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Business Law Practitioners



# VIETNAM

## Fintech Guide

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## Abbreviation

ASEAN	Association of Southeast Asian Nations
DPI	Provincial Department of Planning and Investment
FTA	Free Trade Agreement
MIC	Ministry of Information and Communications
MOF	Ministry of Finance
MPS	Ministry of Public Security
PM	Prime Minister
SBV	State Bank of Vietnam
SSC	State Securities Commission
WTO	World Trade Organization
VISC	Vietnam Standard Industrial Classification

## Introduction

1. Fintech, short for financial technology, is witnessing rapid growth in Vietnam, capturing the interest of both domestic and foreign investors. Since its emergence in early 2018, the Fintech industry has significantly impacted the Vietnamese market, although it remains in the preliminary stages of development compared to other ASEAN countries.
2. As a participant in several FTAs, including the WTO, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the EU-Vietnam Free Trade Agreement (EVFTA), and the Vietnam-Japan Economic Partnership Agreement (VJEPA), Vietnam engages actively in international trade. However, these agreements do not automatically grant foreign investors access to the Vietnamese market. Notably, the EVFTA and CPTPP recognize Fintech services as “new financial services”, but Vietnam reserves the right to regulate these services through pilot programs. These programs allow Vietnam to carefully control the number of financial service providers and limit the pilot programs' scope, serving as a controlled environment for testing new Fintech products.<sup>1</sup>
3. To date, Vietnam has yet to develop clear and robust legislation regulating Fintech activities. The payment segment of fintech (including e-wallets) dominates the Vietnam Fintech market largely due to clear regulations. Other segments (such as P2P lending) have long waited for a regulatory sandbox that would facilitate their growth and integration into the broader financial system.
4. This guide aims to provide an overview of the regulatory landscape for Fintech in Vietnam, and focuses on several succinct legal issues for popular business models, at the time of writing. The guide is structured as follows:
  - (a) **Executive Summary:** A concise overview of the key findings.
  - (b) **Fintech Popular Business Models and Activities:** An examination of popular Fintech business models, including P2P lending, buy-now-pay-later, wealth management, e-payment services (including e-wallets), cryptocurrency, Insurtech, and digital credit scoring. We also analyze how investment restrictions and local industry regulations may impact these businesses.
  - (c) **Implications of Additional Regulations:** A review of three non-financial service laws with significant implications, covering data protection and cybersecurity, anti-money laundering, and electronic transactions.
  - (d) **Sandbox Mechanism:** An assessment of the draft Government decree aimed at regulating previously unregulated Fintech forms.

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<sup>1</sup> Appendix 8-B-1 (Vietnam’s Schedule of Specific Commitments), EVFTA and Annex III (Vietnam’s Schedule of Commitment under Chapter 11 (Financial Services)).

## Executive Summary

5. The existing legal framework in Vietnam does not explicitly define Fintech nor does it offer a comprehensive regulatory scheme for Fintech activities. Regulations mainly focus on Fintech in the e-payment industry, while other areas such as P2P lending and cryptocurrency lack tailored regulation. It is a common practice for providers of unregulated Fintech areas to adapt their business models and specific functions, in an effort to comply with the existing laws and regulations, with necessary modifications made as required, to justify their operations. These models are still being applied in practice, provided they do not contravene general law.
6. Currently, the SBV is the ministerial agency of the Vietnamese Government which supervises Fintech activities in Vietnam. The SBV has taken a cautious approach to fintech regulations, observing the initiatives championed by regulators in neighboring countries before determining its strategies to drive Fintech growth.
7. Foreign investment in Vietnam is governed by both international treaties and local laws. Foreign investors can invest in Vietnam either by setting up a new company or acquiring a stake in an existing company. However, local authorities in Vietnam often base their decisions on the country's commitments under the FTAs, resulting in inconsistent application of regulations on market entry restrictions.
8. The SBV is currently developing the first regulatory sandbox for Fintech since 2021, demonstrating the Government's support for Fintech growth and financial inclusion.

# Fintech Popular Business Models and Activities

## Peer-to-Peer (P2P) Lending

9. The operational scope of P2P lending businesses is to provide a platform for lenders and borrowers to transact directly with each other without the involvement of traditional banks or financial institutions.
10. While P2P companies in other countries may engage in a broader spectrum of activities traditionally associated with banks (in addition to connecting peer borrowers to peer lenders), Vietnam's regulatory landscape still does not permit such activities for P2P companies. These activities are classified as banking-related and can only be engaged in by licensed credit institutions. As a result, P2P lending platform operators function merely as intermediaries by offering the digital platform using technology to connect lenders and borrowers.<sup>2</sup>

### *Foreign Investment Restrictions*

11. P2P lending services are not included in the category of “Banking Services and Other Financial Services” under the relevant FTAs of which Vietnam is a member. The absence of a specific legal framework for P2P lending presents regulatory challenges for the SBV in assessing applications, often resulting in applications being either pending or refused.
12. Notwithstanding that, most P2P platform providers in Vietnam continue to operate since they are not explicitly prohibited by the laws. In fact, they have registered their business activities as financial and investment management consulting, brokerage or IT services, all of which are open for foreign investment in Vietnam.

### *Non-Lender Status*

13. Under Vietnamese law, entities, including those operating P2P platforms that are not licensed as credit institutions, are prohibited from conducting any banking activities,<sup>3</sup> which are defined as the regular business and provision of credit extension (including lending and providing guarantees), receipts of deposits and payment services. Thus, any P2P lending platform operator that assumes the role of a professional lender (i.e., directly providing loans to borrowers) without a requisite license could be considered in violation of the prevailing laws.
14. However, it can be argued that most P2P companies can operate as financial advisory companies, and P2P lending activities are “civil lending transactions” under the Civil Code of

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<sup>2</sup> This is concluded per the SBV's statement under its Official Letter No. 5288/NHNN-CSTT dated 8 July 2019, and is further affirmed by the SBV's approach introduced via the Draft Sandbox Decree, i.e. P2P Lending is defined as “a solution for lending in Vietnamese Dong on digital platforms, designed and implemented based on financial technology applications provided by peer-to-peer lending companies participating in the Sandbox mechanism to connect borrowers with lenders”.

<sup>3</sup> Article 8.2, the Law on Credit Institutions.

Vietnam. In this case, the lender is not required to obtain a banking license. It is important to note that a transaction will not be a civil lending transaction if it is conducted by a person as part of their regular business for profit-making. Therefore, if a peer lender makes frequent lending transactions, strictly speaking, the transactions may no longer be classified as civil lending transactions, and the lender may be found to have conducted banking activities illegally without a banking license.

15. On a side note, the SBV has proposed under the Draft Sandbox Decree 2024 that (if adopted) P2P lending platform operators that are also engaged in pawnshop business, shall not be able to participate in the Fintech sandbox.<sup>4</sup>

### *Cap on Loan Interest*

16. A major issue faced by most P2P lending models in Vietnam is the collection of interest on the loan, and what exactly is considered interest. In absence of the legal framework, loan on P2P platforms may be governed by the Civil Code as civil lending transaction with the capped interest rate not exceeding 20 percent of the principal per year.<sup>5</sup>
17. Regarding the models that have not yet been officially recognized in the legislation, such as P2P lending, there are no strict rules on imposing service fees to charge customers. Normally, when granting a loan, there may be a service fee, an origination fee and depending on the nature of the introduction of a consultancy fee or other costs levied on the borrower. These fees are not technically against the law. But the police have proven they are willing to view these fees, especially if they are excessive, as de facto interest and an attempt by the lender to circumvent the interest rate caps.
18. This is a problem unique to P2P lending as properly licensed credit institutions are allowed a different interest rate cap, and fees of this nature are assumed as part of the loan process. For P2P lending, it is crucial to plan and properly define fees to ensure they are distinguishable from interest and the purpose of the fees is traceable to specific activities that are separate from the lender's profit. Careful consideration of fees is important before entering the P2P lending business.

### *Other Possible Regulatory Model*

19. P2P lending platform operators typically conduct due diligence and creditworthiness audits on borrowers who apply for financing as part of their auxiliary services, which may be considered a credit scoring service under existing laws. A special license from either the MOF in accordance with Decree 88 or the SBV in accordance with Decree 58 is required to provide credit scoring services. However, some creditworthiness audits conducted by P2P lending platforms may fall under the existing framework's legal vacuum, as they are neither captured by Decree 88 nor Decree 58.

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<sup>4</sup> Article 10, the Draft Sandbox Decree 2024.

<sup>5</sup> Article 468.1, the Civil Code.



## Buy Now Pay Later

20. Buy Now Pay Later (BNPL) is a type of short-term financing that allows customers to purchase specified goods or services and defer payment to a later date without incurring interest. While each Fintech company has its own terms of service, the “point-of-sale installment loans” function is a common feature. Under this, customers can initiate a purchase from a participating store, select BNPL mode, and pay a specific deposit amount. The remaining balance is then repaid in installment schemes.
21. Lending is a key activity in BNPL services. However, there is no regulation governing BNPL in Vietnam, and it is unclear whether this business model constitutes credit extension. Only qualified credit institutions are permitted to conduct banking activities, making it difficult for Fintech companies to comply.
22. For BNPL startups, services may be provided by way of a number of structures, such as a voucher structure, a pawn shop structure, or a partnering structure. Of these, the partnering structure has proven to be the most initiative-taking for addressing regulatory challenges. This structure involves three players: a company, a licensed financial institution, and a merchant. When a customer makes a purchase, the financial institution pays the merchant upfront, and the customer is then required to make repayments to the financial institution over a set period, ranging from several weeks to a few months. It allows the BNPL platform to benefit from licenses it does not hold.

## Wealth Management

23. Fintech companies in Vietnam provide wealth management platforms that allow small investors to connect with reputable financial investment funds, enabling them to earn passive income. Typically, these platforms state in their terms and conditions that the funds are managed by fund managers who have signed a cooperation agreement with the Fintech company to provide fund management and investment activities.
24. However, there is a regulatory gap between the Securities Law, which governs security investment fund managers, and the lack of regulation for financial products, such as wealth management platforms, offered by relevant Fintech companies. There are concerns from authorities that these companies may manage and use funds directly from customers without proper licensing. In particular, on 5 October 2022, the SSC issued a warning that some companies have set up trading websites and apps and used media and press to promote their products and services to raise capital from investors under the form of business cooperation contracts, with signs of fund management and management of securities investment portfolios without being licensed, managed, and monitored by the SSC in accordance with the Securities Law.
25. Despite concerns, authorities seem to acknowledge that Fintech companies may function as technology service providers for fund management companies. Fintech companies should continue to work closely with regulators to ensure compliance with securities laws and regulations, while also fostering innovation in the industry.



## E-payment Services

26. The current Vietnamese law recognizes the following e-payment services [or “intermediary payment services” (IPS), as they are referred to in Vietnamese law]:
- (a) Payment support services (Payment Support Services), which include:
    - (i) E-wallet service: provision to customers of an e-wallet with which they can top up, withdraw money, and make online payments for online/offline products/services;
    - (ii) Collection and payment support services: provision of services to assist banks in providing collection and payment services (e.g., payment of water, electricity or TV cable fees) for customers with bank accounts; and
    - (iii) Support services for electronic money transfer: provision of services to assist the transfer of electronic money by banks, by allowing customers to transfer money between bank accounts using e-payment platforms.
  - (b) E-payment infrastructure services (E-payment Infrastructure Services): this service covers the provision of technical infrastructure that is essential to operate an e-payment system, such as data-processing, information communication, automated clearing or interbank settlement systems. By law, these services are classified as follows:
    - (i) Financial switch: provision of infrastructure for payments via ATMs, POS machines, and via the internet and mobile phones;
    - (ii) Electronic clearing: provision of infrastructure for payment data clearing processes; and
    - (iii) Payment gateway: provision of infrastructure to connect banks, Payment Support Service providers and customers, for online payments.

### *Foreign Investment Restrictions*

27. The e-payment sector in Vietnam currently has no foreign ownership limits. However, as Vietnam has not opened this sector to foreign investment under any FTA to which it is a member, the approval of foreign investment in e-payment services is determined by Vietnamese licensing authorities on a case-by-case basis.
28. Foreign investors can technically invest in the e-payment sector in Vietnam by either establishing a new e-payment company or acquiring a stake in an existing one. However, to date, there is no record of a foreign-invested e-payment company successfully being established within the country. The approval process for establishing a wholly foreign-owned IPS provider is subject to review and decision-making by competent authorities, including the SBV.
29. In recent years, acquiring interests in e-payment local entity is a preferable market-entry strategy among many foreign companies, such as NLIFE (a platform offering banking enablement, digital payment, online travel and retail) raised US\$250 million in Series B

Funding, whilst Momo (a payment platform) raised US\$200 million in Series E funding. The key regulatory step for acquiring an existing company is obtaining an M&A approval from the local DPI before acquiring an equity interest in an e-payment company. The statutory timeline for obtaining an M&A approval is 15 days, though it may take longer in practice, as the DPI may decide to seek a further opinion from the SBV before giving approval.

30. The SBV initially proposed a foreign ownership limit of 49% for IPS, but this proposal was objected to by experts and IPS providers.

### *Industry Regulations*

31. To operate as an IPS provider in Vietnam, a license from the SBV is required, with a validity of 10 years and the possibility of renewal. The SBV requires IPS providers to meet certain criteria for license obtainment, including:<sup>6</sup>
  - (a) **Establishment:** Having an establishment license or enterprise registration certificate issued by competent State authorities;
  - (b) **Minimum charter capital:** VND50 billion;
  - (c) **Technical requirements:** Having internal rules, the mechanism and infrastructure to guarantee payments, internal auditing, risk management, data storage, and IT and accounting management systems that are appropriate for provision of IPS;
  - (d) **Key personnel:** The general director and personnel in charge of IPS business must have expertise and practical experience, in business management and/ or the IPS business; and
  - (e) **Know-Your-Customer and Anti-money Laundering:** There are internal rules for identifying customers, and for preventing and combating money laundering.
32. The fees charged for payment intermediary services in Vietnam are regulated by Decree 101, which allows IPS providers to set their charges and mandates the public disclosure of these fees. If there are any unpredictable activities, the SBV will establish a mechanism for determining the charges for payment services and payment intermediary services. However, to date, the SBV has not taken any official action in regard to the charges imposed on payment intermediary services.

### *E-Wallet*

33. E-wallets are the most commonly used IPS in Vietnam, contributing significantly to the growth of digital payments in the country. According to Statista, the emerging e-wallet segment has been contributing significantly to the growth of Vietnamese digital payments, accounting for an increasing transaction value which was forecast to reach over 48 billion U.S. dollars by 2025. Pursuant to Decree 101, an e-wallet service is: “*the service providing for customers an*

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<sup>6</sup> Article 15.2, Decree 101.

*electronic account of identifications from organizations providing intermediary payment services established via messengers (like electronic chips, mobile phone SIM cards, computers, etc.), that allow the preservation of the value of currency as secured by the equivalent value of money that is transferred from payment accounts of the customers at banks as a security account of the service provider in a 1:1 ration between the amount spent and the amount in the security account.”<sup>7</sup>*

34. Non-credit institutions can offer e-wallet services in Vietnam, provided they meet relevant requirements and obtain the IPS license from the SBV. E-wallet services are subject to various statutory obligations during their operation, including compliance with anti-money laundering regulations, protection of customer funds, and the provision of transaction reports and record-keeping to the SBV.
35. An e-wallet in Vietnam does not hold money itself, but instead, the money is held in a security account at a bank. The e-wallet only stores the necessary information for transferring money from the account to other accounts. It can be accessed on digital devices such as phones, chips, or computers.
36. E-wallet providers are required to partner with banks (which are also effectively their competitors) to provide e-wallet services, as they are not allowed to accept cash top-ups to, or cash withdrawal from, their e-wallets. To use an e-wallet in Vietnam, it must be linked to a payment account at a commercial bank. Any actions related to credit extension or paying interests on e-wallet balance is prohibited from e-wallet providers. Customers can only open one e-wallet with one provider, withdraw or top up through a linked payment account, and receive funds from another e-wallet of the same provider. The monthly transaction limit for each e-wallet is VND 100 million.

## Mobile Money

37. On 9 March 2021, the PM issued Decision 316 approving pilot implementation of use of telecommunication accounts for payment of low-value commodities and services, pursuant to which the customers can transfer money and purchase goods and services at merchant stores (or remotely) using their mobile phone (even non-smartphones) instead of cash, and without the requirement of having a bank account. Aim of the pilot program is to promote cashless payment and encourage access and use of financial services in Vietnam, especially for people living in rural and mountainous areas who are suffering from financial exclusion and lack of access to common financial services. The pilot program has run nationwide for two years from 18 November 2021 to 17 November 2023. The pilot program has been extended to 31 December 2024 by Resolution 192 of the Government dated 18 November 2023.
38. This is a major step forward in the use of non-physical currency in the country and marks a potential change in the direction of the Government’s policies towards digital currencies. Prior to this Decision 316, the use of digital currency in any form was not allowed in Vietnam. This

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<sup>7</sup> Article 4.8, Decree 101.

prohibition was applied to all non-traditional means of payment including cryptocurrency, digital coins, and all forms of digital currency.

39. 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. Users can sign up for the services using their mobile accounts. But they must demonstrate their identity in a Know Your Customer (KYC) requirement through the provision of identity cards, citizen identification, or passports. They must also have a registered mobile account for at least three months prior to signing up for the service.<sup>8</sup>
40. The mobile money pilot program is allowed throughout the territory of Vietnam, though priorities are those areas already mentioned: rural, remote, border and island regions. Mobile money is only allowed to pay for goods domestically. There are no provisions for allowing cross-border payment.
41. As per Decision 316, customers are allowed to top up or withdraw from their mobile money accounts at physical kiosks, via bank accounts and e-wallets. They can also pay for goods and services at stores accepting mobile money. In addition, money transfers between customers' mobile money accounts will be supported. There is a maximum cap set on the total transactions allowed to minimize the risks of digital piracy and other abuses. In any given month, a single user can only transact up to VND100 million for all transactions, including withdrawals, transfers, and payments.<sup>9</sup>

#### *Foreign Investment Restrictions and Industry Regulations*

42. The pilot program is limited. Only businesses that already have IPS licenses to provide intermediary e-wallet payment services, or licenses 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 "**PLMN License**"), can participate in the pilot program<sup>10</sup>.
43. While the current laws do not impose any limitation on capital contribution of a foreign-invested enterprise engaging in e-wallet payment services, 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.
44. As disclosed on the MIC's website, as of the end of 2020, only eight telecom companies have been granted a PLMN License. This small number narrows the pool of eligible applicants to the MMS pilot program. Currently, only MobiFone, VNPT, and Viettel are approved to participate in the pilot.

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<sup>8</sup> Section II.2, Decision 316.

<sup>9</sup> Section III.3, Decision 316.

<sup>10</sup> Section II.1, Decision 316.

## Cryptocurrency

45. In Vietnam, cryptocurrency is not currently recognized by the authorities as a legal mean of payment. The SBV has confirmed this publicly: “*According to the regulations of the law as provided, Bitcoin and other similar types of cryptocurrencies are not methods of payment compliant with law in Vietnam; issuing, supplying, using Bitcoin and other similar types of cryptocurrencies as forms of payment is an act prohibited in Vietnam*”.<sup>11</sup>
46. There is currently no specific law or regulation in Vietnam that governs cryptocurrencies. Most of the guidelines related to cryptocurrency matters are not legal instruments under Vietnamese law, but rather internal guidance or directives within or between State agencies and organizations, as well as expressions of the SBV's views on crypto-related issues. Examples include Directive 02/2018, Directive 02/2021, and Official Letter 5747/NHNN-PC of the SBV.
47. While the use of cryptocurrency or any other form representing money as a legal means of payment is not recognized, the legal classification of cryptocurrency as property remains unresolved under Vietnamese law. In Vietnam, properties are categorized as either movable or immovable, and the MOF has issued guidance to the Department of Tax of Ben Tre Province stating that Bitcoin is considered a good, specifically a movable property, and is subject to Vietnamese taxes. However, the First-instance Court of Ben Tre Province ruled that the MOF lacked the authority to determine the taxability of cryptocurrency without legal documents from the PM or the National Assembly.
48. On 16 May 2023, the Ho Chi Minh City People's Court sentenced two individuals to life imprisonment for stealing cryptocurrency valued at over VND37 billion. In this groundbreaking case, according to the court, cryptocurrency such as Bitcoin is currently not recognized as legal in Vietnam, as the law does not acknowledge it as a valid currency or payment method. Nevertheless, the defendants successfully converted the stolen Bitcoin into VND18.8 billion. Consequently, they are obligated to compensate the victim with this converted amount.
49. It has been observed that quite a few offshore entities without any commercial presence, which operate crypto spot and derivative products exchanges / trading floors, provide services online (via a website or an app) and accept users / clients accessing from Vietnam. Given the absence of explicit prohibitions on the possession or ownership of cryptocurrencies by the government, Vietnamese users are technically able to participate in cryptocurrency-related transactions / activities offshore.
50. Some local entities in Vietnam have been established to operate in conjunction with foreign entities that provide cryptocurrency-related transactions and activities offshore. However, due to the lack of a clear legal framework, these local entities can only register for advisory, supporting, and/or auxiliary services that are not directly relevant to cryptocurrencies.
51. Compliance with local laws regarding anti-money laundering, cybersecurity, data protection, and privacy is important even for cross-border and online services. If offshore activities

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<sup>11</sup> Official Letter No. 5747/NHNN-PC of the SBV dated 21 July 2017.

become involved in scandals or frauds, local authorities may take technical measures to block Vietnamese clients / users from accessing them.

## Insurtech

52. Vietnam's Insurtech sector is rapidly advancing, utilizing innovative technologies such as AI, blockchain, and IoT to revolutionize insurance processes. These innovations facilitate the efficient handling of large data volumes, enhancing customer engagement, product personalization, risk evaluation, distribution efficiency, and after-sales support. Insurtech companies are diversifying the insurance landscape with products specifically designed for various consumer needs, departing from the traditional generalized insurance approach. Despite its significant potential, the practical deployment of Insurtech in Vietnam is still in the early stages, with its market impact awaiting full realization.
53. The Vietnamese Government recognizes the potential of technological developments in this sector. The Law on Insurance Business has a dedicated section for digital transformation in the insurance industry that encompasses Insurtech. This law contains two provisions for the application of IT in insurance business,<sup>12</sup> as well as regulations for insurance product and service provision on the digital platform.<sup>13</sup> However, insurance, like banking and other financial services, is a sensitive area and is currently treated as conditional business. Under the Law on Insurance Business, insurers and insurance brokers must apply for a business license from the MOF. Although the Government supports the application of innovative technologies in the insurance sector, supervising authorities (i.e., the MOF) may take more conservative views, given the lack of specific laws on Insurtech.
54. A significant regulatory advancement is Decree 03, which enables insurance firms to issue Electronic Certificates for compulsory motor vehicle owner civil liability insurance - a first for Vietnam. Only a select group of insurers, including Military Insurance MIC, VietinBank Insurance, and PVI Insurance, are equipped to provide these electronic certificates. This progress presents opportunities for collaboration between traditional insurance companies and Fintech enterprises, potentially paving the way for future partnership.
55. The Insurtech industry's evolution faces challenges from the “technology waiting for law” dilemma, where the lack of definitive legal guidelines presents risks for innovators. Even the current Draft Sandbox Decree is limited to the banking sector, leaving the insurance industry without a clear path forward. To foster the growth of the Insurtech sector in Vietnam, it is crucial to establish a regulatory sandbox, similar to other Fintech segments. A regulatory sandbox provides a safe space for innovative businesses to experiment and develop effective solutions while facilitating a dialogue between regulatory bodies and the market.

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<sup>12</sup> Article 12 on the application of information technology in insurance business activities, and Article 13 on requirements for application of information technology in insurance business activities.

<sup>13</sup> Article 14 on provisions of insurance products and services on the internet.

## Digital Credit Scoring

56. The credit-rated activities in Vietnam are governed by two main decrees issued by the Government, namely Decree 88 and Decree 58. Although they both regulate credit-related activities in Vietnam, they have different governing scopes.
57. Decree 88 applies specifically to credit rating services (*in Vietnamese: xếp hạng tín nhiệm*) provided by credit rating agencies for the purpose of analyzing, assessing, and rating (i) the ability of businesses or organizations to fully and timely perform their debt obligations, and (ii) the ability to fully and timely perform debt obligations of the issuer for the debt instruments at the time of rating.<sup>14</sup> Decree 88, however, does not cover the analysis, assessment, or rating of individual borrowers.
58. On the other hand, Decree 58 regulates the provision of credit information (*in Vietnamese: cung ứng thông tin tín dụng*), including data, statistics, and related information, of customers borrowing from participating organizations by credit information companies.<sup>15</sup> Participating organizations include credit institutions, foreign bank branches, or other organizations that provide services for leasing assets, deferred payment purchases, installment purchases, pawn with conditional interest rates, terms, rental fees, and security measures as prescribed by law.<sup>16</sup> The credit information company may provide relevant credit information to (i) another participating organization or customer of any participating organization, (ii) another credit information company for their provision of credit information services, or (iii) even competent authorities for state management purposes, in accordance with signed credit information service agreements.<sup>17</sup>
59. Since Fintech companies collect data from various sources, including credit bureaus, bank statements, and social media platforms, to create a credit score for borrowers, their digital credit scoring services could potentially fall under both the provision of credit rating services as outlined in Decree 88 and credit information services regulated by Decree 58. If that is the case, Fintech companies offering digital credit scoring services may be required to obtain two business licenses from the MOF (for credit rating agencies) and the SBV (for credit information companies) in order to operate legally.
60. The credit-related industry in Vietnam, however, is a high barrier to entry. As of 2022, the MOF has only granted licenses for three (3) credit rating service providers in Vietnam, including Saigon Ratings, FiiRatings and VIS Rating. According to Decision No. 507/QĐ-TTg dated 17 April 2015 by the PM approving the development plan of credit rating services until 2020 and the vision until 2030, only a maximum of five (5) companies are considered for certification to provide credit rating services. Meanwhile, the entire credit information market in Vietnam currently has two (2) credit information companies, including the Credit Information Center (CIC) under the SBV and Vietnam Credit Information Joint Stock Company (PCB) duly licensed by the SBV, which owned by several domestic banks.

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<sup>14</sup> Articles 4.5 and 4.6, Decree 88.

<sup>15</sup> Articles 3.1 and 3.2, Decree 58.

<sup>16</sup> Article 3.3, Decree 58.

<sup>17</sup> Articles 3.10 and 21.1, Decree 58.



61. Fintech companies may consider participating in the Sandbox, which covers credit scoring activities, as a way to evaluate their innovative credit scoring solutions before the establishment of an appropriate legal framework by the relevant ministries.
62. It is also worth noting that digital credit scoring raises concerns about data privacy, as Fintech startups that use personal data for credit scoring may pose risks to individuals' privacy. Under the current laws of Vietnam, Fintech business is subject to a plethora of duties, including requirements to collect information only when consented to by the data subject and use data collected only within the scope of consent.

## Open Banking

63. Open banking has been gaining traction in Vietnam, with several banks adopting the concept by providing open APIs for third parties. However, the existing legal framework for open banking in Vietnam is fragmented and does not adequately address the rapidly evolving sector's requirements.
64. Open banking-related provisions are scattered throughout various laws, including electronic transactions, credit institutions, cybersecurity, and personal information regulations. A comprehensive regulatory framework for open banking is currently lacking in Vietnam. The absence of such a framework is impeding the full realization of the concept of open banking in Vietnam, despite significant efforts by industry participants.
65. The Vietnamese Government is aware of the importance of open banking and has taken steps towards developing a comprehensive regulatory framework. The Governor of the SBV has established a Steering Committee for Fintech, as per Decision No. 328/QĐ-TTg dated 16 March 2017. The Committee's core responsibilities include researching, building connections, and sharing data through open APIs. This Government's initiative is a positive step towards developing a comprehensive legal framework for open banking in Vietnam.

## Outsourcing in Banking

66. Outsourcing is a common business strategy where a company hires a third-party service provider to manage part of their operations, including IT services, product development, and customer service. While prominent banks have traditionally created their own proprietary platforms to provide banking services, they are now increasingly collaborating with Fintech companies to leverage their innovative digital technologies.
67. The outsourcing activities of commercial banks, foreign bank branches in Vietnam are regulated under Circular 13, pursuant to which the outsourcing is defined as *“the commercial bank/foreign bank’s branch making an agreement in writing (an outsourcing contract) on hiring another enterprise, credit institution or foreign bank’s branch 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”*.<sup>18</sup>

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<sup>18</sup> Article 3.20, Circular 13.

68. An outsourcing contract must contain clauses that rigorously protect the ownership and confidentiality of databases and customer information. It should also detail the right to terminate the contract, outline the extent and scope of outsourcing activities, specify the responsibilities of commercial banks and outsourcing enterprises, and include provisions for dispute resolution.<sup>19</sup>

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<sup>19</sup> Article 43.2(d), Circular 13.

## Implications of Additional Regulations

69. 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.

### Data Protection and Cybersecurity

70. Fintech businesses, as controllers of personal data, are subject to the Law on Cyberinformation Security 2015 and the newly promulgated Decree 13 focusing on governing personal data protection, which imposes several obligations on them regarding the collection, storage, sharing and usage of personal data. These obligations include the requirement to process personal data only with the prior consent of the data subject, and within the scope of that consent, and implement adequate systems to protect the collected personal data. They are also obligated to ensure confidentiality of the collected personal data as well as implement certain administrative procedures to maintain and submit Personal Data Processing Impact Assessment (PDPIA) and Overseas Personal Data Transfer Impact Assessment (OPDTIA) Dossiers to the Department of Cybersecurity and Prevention of Hi-tech Crimes (A05) under the MPS.
71. Payment intermediaries also have specific obligations provided under Article 23 of Decree 101. They are required to maintain internal inspection and control systems to manage risks and ensure the safety and confidentiality of the data. They must also keep information relating to customers' bank accounts.
72. From 1 October 2022, personal information data of service users, data generated by service users in Vietnam and data on the relationships of service users in Vietnam, must be stored domestically. Both local and foreign enterprises are subject to this data localization requirement, with different conditions. While it is mandated for all local companies, foreign enterprises shall only be required if they meet the following conditions:<sup>20</sup>
- (a) The foreign enterprise has business operations in Vietnam, with interests in major digital services like telecom services; e-commerce; online payment and intermediary payment; phone calls, video calls, email, or online chat;
  - (b) The services provided by the foreign enterprise are used for committing a breach of the laws as to cybersecurity; and
  - (c) Such foreign enterprise has received a written request from the MPS but fails to comply or otherwise challenges the cybersecurity protection method applied by the competent authorities.
73. The data localization requirement may impose significant compliance costs for foreign businesses with operations in regulated services and increase their risk of falling under

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<sup>20</sup> Articles 26.2 and 26.3, Decree 53.

regulated entities, particularly small and medium enterprises that lack resources to comply with the decree's requirements.

74. For a detailed legal analysis of data protection regulations in Vietnam, we invite you to refer to our comprehensive guide available at the following link: [Vietnam Data Protection Guide](#).

## Anti-Money Laundering

75. As reporting entities under the AML Law, IPS providers are obligated to implement the same measures as financial institutions to prevent and combat money laundering. These measures include conducting KYC, reporting suspicious transactions, and retaining relevant information and documents.
76. The AML Law upholds the principle that reporting entities in the business process must conduct KYC/customer due diligence, which involves collecting, updating, and verifying customers' identification information at the beginning and throughout the business relationship. The information collected should include (i) identifying information, and (ii) information about the respective beneficial owner.
77. According to the AML Law, reporting entities are required to report certain transactions to the SBV, including:
- (a) Transactions with a high value that is equal to or exceeds the value set by the PM. Currently, the transaction-reporting threshold value is VND400,000,000 based on Decision No. 11/2023/QD-TTg of the PM dated 27 April 2023 of the PM regulating range of values of which transactions are subject to mandatory reporting.
  - (b) Suspicious transactions, which can be identified by several signs. In the IPS sector, these signs include:<sup>21</sup>
    - (i) A sudden increase in transaction volume on an e-wallet, with money flowing in or out quickly. Despite the high volume of transactions, the balance remaining in the e-wallet is very low or equals zero.
    - (ii) A customer frequently tops up an e-wallet with insignificant amounts and then conducts a transaction involving a large transfer of funds to another e-wallet or a bank account, or vice versa.
    - (iii) Transactions involving the transfer of small amounts of money between e-wallets in a short period of time, with the parties involved not concerned about transaction fees. There are a lot of transactions, each of which is close to the reporting threshold value.
    - (iv) An unusually large top-up amount is credited to a customer's e-wallet.
    - (v) A transaction is performed by an entity or person who has obtained illegal assets as a result of criminal activity and has been named in the mass media.
    - (vi) There is a suspicion that a customer is using a personal account to conduct a transaction related to the structure of a legal person, or is acting on behalf of

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<sup>21</sup> Article 29, the AML Law.

- another natural person to perform a transaction.
  - (vii) A customer is a merchant that continues to record transactions even though its official website or office has been closed.
  - (viii) Online transactions performed through e-wallets constantly change in terms of login devices or IP addresses.
  - (ix) A customer regularly uses login devices or IP addresses abroad to access an e-wallet or perform transactions on various e-wallets held by different holders.
- 78. Regarding information retention obligations, records of transactions, customer identification, accounting documents, and reports of high-value transactions, suspicious transactions, and transactions involving electronic money transfers must be retained for a period of 5 years from the date of the transaction, the closing date of the transaction or account, or the reporting date to the SBV, as applicable.
- 79. If you are interested in a detailed legal analysis of the key changes and updates on the AML Law, we invite you to refer to our Special Alert, which can be accessed through the following link: [Navigating Vietnam New Anti-Money Laundering Law](#).

## Electronic Transactions

- 80. Transactions using Fintech solutions, such as banking solutions, e-wallets, money transfer applications, and digital banking, are becoming increasingly popular among Vietnamese people. However, concerns have been raised over the form of signing and executing e-contracts, as they are not yet familiar to many. As a result, the Law on Electronic Transactions has significant implications for the recognition of e-contracts and the regulation of e-signatures.
- 81. The law recognizes the legal validity of e-contracts. An e-contract expressed as a data message cannot be denied legal validity solely for that reason. However, a question that many enterprises raises is how to prove the legal validity of the e-contract as the original version when dealing with a third party such as the bank, or with state authorities such as tax authorities, or the courts. To be considered the original, an e-contract must meet the following requirements:
  - (i) The integrity of the information in the e-contract is reliably assured; and
  - (ii) The information contained in the e-contract is accessible and usable in complete form when necessary.
- 82. Legacy players who accept e-signatures have certain obligations, including taking necessary measures to verify the reliability of the e-signature before accepting it. To meet the reliability test, a licensed public digital signature authentication service provider must authenticate a digital signature.

## Sandbox Mechanism

83. In response to the requests from both enterprises and relevant authorities to create a regulation mechanism for companies to legally provide Fintech services in Vietnam with clear guidance, the Government has implemented a range of initiatives to promote Fintech growth, including the establishment of a regulatory sandbox mechanism. The mechanism provides Fintech startups and investors with an opportunity to evaluate and refine their ideas in a controlled environment, thereby reducing costs and regulatory barriers associated with compliance.
84. Building upon initial efforts, the Government introduced a draft decree aimed at specifically regulating Fintech sandbox initiative (the “**Draft Sandbox Decree**”). The 2022 version introduced specific regulatory measures, and a further revised version for 2024 has recently been unveiled. Below is a key comparative overview highlighting the notable changes and continuities between the 2022 and 2024 Draft Sandbox Decrees. For more in-depth analysis or particular inquiries, we invite you to contact us directly for further consultation:

Criteria	Draft Sandbox Decree 2022	Draft Sandbox Decree 2024
<b>List of Eligible Services</b>	Previously considered services included tech-based credit extension, credit scoring, data transmission through Application Programming Interface (API), peer-to-peer lending (P2P lending), and application of blockchain and distributed ledger technology in banking activities, and other innovative business cooperation models that comply with Sandbox principles.	The SBV streamlined the list to three categories: credit scoring, data transmission through API, and P2P lending.
<b>Limitation on Sandbox Participants</b>	The SBV's decision on participant numbers will be based on its capacity to evaluate applications and supervise capabilities, consistent with market development conditions.	Clarification added: the SBV will publicly disclose the number of organizations approved in each application period from the total number of applicants.
<b>General Conditions for Prospective Participants</b>	<ul style="list-style-type: none"> <li>Prospective participants must be legal entities duly incorporated and operating in Vietnam, not under reorganization, bankruptcy, or dissolution. Credit institutions and P2P lending service providers must meet additional criteria.</li> <li>Key personnel must have a professional background or actual experience in relevant fields. For P2P lending service providers, their legal representative and director</li> </ul>	No material changes. Enhanced with clarifying language and additional details for comprehensive compliance.

Criteria	Draft Sandbox Decree 2022	Draft Sandbox Decree 2024
	<p>must not have any criminal record or administrative sanctions in financial, banking, or cybersecurity sectors.</p> <ul style="list-style-type: none"> <li>Fintech solutions must be innovative, beneficial to Vietnamese users, possess a good risk management mechanism, and be commercially viable.</li> </ul>	
<b>General Obligations</b>	Participants are required to manage risks, ensure safety and security in service provision to customers, and maintain a reporting regime to minimize customer risks.	No material changes. Supplemented with further clarifications to emphasize the importance of ongoing risk management and security.
<b>Special Conditions for P2P Lending</b>	P2P lending service providers are required to comply with certain operational principles and restrictions during the trial run, such as not providing loan security measures or information brokerage services related to high-risk purposes. Executives of P2P lending service providers must not own or manage other enterprises providing financial, credit, multi-level marketing, or pawnshop services, and must not work in the banking sector or intermediary payment services.	Operational principles and restrictions were removed, but an appendix now introduces detailed guidance for application preparation, which requires P2P lending platforms to demonstrate their operational legitimacy from the outset (e.g., compliance with risk management, KYC protocols, and ensuring client rights and responsibilities), potentially signifying a shift in responsibility to the platforms themselves.
<b>Supervision, Inspection, and Reporting Mechanism</b>	Participants were subject to supervision by the SBV and relevant regulatory authorities through regular and ad hoc reports and other information related to the Sandbox implementation.	The Decree introduces provisions for the SBV to conduct on-site inspections in specific scenarios, like suspicions of inadequate or non-compliant documentation, limited to no more than two inspections per year.
<b>Outcomes</b>	Decisions on the next steps after the experimental period - terminating, certifying completion, or extending the trial - are based on final reports, supervision processes, and feedback from relevant ministries.	Most changes relate to procedural aspects, with no change in the decision-making approach.

85. If the Fintech solution deployment is deemed compliant with existing laws and not classified as a conditional business activity, the participant may receive approval from the SBV and



proceed to officially enter the market following legal standards applicable at the time of completion. However, the Draft Sandbox Decree 2024 has yet to be passed.

86. The controlled testing mechanism enables the SBV to gain firsthand experience in managing the sector. Through the sandbox, fintech firms can evaluate their novel products in a safe environment, while the SBV allows for some risks to better understand potential dangers, thereby creating comprehensive legal framework.
  
87. Fintech players who do not wish to, or fail to, participate in the Fintech sandbox would still be allowed to continue their operations and conduct their business as far as they comply with (existing) applicable laws. The Draft Sandbox Decree 2024 further clarifies that the cessation of participation in the Fintech sandbox does not equate to non-compliance with the operational conditions as prescribed by law at the time of cessation. Participants are responsible for reviewing and adhering to current legal regulations concerning business operations, investment, and other relevant laws.<sup>22</sup>

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<sup>22</sup> Article 23, the Draft Sandbox Decree 2024.

## Appendix I - List of Relevant Regulations

1. Civil Code No. 91/2015/QH13 dated 24 November 2015 (the “**Civil Code**”);
2. Law on Insurance Business No. 08/2022/QH15 dated 16 June 2022 (the “**Law on Insurance Business**”);
3. Law to Prevent and to Combat Money Laundering No. 14/2022/QH15 dated 15 November 2022 (the “**AML Law**”);
4. Law on Investment No. 61/2020/QH14 dated 17 June 2020 (the “**Investment Law**”);
5. Law on Enterprises No. 59/2020/QH14 dated 17 June 2020 (the “**Enterprise Law**”);
6. Law on Cybersecurity No. 24/2018/QH14 dated 12 June 2018 (the “**Cybersecurity Law**”);
7. Law on Cyberinformation Security No. 86/2015/QH13 dated 19 November 2015 (the “**Cyberinformation Security Law**”);
8. Law on Credit Institutions No. 47/2010/QH12 dated 16 June 2010, as amended by Law No. 17/2017/QH14 dated 20 November 2017 (the “**Law on Credit Institutions**”);
9. Commercial Law No. 36/2005/QH11 dated 14 June 2005 (the “**Commercial Law**”);
10. Resolution No. 192/NQ-CP of the Government dated 18 November 2023 on the extension of the period of pilot program for mobile money services (“**Resolution 192**”);
11. Decree No. 13/2023/ND-CP of the Government dated 17 April 2023 on personal data protection (“**Decree 13**”);
12. Decree No. 53/2022/ND-CP of the Government dated 15 August 2022 detailing some articles of the Cybersecurity Law (“**Decree 53**”);
13. Decree No. 31/2021/ND-CP of the Government dated 26 March 2021 providing detailed guidance on the Investment Law (“**Decree 31**”);
14. Decree No. 101/2012/ND-CP of the Government dated 22 November 2012 on non-cash payment, as amended by Decree 80/2016/ND-CP dated 1 July 2016 and Decree No 16/2019/ND-CP dated 1 February 2019 (the “**Decree 101**”);
15. Second Draft Decree of the Government on non-cash payment (the “**Non-Cash Payment Draft Decree**”);
16. Decree No. 58/2021/ND-CP of the Government dated 10 June 2021 on credit information services (“**Decree 58**”);
17. Decree No. 03/2021/ND-CP of the Government dated 15 January 2021 on compulsory civil

- liability insurance of motor vehicle users (“**Decree 03**”), replaced by Decree No. 67/2023/ND-CP of the Government dated 6 September 2023;
18. Decree No. 15/2020/ND-CP dated 3 February 2020 providing penalties for administrative violations against regulations on postal services, telecommunications, radio frequencies, information technology and electronic transactions (“**Decree 15**”);
  19. Decree No. 98/2020/ND-CP of the Government dated 26 August 2020 providing penalties for administrative violations against regulations on commerce, production and trade in counterfeit and prohibited goods, and protection of consumer rights, as amended by Decree No. 17/2022/ND-CP of the Government dated 31 January 2022 (“**Decree 98**”);
  20. Decree No. 88/2019/ND-CP of the Government dated 14 November 2019 of the Government providing for penalties for administrative violations in monetary and banking sector, as amended by Decree No. 143/2019/ND-CP of the Government dated 31 December 2021 (“**Decree 88/2019**”);
  21. Decree No. 88/2014/ND-CP of the Government dated 26 September 2014 on credit scoring service, as amended by Decree No. 151/2018/ND-CP of the Government dated 7 November 2018 amending certain regulations on business conditions falling within the management of the MOF (“**Decree 88**”);
  22. Decree No. 52/2013/ND-CP of the Government dated 16 May 2013 on e-commerce, as amended by Decree No. 08/2018/ND-CP of the Government dated 15 January 2018 and Decree No. 85/2021/ND-CP of the Government dated 25 September 2021 (“**Decree 52**”);
  23. Circular No. 13/2018/TT-NHNN of the SBV dated 18 May 2018 on internal control systems of commercial banks and foreign bank branches (“**Circular 13**”);
  24. Circular No. 39/2014/TT-NHNN of the SBV dated 11 December 2014 guiding intermediary payment services (“**Circular 39**”);
  25. Decision No. 27/2018/QD-TTg of the PM dated 06 July 2018 issuing the system of economic branches (sectors) of Vietnam (“**Decision 27**”); and
  26. Decision No. 316/QD-TTg of the PM approving a pilot program for mobile money services (“**Decision 316**”).

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