

DOING BUSINESS IN FINTECH IN VIETNAM: A REGULATORY OVERVIEW ON SELECTED SECTORS

BAO Quoc Nguyen* & **NHU** Thi Thao Hoang**

The world has witnessed the exponential growth in the development and outreach of financial technology (Fintech) in different parts of the globe with different socio-economic status, and Vietnam is not an exception to this trend. Fintech reconceptualises how financial services are delivered to the public through the process of disintermediation, gradually alleviating the dependence on conventional banking institutions of the financial system. In a nutshell, financial market is made up of three primary branches, namely banking, capital market and insurance¹. This article shall discuss, in a brief, the current status of the regulatory framework in Vietnam on selected sectors of each aforementioned branch, including:

- Payment sector and in particular to the foregoing the e-wallet and B2B cross-border payment service, as part of the banking branch;
- Crowdfunding and in particular to the foregoing, lending-based crowdfunding and equity-based crowdfunding, as part of the banking and capital market branch; and
- Insurance technology (InsurTech), as part of the insurance branch.

Overview Fintech market in Vietnam occupied by sectors

According to Vietnam Fintech Report 2020 submitted by Fintech Singapore², payment sector has been and remains the overwhelming sector of Fintech in the market, accounting for 31% of the total operating Fintech companies in 2020 while lending-based crowdfunding, including both P2P lending and SME financing, occupies nearly one-fourth of the Fintech market. The other branches of crowdfunding (mainly the donation-based) and InsurTech account for a quite minimal portion of the market (8% in total).

* **BAO** Quoc Nguyen (LLB, LLM), lead author, is the senior associate of TND Legal.

** **NHU** Thi Thao Hoang (LLB), co author, is the legal assistant of TND Legal.

¹ Mark Fenwick, Steven Van Uytsel, Bi Ying, *Regulating Fintech in Asia – Global Context, Local Perspectives* (Springer 2020) 21.

² Fintech Singapore (supported by Switzerland Global Enterprise), Vietnam Fintech Report 2020.

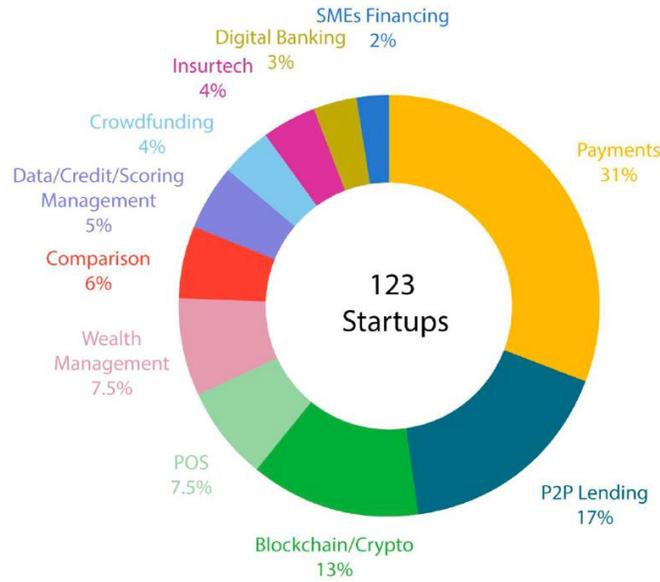


Diagram 1 – Breakdown Vietnam’s Fintech Players in 2020 (Source: Fintech Singapore)



Diagram 2 – Fintech Vietnam Startup Map 2020 (Source: Fintech Singapore)

The domination of the payment sector is indeed plausible given the constant promotion of e-commerce and cashless payment policy taken on by the Vietnamese Government. In light of such motivation, Vietnam has adopted a cohesive legal framework governing the provision of payment intermediary service by non-bank financial institutions (NBFIs), particularly to e-wallet and payment gateway services. Crowdfunding, on the other hand, has not received much attention from the regulators until the dramatical rise of P2P lending and SME financing start-ups in Vietnam, especially in the context of the collapse of Chinese P2P lending due to the lack of regulatory oversight³. Unlike the payment and crowdfunding sector, InsurTech receives the least attention from the regulators and most InsurTech firms in Vietnam tend to apply technology to the traditional insurance model rather than come up with new insurance products that are intrinsically different from the conventional ones.

Overview regulatory framework on payment sector

E-wallet services

As can be seen in Diagram 2 above, e-wallet in combination with payment gateway services or e-wallet service alone predominantly occupies the Fintech payment sector in Vietnam. According to the State Bank of Vietnam (the **SBV**), as of 02 July 2021, 43 NBFIs have been granted with licenses for providing payment intermediary services, in which 37 of them engaged in e-wallet service⁴. This would essentially mean that e-wallet service stays among the most common choice to Fintech players during the Fourth Industrial Revolution in Vietnam.

In terms of permitted foreign ownership, neither the municipal laws nor the WTO commitment to which Vietnam is a party set out any particularity of the requirement on foreign ownership or any restrictions thereof. Under the recently-adopted 2020 Investment Law, Vietnam has shifted its approach towards market access from a *positive approach* to a *negative approach*, under which foreign investors will be treated equally with the local ones in relation to the market entry conditions for all business sectors, except for those falling under the specifically-listed conditional or prohibited sectors set out by the guiding decree. Accordingly, banking sector and services related to banking sector are listed under the list of business activities with conditional market access. Therefore, the entry of foreign entrants in the *payment intermediary services* shall be subject to the requirements set out by the specific legislations. Due to the silence of the existing regulations on such regard, the licensing authority in Vietnam in practice usually seeks the supporting opinion from the relevant ministerial authority and the decision granted therefrom

³ Angela Tritto, Yujia He and Victoria Amanda Junaedi, "Governing the gold rush into emerging markets: a case study of Indonesia's regulatory responses to the expansion of Chinese-backed online P2P lending" (2020) 51 Financial Innovation 1, 7.

⁴ "List of NBFIs granted with payment intermediary service licenses" (SBV) <https://www.sbv.gov.vn/webcenter/portal/vi/menu/trangchu/tk/hdtt/ctccudvt?centerWidth=80%25&dDocName=SBV458410&leftWidth=20%25&rightWidth=0%25&showFooter=false&showHeader=false&_adf.ctrl-state=k4ivx8334_78&_afLoop=31828787955057224> accessed 25 August 2021.

shall be made on a case-by-case basis. In fact, several payment intermediary service providers in Vietnam had their substantial shares being owned by foreign investors (i.e. MoMo or Payoo) and this means that the incorporation of a supermajority foreign-owned or even a wholly foreign-owned e-wallet service provider in Vietnam is not far-fetched.

Below are the notable regulations governing the e-wallet service in Vietnam⁵.

- (i) First, an e-wallet is required to be linked with at least a bank account (Vietnamese Dong) opened at or a debit card granted by a licensed commercial bank of the user. Recently, an alternative form of e-wallet, namely *mobile money*, legally emerges under the pilot scheme⁶ which allows the underbanked to top up their telecommunication account in cash (instead of using a bank account) to pay for low-value commodities and services. However, mobile money is restricted to be provided by the mobile network operators (MNOs) only.
- (ii) Second, the funds in e-wallet can be used to pay for the lawful purchase of goods or use of services. The regulations fail to define the ambit of *lawful purchase of goods or use of services* though it may be understood that the payment for any legitimate goods and services shall be accepted. In practice, as far as we concern, e-wallet is customarily used for payments of goods and services within the territory of Vietnam, except for the extraordinary cases in connection with the individual purchase of offshore services via e-commerce platform which is, in most cases, subject to the approval from the SBV (i.e. tourism/entertainment/airline booking purposes).
- (iii) Third, e-wallet service providers are not allowed to grant credit to customers using e-wallets, pay interest on e-wallet balances or conduct any act that may result in the increase of monetary value of the topped up amount.
- (iv) Fourth, e-wallet service providers are required to have its minimum charter capital of VND50billion (approx. USD2,2million) upon its incorporation.
- (v) Fifth, e-wallet service provider is required to maintain the security payment accounts specifically designed to hold the customers' fund at a licensed bank, and the balance of the security payment accounts at any given time must not be lower than that of all circulated e-wallets.

B2B cross-border payment

The slow and complicated process of B2B cross-border payment handled by the obsolete banks has made this a fertile sector to be disrupted by a variety of Fintech players. Nonetheless, due to the strict requirements on forex control, no B2B cross-border payment platform, to the best of our knowledge, has successfully been deployed in Vietnam.

⁵ Decree 101/2012/ND-CP on cashless payments issued by the Government on 22 November 2012, as amended by Decree No. 80/2016/ND-CP issued by the Government on 01 July 2016 and Decree No. 16/2019/ND-CP issued by the Government on 01 February 2019; and Circular No. 39/2014/TT-NHNN on guiding the intermediary payment services issued by the SBV on 11 December 2014, as amended by Circular 20/2016/TT-NHNN issued by the SBV on 30 June 2016, Circular 30/2016/TT-NHNN issued by the SBV on 14 October 2016 and Circular No. 23/2019/TT-NHNN issued by the SBV on 22 November 2019.

⁶ Decision No. 316/QD-TTg approving pilot implementation of telecommunication accounts for payment of low value commodities and service issued by the Prime Minister on 9 March 2021.

In nature, B2B cross-border payment often refers to the payment for the export of goods and services by a local exporter to an offshore importer or vice versa. Under the Foreign Exchange Ordinance (the **FX Ordinance**), all payments and remittance of monetary transactions in relation to *import and export of goods and services* must be performed by *wire transfer* via an authorised *credit institution*. Although credit institution also includes NBFIs⁷, *wire transfer*, as part of the *payment service via accounts*, may only be performed by banking institutions rather than NBFIs. This would essentially mean that banking institution is the only form of credit institutions permitted to carry out the B2B cross-border payment under the existing legal framework of Vietnam.

The above outright exclusivity conferred upon the banking institution prevents the majority of if not all potential Fintech company to independently render the relevant services. That being said, a bank-led model where the Fintech company and banks, by leveraging their own advantages (cutting-edge technology infrastructure on the end of Fintech company and legal capacity of making cross-border payment on the end of commercial bank), cooperate with each other to mutually deliver the B2B cross-border payment services could be a feasible option for Fintech entrants.

Overview regulatory framework on crowdfunding sector

Lending-based crowdfunding (P2P lending and SME financing)

Currently, the lending-based crowdfunding in particular and the crowdfunding sector in general are unregulated by the laws of Vietnam. Indeed, in 2016, a draft Law on Support to SMEs, lobbied by several stakeholders, laid down the basic provisions governing 3 out of 5 forms of crowdfunding⁸, including lending-based, reward-based, and equity-based. Nonetheless, such draft has never been formalised since the regulators considered that it could be premature for the introduction of such provisions given the minimal size of crowdfunding in the market, at least for such time being.

Lending-based crowdfunding refers to the lending activities and relationship among *lenders, borrowers* and *platform*. The foundation of this crowdfunding model is an online intermediary platform, operated and monitored by the Fintech Companies, connecting prospective lenders and borrowers. Such companies, in most cases, do not directly participate in lending activities but only assist the platform participants to enter into such a relationship.

In accordance with 2010 Law on Credit Institution, *lending* is classified into one of *banking operations* which is the central activity of the bank and stringently supervised by SBV. Put it differently, the laws prohibit individuals and organisations which are not the credit institutions from conducting banking

⁷ 2010 Law on Credit Institutions, art. 4.1 & art. 4.4.

⁸ Crowdfunding encompasses 5 common forms: lending-based, equity-based, reward-based, donation-based and royalty-based.

operations⁹. Nevertheless, the lending relationship between the *individual* lender and borrower established via the platform is likely to be classified as an ordinary civil transaction and therefore sits outside the scope of the 2010 Law on Credit Institution. In fact, this assumption has been confirmed by the SBV¹⁰. In that sense, the lending relationship created through the platform is subject to the Civil Code 2015 and freely conducted by the parties without any banking license. On the contrary, if the platform involves institutional lenders, the lenders may be deemed to have conducted banking operations under the 2010 Law on Credit Institution, and this is prohibited unless such institutional lender is granted with banking license by the SBV.

Lending-based crowdfunding however emerges despite regulatory vacuum. In the draft sandbox decree (as analysed below), the regulators intentionally include P2P lending as the subject to be tested under the sandbox regime. Henceforth, it is highly recommended for lending-based crowdfunding platform to apply to the sandbox regime to gain a peace of mind from the regulatory perspective when deploying the model in Vietnam.

Equity-based crowdfunding

Similar to lending-based crowdfunding, equity-based crowdfunding remains largely unregulated. Absence of specific legal norms, worldwide law-making practice with respect to this novel typology of fundraising encourages the practitioners to revisit the existing legal framework to examine if equity crowdfunding could fit into the niche of the regulated securities market¹¹. Put differently, one must ask if equity-based crowdfunding falls under the ambit of “public offering”, and therefore is subject to the extremely stringent requirements set out by the conventional law on securities. This question becomes the central issue in the legal feasibility study of any entrant prior to making their decision to enter any market let alone Vietnam.

In Vietnam, *public offering* is a legal concept embedded in the 2019 Law on Securities. Accordingly, any of the following offering of securities shall be deemed as public offering¹², (i) the offering is conducted through mass media; (ii) the offering is made to at least 100 investors (excluding professional ones) or (iii) the offering is made to unspecified investors. Where the first two categories are quite straightforward, the last one, however, could envisage different interpretations. For instance, it remains unclear whether “unspecified” refers to either the unspecific quality of securities to be offered or unspecific identity of offeree

⁹ 2010 Law on Credit Institutions, art. 8.2

¹⁰ “Opinion of SBV on P2P lending” (SBV)

<https://www.sbv.gov.vn/webcenter/portal/vi/menu/trangchu/ttsk/ttsk_chitiet?centerWidth=80%25&dDocName=SBV355385&leftWidth=20%25&rightWidth=0%25&showFooter=false&showHeader=false&_adf.ctrl-state=140koy59k_105&_afLoop=31829824181142224#%40%3F_afLoop%3D31829824181142224%26centerWidth%3D80%2525%26dDocName%3DSBV355385%26leftWidth%3D20%2525%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26_adf.ctrl-state%3Dk4ivx8334_115> accessed 25 August 2021.

¹¹ Fenwick (n 1) 37.

¹² 2019 Law on Securities, art. 4.19.

or both of the foregoing. Furthermore, the legal gray extends further when taking into account the concept of private offering. Under the 2019 Law on Securities, private offering is defined as the offering of securities not being conducted through mass media provided that it falls under either following category, (i) the offering is made to less than 100 investors (excluding professional ones) or (ii) the offering is made only to the professional securities investors¹³. Coupled this concept with that of public offering, it can be seen that if an issuer offers its securities via the crowdfunding platform¹⁴ to 99 unspecified investors, such an issuer may be treated as having conducted either the public offering under Article 4.19 of the 2019 Law on Securities or private offering under Article 4.20 of the same legislation. In case of the former, the issuer will be subject to onerous requirements while in case of the latter, the applicable requirements are substantially relaxed.

Given the above analysis, we opine that the most secured way for the relevant stakeholder to deploy the equity-based crowdfunding model in Vietnam is to be accepted in the sandbox regime (as analysed below). Accordingly, any applicable sandbox framework should be able to relieve the issuer/project owner on the platform from the strict conditions and requirements with respect to public offering under the 2019 Law on Securities. Nonetheless, as sandbox is mainly monitored by the SBV while securities-related matters are mostly supervised by the State Securities Commission (SSC), the applicability of the sandbox regime on this Fintech solution remains in doubt.

Overview regulatory framework on insurance sector

There hardly is a globally unified concept of InsurTech. In a broad sense, InsurTech encompasses any insurance process assisted, simplified and facilitated by the extensive use of state-of-art technology. In a narrower sense, it should be understood that InsurTech goes further than merely leveraging the latest technology, it should bring up disruptive insurance model that can deal with the inherent problems of the incumbent insurers. The latter is exemplified by the P2P insurance model where the age-old conflict of interest between the insurance company and policyholders is addressed by allowing the insured to pool their risk and capital so as to minimise their loss and maximise their gains¹⁵.

The broad-based understanding of InsurTech encounters almost no significant regulatory hurdles in Vietnam as this only adds up the element of technology to the traditional insurance model. Indeed, no existing firms, which claim themselves to be the “InsurTech” ones in Vietnam as indicated in Diagram 2 above, aim at dealing with the conflict of interest between the insurers and insureds¹⁶. Hence, the feasibility of adopting P2P insurance model remains mostly untested within the legal framework of Vietnam.

¹³ 2019 Law on Securities, art. 4.20.

¹⁴ For the sake of argument, crowdfunding platform will not be treated as mass media.

¹⁵ Pierpaolo Marano and Kyriaki Noussia, *InsurTech: A Legal and Regulatory View* (Springer 2020), 30.

¹⁶ Angelica Wilamowicz, “The Great Fintech Disruption: *InsurTech*” (2019) 34 B.F.L.R 215, 229.

P2P insurance model may vary in a number of distribution forms but ultimately it can be boiled down to (i) broker model (i.e. *Friendsurance*); (ii) carrier model (i.e. *Lemonade*) and (iii) self-governing model (i.e. *Teambrella*)¹⁷. Considering that self-governing model could be much less pervasive and carrier model shall require the P2P platform to be treated as an insurer and therefore, subject to the full prudential requirements, this section will briefly look through the broker model in an attempt to identify the mere legal identity of the relevant P2P platform.

In the broker model of P2P insurance, the P2P platform partners up with one or multiple third-party insurance company (the **Partner Insurers**) and allow the customers to select the insurance policy offered by such Partner Insurers via its virtual platform at the same premium as if the customers acquire directly from those Partner Insurers. The P2P platform then organises homogenous group of customers, collecting premiums and splitting the same into a small portion to be paid to the selected Partner Insurer whilst the rest of it flows into a pool of fund feeding the group. The P2P platform firstly uses the funds in the pool to cover the claims lodged by the customers within such group during the policy year. If the claim value exceeds the deductible of the pool, the Partner Insurers will then step in to cover such exceeded claims. If the pool remains a positive balance at the end of the policy year, the remainder shall be credited towards the premium to be payable by the customers in the next policy year or simply be refunded to them on a pro-rata basis.

The above-illustrated model breeds the question on identifying the precise role of the platform, whether it is an insurance firm or insurance broker or insurance agent or else under the applicable laws. Below are the main differences of the scope of operation between these roles under the laws of Vietnam.

Role	Scope of operation ¹⁸
Insurance company	<ul style="list-style-type: none"> ✓ Engaging in insurance/re-insurance business ✓ Risk, loss prevention and limitation ✓ Loss assessment ✓ Loss assessment agency, agency for consideration and resolution of indemnity, agency for third-party recovery claims ✓ Management of funds and investments
Insurance agent	<p>Operated under the authorization of the insurance company, including the scope of operation as below:</p> <ul style="list-style-type: none"> ✓ Introducing and offering insurance for sale ✓ Arranging the conclusion of insurance contracts ✓ Collecting insurance premiums

¹⁷ Marano and Noussia (n 11) 32.

¹⁸ 2000 Law on Insurance Business, art. 60, art. 85 and art. 90.

	<ul style="list-style-type: none"> ✓ Dealing with claims for indemnity and paying compensation upon occurrence of insured events ✓ Carrying out other activities related to the insurance contract
Insurance broker	<ul style="list-style-type: none"> ✓ Providing information on the insurance types, conditions, terms, premiums and/or insurers to the customers ✓ Advising the customers on the evaluation of risks, selection of insurance types, conditions, terms, premium rate index and insurers ✓ Negotiating, arranging the conclusion of insurance contracts between insurers and customers ✓ Performing other jobs relating to the performance of insurance contracts at the request of the customers

Considering that a P2P platform only markets the product of the Partner Insurers, undertaking the risk analysis and determining the premiums to be collected in the manner prior agreed with and authorised by the Partner Insurers via the use of technology, this will create the impression that the P2P platform engages as both insurance agent and broker services rather than as an insurance company. Nonetheless, when considering function of fund management and capital investment, it appears that the P2P platform handles such work of the insurer with respect to the pool of funds. The prevailing laws of Vietnam fall short of any rule defining the nature of such pool of funds and therefore, whether the P2P platform in the broker model may be treated as an insurance company remains unclear.

Regulatory development trend

In response to the emergence of burgeoning Fintech players in the market, SBV has proposed the regulatory sandbox as a blueprint to test a wide array of Fintech solutions. According to the latest draft decree, Fintech solution which can apply the sandbox may include those operating in the following sectors (i) payment; (ii) credit; (iii) P2P lending; (iv) open API; (v) disruptive and innovative technology, hi-tech; and (vi) other services supporting the banking operation (i.e. KYC, credit rating, saving, capital mobilisation, etc.). Given such, while B2B cross-border and lending-based crowdfunding can be applied to category (i) and (iii) respectively, equity-based crowdfunding and InsurTech may, to certain extent, be applicable via category (v).

Any Fintech solution to be applied to sandbox regime is expected to meet all following criteria:

- (i) Whole or part of the Fintech solution is unregulated or lacks clarity in regulations.
- (ii) The Fintech solution is a creative solution bringing benefits for service users in Vietnam, especially solutions for supporting and promoting the goal of financial inclusion.
- (iii) The Fintech solution is designed to manage risks appropriately, limiting impact on financial institutions in particular and the financial system in general, with a plan of handling and rectifying risks during the testing process in accordance with the business activities.

- (iv) The function, purpose and utility of the Fintech solution has been assessed by applicant of sandbox to be accurately and appropriately.
- (v) The Fintech solution is practicable, highly commercially feasible with a specific plan to deploy to the market upon completion of sandbox testing period.
- (vi) The Fintech solution that allows control, with a plan of handling risks during the test, without causing instability to the financial - banking market in particular and the economy in general.

The sandbox regime draft has yet to be passed by the Government but is so expected by the end of 2021.

Authors



Lead Author

BAO Quoc Nguyen (Mr.)

Senior Associate

E: bao.nq@tndlegal.com

W: www.tndlegal.com

Profile: [LinkedIn](#)



Co Author

NHU Thi Thao Hoang (Ms.)

Legal Assistant

E: nhu.htt@tndlegal.com

W: www.tndlegal.com

Profile: [LinkedIn](#)

Disclaimer: The article neither constitutes the formal legal opinion nor advice from the authors and TND Legal with respect to the subject matters. Please contact us to obtain a sophisticated and formal legal advice/opinion on the matter of your interest.