordingly, as of January 2022, virtual currencies and blockchain assets are not payment instruments under Decree 101/2012. Therefore, they are prohibited from being used as payment instruments 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 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.

12.9 Non-fungible Tokens (NFTs)
NFTs and NFT platforms are not within the fintech regulatory perimeter in Vietnam. In practice, NFTs can be considered as property. However, under Article 105 of the Civil Code, property comprises objects, money, valuable papers and property rights. Accordingly, NFTs do not belong to any type of property aforementioned.

Because of the growing commercial activity around NFTs, as mentioned in 7.2 Regulation of Different Asset Classes, the Ministry of Information and Communications has prepared a draft for a Law on Digital Technology Industry. Accordingly, NFTs are expected to be recognised as a digital asset, with ownership protected. A sandbox mechanism on the purchase, sale and exchange of digital assets, including NFTs, and mechanisms to manage NFT platforms are also planned to be included in the draft.
13. OPEN BANKING

13.1 Regulation of Open Banking
There are no legal regulations in Vietnam on open banking; however, this may change. Indeed, the Vietnamese government is actively promoting competent agencies to develop a legal framework on open banking.

Indeed, in 2017, the Governor of the SBV established a Steering Committee for Fintech in accordance with Decision No 328/QD-NHNN dated 16 March 2017. One of the core tasks of the Committee is researching, building connections and sharing data through open API. This is a start and could result in developments in open banking in the foreseeable future.

Furthermore, according to the plan for digital transformation of the banking industry by 2025, looking forward to 2030 (issued under Decision No 810/QD-NHNN dated 11 May 2021 of the SBV Governor), developing a regulation on the collection, exploitation, processing and sharing of customer data with third parties, towards the development of open banking, is one of the tasks and solutions to facilitate the digital transformation process in the banking sector.

Although there is no legal framework for open banking, there are many banks – such as VietinBank, Agribank, BIDV, VPBank and Vietcombank – that have implemented open banking by opening API to connect with payment intermediaries, and e-commerce and utility service providers (electricity, water, aviation, etc).

13.2 Concerns Raised by Open Banking
It is undeniable that the development of open banking enhances convenience for customers and brings many opportunities for banks. However, the implementation of open banking also entails a number of risks, including the risk of unsecured customer data, and the risk of cyber-attacks due to the increased duration and number of connections between the bank and third parties. In addition, customers may be at risk of the infringement and theft of their data through the process of collecting and processing the data of third parties.

Not only customers but also banks may face difficulties in maintaining data quality and accuracy, and challenges in data analysis and mining, data standardisation and junk data removal, etc. Banks also need to pay attention to ensuring data safety and customer information security in the network environment, which is one of their statutory obligations.
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