

Fintech 2022

Contributing editors
Angus McLean and Penny Miller



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent

adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between June and July 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021

No photocopying without a CLA licence.

First published 2016

Sixth edition

ISBN 978-1-83862-661-7

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Fintech

2022

Contributing editors**Angus McLean and Penny Miller**

Simmons & Simmons LLP

Lexology Getting The Deal Through is delighted to publish the sixth edition of *Fintech*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Mexico and the United States.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons LLP, for their continued assistance with this volume.



London

July 2021

Reproduced with permission from Law Business Research Ltd

This article was first published in July 2021

For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	5	Gibraltar	100
Angus McLean and Penny Miller Simmons & Simmons LLP		David Borge, Kunal Budhrani and Peter Howitt Ince	
Australia	6	Hong Kong	107
Michael Bacina, Andrea Beatty, Tim Clark, Will Fennell, Tim O'Callaghan and Andrew Rankin Piper Alderman		Ian Wood, Jolyon Ellwood-Russell, Michelle Ta, Catherine Kwong and Donia Chu Simmons & Simmons LLP	
Belgium	18	India	116
Martin Carlier, Zeger Saerens, Dimitri Van Uytvanck, Jérôme De Ruyver, Mathieu Vancaillie and Jérémie Doornaert Simmons & Simmons LLP Marc de Munter Baker Tilly		Stephen Mathias and Anuj Kaila Kochhar & Co	
Brazil	30	Indonesia	126
Nei Zelmanovits, Eduardo Castro, Thales Saito, Pedro Nasi, Rodrigo Chiaverini, Érica Sumie, Alina Miyake and Vinicius Costa Machado Meyer Advogados		Winnie Yamashita Rolindrawan and Harry Kuswara SSEK Legal Consultants	
Canada	41	Ireland	134
Alix d'Anglejan-Chatillon, Ramandeep Grewal, David Elder, Shawn Smith and Éric Lévesque Stikeman Elliott LLP		Joe Beashel and Ian O'Mara Matheson	
China	50	Japan	142
Jingyuan Shi Simmons & Simmons LLP		Ken Kawai, Akihito Miyake, Tomoyuki Tanaka, Yutaka Shimoo and Kensuke Inoue Anderson Mōri & Tomotsune	
Denmark	60	Kenya	150
Rasmus Mandøe Jensen and Christian Scott Uhlig Plesner Advokatpartnerselskab		John Syekei, Dominic Indokhomi, Ariana Issaias, Cynthia Amutete and Sharon Odeny Bowmans	
Egypt	69	Liechtenstein	160
Mohamed Hashish and Farida Rezk Soliman, Hashish & Partners		Thomas Nägele, Thomas Feldkircher and Monika Hammermüller NÄGELE Attorneys at Law	
France	77	Malta	168
Hubert de Vauplane and Victor Charpiat Kramer Levin Naftalis & Frankel LLP		Leonard Bonello and James Debono Ganado Advocates	
Germany	87	Mexico	177
Christopher Götz, Dang Ngo, Elmar Weinand, Eva Heinrichs, Felix Biedermann, Janine Marinello, Jochen Kindermann, Martin Gramsch and Sascha Kuhn Simmons & Simmons LLP		Gunter A Schwandt and Mario de la Portilla G Nader Hayaux & Goebel	
		Netherlands	184
		Jeroen Bos, Marline Hillen and Koen van Leeuwen Simmons & Simmons LLP	

New Zealand	196	United States	312
Derek Roth-Biester and Megan Pearce Anderson Lloyd		Paul T Clark, Jeffrey M Berman, Beth H Alter, Casey J Jennings and Nathan S Brownback Seward & Kissel LLP	
Pakistan	204	Vietnam	325
Asma Hamid, Zainab Kamran, Zubair Mughal, Ali Javed Darugar and Asghar Leghari Asma Hamid Associates		Le Thi Loc, Nguyen Ngoc Bich Tram, Nguyen Duy Duong, Ta Nguyen Nhu Quynh and Ho Ngoc Quynh Anh YKVN LLC	
Singapore	211		
Grace Chong, Dax Lim, Bryan Chua, Alexis Ng and Ern Xu Seah Simmons & Simmons JWS			
South Africa	223		
David Geral, Kirsten Kern, Livia Dyer, Xolani Nyali and Bright Tibane Bowmans			
Spain	236		
Alfredo De Lorenzo, Álvaro Muñoz, Carlos Jiménez de Laiglesia, Ignacio González, Juan Sosa and María Tomillo Simmons & Simmons LLP			
Sweden	246		
Emma Stuart-Beck, Nicklas Thorgerzon, Caroline Krassén, Lave White and Anton Sjökvist Advokatfirman Vinge			
Switzerland	255		
Clara-Ann Gordon and Thomas A Frick Niederer Kraft Frey			
Taiwan	263		
Abe T S Sung and Eddie Hsiung Lee and Li Attorneys at Law			
Turkey	273		
Cigdem Ayozyer Ongun, Volkan Akbas and Selin Çetin SRP Legal			
United Arab Emirates	284		
Muneer Khan, Jack Rossiter and Raza Rizvi Simmons & Simmons LLP			
United Kingdom	296		
Angus McLean, George Morris, Jo Crookshank, Kate Cofman-Nicoresti, Olly Jones, Penny Miller and Peter Broadhurst Simmons & Simmons LLP			

Vietnam

Le Thi Loc, Nguyen Ngoc Bich Tram, Nguyen Duy Duong, Ta Nguyen Nhu Quynh
and Ho Ngoc Quynh Anh

YKVN LLC

FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

1 | What is the general state of fintech innovation in your jurisdiction?

In Vietnam, fintech is generally defined as the application of innovative, creative and modern technologies in the banking and finance sector to provide customers with transparent, efficient and convenient financial services at a lower cost than traditional services systems; and accordingly, fintech is classified in the banking and finance sector, which is strictly regulated by the State Bank of Vietnam (SBV). Fintech in Vietnam currently remains nascent in comparison with ASEAN countries (eg, Singapore, Malaysia, Indonesia, the Philippines and Thailand). Only a few fintech segments, such as digital transactions, e-commerce platforms and digital payments (eg, e-wallet, point of sale or payment gateway) are regulated, while most fintech segments are not recognised in Vietnam, such as peer-to-peer lending (P2P lending), crowdfunding and blockchain (including but not limited to virtual currencies on the basis of blockchain), because there is no legal framework to govern it. Regardless of unregulated segment, in practice some companies are operating in Vietnam by way of registering with the competent authorities as investment or enterprise management consultancy firms instead of financial institutions.

In general, Vietnam was and is actively looking to grow its fintech sector, and it welcomed potential investors to help the country grow in the area, given that it only possesses mid-level logistics for the fintech sector; and accordingly, recently, the Prime Minister (PM) has instructed relevant authorities to build a testing framework (regulatory sandbox) for financial and banking services based on information technology platforms. In which, as assigned, the SBV is drafting a decree on the trial mechanism for controlling financial technology activities in the banking sector (sandbox) (the Fintech Draft Decree), listing seven fintech segments (the Seven Fintech Segments) that non-banking and finance companies (fintech companies) may be permitted to participate in the trial mechanism, including payment, credit, P2P lending, customer identification support, open application programming interface (Open API), innovative technology application solutions (eg, blockchain) and services to support banking activities (eg, credit scoring, savings and capital mobilisation).

In the near future, more developments are expected on the back of favourable regulations. Pending the regulatory sandbox of the SBV, fintech companies cannot engage in unregulated segments unless there is a special pilot approval of the PM.

Government and regulatory support

2 | Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

Vietnam has not issued any regulations on specific support for financial innovation and has only directed agencies to build a legal framework for fintech, including:

- 2017: Decision No. 328/QĐ-NHNN of the SBV establishing a fintech steering committee for the purpose of (1) researching fintech activities, building, and developing legal framework for fintech; and (2) coordinating with relevant ministries to implement instructions of the PM under Decision No. 844/QĐ-TTg of the PM on approval for 'Assistance policies on national innovative start-up ecosystem to 2025' in 2016.
- 2019: Decision No. 999/QĐ-TTg of the PM approving a scheme for the development of a sharing economy to encourage innovation, application of digital technology and development of digital economy, and implement trial mechanism for new policies (sandbox) for the development and application of new technologies to the sharing economy model.
- 2020: Decision No. 283/QĐ-TTg of the PM approving a proposal on services sector restructuring to the year of 2020, with orientation to 2025, which promotes the application of key technologies of the fourth industrial revolution in the management, development and supply of banking products and services; and building a trial mechanism (regulatory sandbox) for financial and banking services based on information technology such as e-wallets, electronic know your client, peer-to-peer lending and crowdfunding.

Accordingly, the SBV prepared the Fintech Draft Decree providing for the following two types of fintech companies participating in the Seven Fintech Segments: (1) fintech models and solutions not directly provided by banks; and (2) technology solutions applied or supported in banking activities. If the Fintech Draft Decree is adopted, fintech companies can engage in the Seven Fintech Segments, which are currently for banking and finance companies only.

In 2021, the PM issued Decision No. 316/QĐ-TTg approving pilot implementation of use of telecommunication accounts for payment of low-value commodities and services (Mobile-Money); pursuant to which, customers can use telecommunication accounts for payment without registration of a bank account.

Based on the results from trial mechanism, competent authorities will prepare and develop the legal framework for each fintech service and technology.

FINANCIAL REGULATION

Regulatory bodies

3 | Which bodies regulate the provision of fintech products and services?

Currently, there is no single regulatory body responsible for the regulation of fintech products and services. Under the current Fintech Draft Decree, the State Bank of Vietnam (SBV) is the sole regulator of fintech products and services, and it may seek opinions from different regulatory bodies for approving the sandbox for a specific fintech product or service, such as the Ministry of Finance (MOF), the Ministry of Industry and Trade, and the State Securities Commission (SSC).

Regulated activities

4 | Which activities trigger a licensing requirement in your jurisdiction?

The following activities are regulated and require a licence:

- carrying on securities brokerage;
- carrying on securities investment consultancy;
- carrying on financial advising relating to securities trading or investment;
- carrying on securities underwriting and sponsorship;
- carrying on proprietary account transactions;
- carrying on securities asset management;
- taking in deposits from the general public;
- handling domestic and foreign settlements and intermediary payment services;
- handling, accepting and discounting of certain types of negotiable instruments;
- underwriting and market-making of government bonds;
- offering and providing discretionary investment management services;
- buying and selling foreign exchange, and acting as an agent for the purchase and sale of foreign exchange;
- carrying on fund management services;
- carrying on fund custodian services;
- carrying on derivative products transactions;
- lending micro loans online or offline;
- providing certain types of insurance;
- carrying on credit information services; and
- providing consumer finance services.

Consumer lending

5 | Is consumer lending regulated in your jurisdiction?

Consumer lending is generally regulated by (1) Law on Credit Institutions No. 47/2010/QH12, as amended from time to time (the Law on Credit Institutions); (2) Circular No. 39/2016/TT-NHNN prescribing lending transactions of credit institutions or foreign bank branches, or both, with customers (Circular 39); and (3) Circular No. 43/2016/TT-NHNN, as amended in 2019, prescribing consumer lending by finance companies.

The Law on Credit Institutions provides two types of credit institutions that are allowed to provide consumer lending such as (1) Vietnam-based commercial banks, foreign bank branches and foreign invested banks and (2) Vietnam-based finance companies. Both banks and finance companies must obtain an operation licence from the SBV and an enterprise registration certificate from the Department of Planning and Investment. Finance companies are limited to providing loans not exceeding 100 million Vietnamese dong (except for car loans with security). Non-credit institutions such as fintech companies are currently not allowed to provide consumer lending.

Secondary market loan trading

6 | Are there restrictions on trading loans in the secondary market in your jurisdiction?

Yes, trading loans in the secondary market in Vietnam are subject to the following restrictions:

- a credit institution (seller) can only sell its bad debts to the Vietnam Asset Management Company (VAMC) and this sale is subject to the supervision by the SBV and the following restrictions:
 - the currency used for the purchase and sale of bad debts is Vietnamese dong (except in case of special VAMC bonds);
 - all rights and interests associated with the bad debt, collateral and other security measures must be preserved and transferred to the debt buyer under the debt purchase contract;
 - if the VAMC and the credit institution reach agreement on amending the security conditions of the bad debt, a written approval of the borrower and guarantor must be obtained; and
 - the VAMC and credit institutions must report certain information to the SBV;
- trading in loans between persons being non-credit institutions or individuals is considered as assignment of rights to demand the payment of debts or assignment of obligation:
 - for assignment of right to demand, the transferer must provide a written notice to the obligor of such assignment, unless otherwise agreed; and
 - for assignment of obligation, the transferer must obtain a consent from the obligee; and
- trading in loans by debt trading companies pursuant to newly issued regulations of the government in 2021 is subject to further guidelines of the government, which have not been issued yet.

Collective investment schemes

7 | Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

The establishment and operation of securities investment funds are regulated under Law on Securities No. 54/2019/QH14 (the Law on Securities). Securities investment funds include public funds and member funds, and public funds include open investment funds and closed investment funds. The establishment of public funds must be registered with and approved by the SSC, and the establishment of member funds shall be notified to and approved by the SSC. Only commercial banks, finance companies, finance leasing companies, investment funds, and security investment companies and fund managers can receive funding or capital to carry out investment activities based on investment entrustment agreements.

The peer-to-peer or marketplace lenders or crowdfunding platforms do not fit the definitions of securities investment funds and so are not currently recognised. Currently, there is no specific regulation of fintech companies providing alternative finance products or services under the Law on Securities.

Alternative investment funds

8 | Are managers of alternative investment funds regulated?

Managers of alternative investment funds are regulated under the Law on Securities and Law on Credit Institutions. Only commercial banks, finance companies, finance leasing companies, investment funds, and security investment companies and fund managers can receive funding or capital to carry out investment activities based on investment entrustment agreement. In particular, these investment activities are broadly

defined as (1) securities investment consultancy conducted by securities companies or securities investment fund managers, (2) securities investment fund management conducted by securities investment fund managers, (3) securities investment portfolio management conducted by securities investment fund managers, and (4) receipt of entrusted funds conducted by credit institutions.

Managers are subject to different regulatory regimes depending on the specific forms of these alternative investment funds; and when fintech regulations are adopted by the government, fintech companies may participate in alternative investment funds (ie, crowdfunding).

Peer-to-peer and marketplace lending

9 | Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

Peer-to-peer lending (P2P lending) is not regulated under the prevailing laws, and currently fintech companies are not allowed to engage in P2P lending. The SBV has expressed concerns over unregulated P2P lending companies applying exorbitant interest rates, high uninformed fees, or resort to threatening tactics, harassment and even violence to recover loans.

According to the Fintech Draft Decree, a P2P lending company can commence operation after complying with the following conditions: (1) being selected for the trial mechanism on P2P lending; (2) passing this trial mechanism for a certain period of time decided by the SBV and the PM; and (3) being subject to some restrictions on locality of service provision, a number of limited customers and limitation of the services.

To be selected for the trial mechanism, the company needs to submit application dossier to the SBV, who will review and examine it; if it is cleared by the SBV, it is submitted to the PM for approval for participation in the trial mechanism.

Crowdfunding

10 | Describe any specific regulation of crowdfunding in your jurisdiction.

Crowdfunding is not regulated or recognised as the legal framework for crowdfunding is still under development by the SBV. Currently, fintech companies are not allowed to engage in crowdfunding.

According to the Fintech Draft Decree, a crowdfunding company can commence operations after complying with the following conditions: (1) being selected for the trial mechanism on crowdfunding; (2) passing this trial mechanism for a certain period of time decided by the SBV and the PM; and (3) being subject to some restrictions on locality of service provision, a number of limited customers and limitation of the services.

To be selected for the trial mechanism, the company needs to submit application dossier to the SBV, who will review and examine it; if it is cleared by the SBV, it is submitted to the PM for approval for participation in the trial mechanism.

Invoice trading

11 | Describe any specific regulation of invoice trading in your jurisdiction.

The Law on Negotiable Instruments and the Law on Credit Institutions provide regulations on debt instruments but are silent on invoice trading.

The Law on Negotiable Instruments applies to categories of negotiable instruments including bills of exchange, promissory notes, cheques and some other negotiable instruments.

The Law on Credit Institutions regulates banking activities that include, among others, factoring. Factoring is a form of credit extension to a goods seller or buyer through acquiring receivable or payable amounts arising from the purchase or sale of goods or provision of

services under a contract on goods purchase or sale or service provision while reserving the right to claim these amounts.

The government has assigned the SBV to draft the Fintech Draft Decree as a framework regulation on a trial mechanism in relation to an alternative financing solution for a borrower with cash flow problems with its investors to sell its unpaid or overdue invoices on e-commerce platform. Until the government adopts new regulations, the invoice trading is not allowed.

Payment services

12 | Are payment services regulated in your jurisdiction?

Non-cash payment (including non-cash payment services and intermediary payment services) is strictly regulated under Decree No. 101/2012/ND-CP (Decree 101) and controlled by the SBV. In particular:

- non-cash payments that can only be provided by Vietnam-based banks:
 - cheques;
 - payment orders;
 - authorised payment orders;
 - collection orders;
 - authorised collection orders;
 - bank cards;
 - letters of credit;
 - monetary remittance via client's payment account; and
 - receipts and disbursements on behalf of others via client's payment account;
- intermediary payment services (IPS) that can be provided by non-credit institutions (IPS provider), include:
 - electronic payment infrastructure provision services: financial switch services, electronic clearing services and online payment gateway services; and
 - supporting services for payment services: supporting services for authorised collection or payment, e-wallet services and supporting services for electronic funds transfer;
- IPS providers are required to obtain a licence from the SBV. Only Vietnam-based IPS providers can provide the IPS in Vietnam, while offshore IPS providers cannot. There are certain technical, legal and personnel requirements for the IPS, including a minimum charter capital of 50 billion Vietnamese dong. Further, the IPS is subject to market access restrictions for foreign investors; however, current IPS regulations are silent on the foreign investment restrictions applicable (including foreign ownership limitation). There is no commitment by Vietnam to open this sector to foreign investors under international treaties (eg, Vietnam's commitments to the WTO and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)). The competent authorities will decide on any limitations or technical barriers applicable to foreign investors who wish to engage in the IPS. Establishment of a 100 per cent foreign-owned IPS provider is subject to the sole discretion of competent authorities, especially the SBV. Foreign investors hold, directly or indirectly, up to 100 per cent equity interest in a few companies of the total 43 licensed IPS providers published on the SBV website; and
- the SBV is in process of amending existing regulations on non-cash payment (including the IPS). The SBV's draft decree to replace Decree 101 (the Non-cash Payment Draft Decree) introduces new concepts of 'e-currency', 'mobilised currency' and 'pre-paid card'. Initially, the SBV proposed a foreign ownership limitation of 49 per cent for the IPS, but this proposal was objected to by experts and IPS providers, and the SBV is reconsidering it. The Non-cash Payment Draft Decree also provides that certain the IPS are not subject to SBV's licence requirement (ie, online payment gateways,

supporting services for authorised collection or payment, and supporting services for electronic funds transfer). However, IPS providers will still be required to cooperate with a Vietnam-based commercial bank or a foreign bank branch to conduct the business.

Open banking

13 | Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

There are no laws or regulations in Vietnam on open banking. The SBV is considering allowing credit institutions and fintech companies to apply Open API with an Open Canvas solution introduced by NTT. However, the SBV has been working on a draft circular for the legal framework for this application.

Under the Law on Credit Institutions, disclosure of data by credit institutions (Vietnam-based banks and finance companies) is heavily restricted. In particular:

- employees, managers and executive of a credit institution (eg, bank and finance company) shall not be permitted to disclose the business secrets of this credit institution (eg, customer and product data);
- credit institutions must ensure confidentiality of information on accounts, deposits, deposited assets and transactions of clients conducted at these credit institutions;
- credit institutions shall not be permitted to provide information to any other organisation or individual about accounts, deposits, deposited assets or transactions of clients conducted at these credit institutions, except when requested by competent authorities or when the client consents; and
- credit institutions shall be permitted to exchange information with each other about their operation.

Robo-advice

14 | Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

There is still no regulation on robo-advisors in Vietnam, except for securities segments.

In 2019, the PM issued Decision No. 242/QĐ-TTg approving a plan to restructure the securities market and insurance market, which includes assigning the MOF the task of issuing guidelines for standardisation of activities for opening online accounts and establishing electronic know your client, online-trading, AI asset management and robo-advisory, and digitalising the main assets in the securities market with fintech. In fact, before 2019, robo-advisors on securities segments were implemented by Techcom Securities (ie, TCWealth).

Insurance products

15 | Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

The sale or marketing of insurance products in Vietnam by insurers or non-insurance companies is regulated by the Law on Insurance Business and the Law on Advertising. In particular, a Vietnam-based insurer can sell insurance products via multiple channels including, among others, online or offline. However, it is currently unclear whether insurance products can be sold via an e-commerce platform operated by third parties. Thus, sale or marketing of insurance products through e-commerce platforms may cause the e-commerce platform service providers to fall within (1) the scope of the insurance agency or insurance broker and (2) the scope of the advertising service.

For (1) (insurance agency or insurance broker), these are conditional businesses that fall in the market access restriction list, with restrictions applying to foreign investors; however, there is no foreign ownership limitation for insurance agencies or insurance brokers under Vietnamese law. The licensing authority may, at its sole discretion, seek opinions from the higher-level authorities (eg, the Ministry of Planning and Investment and MOF) before approving incorporation.

- For insurance agency services, in addition to incorporation documents, the company needs to meet the following requirements: execution of the insurance agency agreement with the insurer; and the staff being Vietnamese citizens, residing locally, at least 18 years old and holding an insurance agency certificate.
- For insurance broker services, the company must make their capital contributions in cash (which must not be financed by a loan or investment trust from other entities); conduct profitable business in three consecutive years prior to the application (for corporate investors holding more than 10 per cent of the charter capital); and undertake that their owner's equity less the minimum legal capital is at least equal to the planned amount of investment in insurance broker.

For (2) (advertising services), the display of the insurance products on platform (such as introduction of products) is regarded as aimed at the public for introducing the insurers and their products and services. Hence, this display would be considered an advertising activity under the Law on Advertising and Vietnam's Commitments to the WTO; and a foreign-invested company engaging in advertising services is required to have a local partner who has registered a business line of advertising.

Credit references

16 | Are there any restrictions on providing credit references or credit information services in your jurisdiction?

Currently, there are two organisations providing credit information services: the Credit Information Centre under the SBV and a company named Vietnam Credit Information Joint Stock Company, which is owned mostly by Vietnam-based banks, which have been licensed by the SBV to provide credit information services.

Credit information services are regulated by Decree 58/2021 (which takes effect on 15 August 2021), replacing Decree 10/2010. 'Credit information' is data and relevant data of borrowers and clients at participating institutions, including credit institutions, foreign bank branches, non-credit institutions, and foreign bank branches that provide property rental services, instalment purchase services, pawn shop services under conditions of interest, duration, rental and security interest pursuant to law.

In addition to incorporation documents, a credit information company must obtain a certificate of eligibility issued by the SBV to provide credit information services and satisfy the following conditions, among others, technical facilities, personnel, minimum charter capital of 30 billion Vietnamese dong, and agreements with at least 15 participating institutions being Vietnam-based banks and foreign bank branches who agree to provide credit information to only a credit information company. The credit information company shall only receive credit information from the participating institutions if the concerned borrowers give consent to the information collection. We are not aware of any other credit information service provider that has obtained this SBV approval.

CROSS-BORDER REGULATION

Passporting

17 | Can regulated activities be passported into your jurisdiction?

Regulated activities cannot be passported into Vietnam, except for the following cross border banking and finance activities:

- insurance:
 - insurance services provided to foreign invested enterprises and foreigners working in Vietnam;
 - reinsurance services;
 - insurance services relating to (1) international maritime transport and international commercial aviation and (2) goods in international transit;
 - insurance broking and reinsurance broking services; and
 - consultancy, actuarial, risk assessment and claim settlement services; and
- banking and finance:
 - provision and transfer of financial information and financial data processing and related software by suppliers of other financial services; and
 - advisory, intermediation and other auxiliary financial services provision.

In addition, the Non-cash Payment Draft, which would replace Decree No. 101/2012/ND-CP, introduces a new concept of a foreign payment service provider, which is a foreign company (1) entitled to provide payment services according to foreign law, including banks, international card organisations, switching organisations and payment intermediaries, etc; and (2) cooperating with a Vietnam-based bank or licensed IPS.

Requirement for a local presence

18 | Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

For the seven segments of fintech services in the Fintech Draft Decree, only local legal entities can obtain licences. For the remaining fintech services, there is no legal framework, so onshore or offshore provision of services is not permitted.

SALES AND MARKETING

Restrictions

19 | What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

Restrictions on the sale and marketing of financial services and products in Vietnam are provided by various legal documents and authorities, depending on the types of services and products.

Insurance companies must be established and obtain a licence from the MOF to sell its insurance products. In addition, the insurance companies must obtain the Ministry of Finance's (MOF) approval before they can sell life and health insurance products. For non-life insurance products (except for vehicle insurance), only the rules, terms and premium scales must be registered with the MOF. The provision of false information and false advertising of the scope of operation and insurance conditions, thereby causing damage to purchasers, is prohibited.

Securities companies, securities investment fund management companies, and branches of foreign securities companies, and fund management companies are not allowed to provide statements or guarantees to clients about the level of income or profit obtainable from

investments of the clients, and cannot to guarantee that clients will not suffer losses (except for fixed revenue securities).

Persons other than credit institutions are prohibited from conducting banking activities (including deposit-taking services, credit extension services and payment services via accounts), except the escrow, purchase and sale of securities by securities companies. IPS providers can only provide the IPS pursuant to their IPS licence.

CHANGE OF CONTROL

Notification and consent

20 | Describe any rules relating to notification or consent requirements if a regulated business changes control.

In 2017, the State Bank of Vietnam (SBV), through Official Letter No. 8104/NHNN-TT, requested all IPS providers to notify any change of their owners. The Non-cash Payment Draft, which would replace Decree No. 101/2012/ND-CP, adds a time limit of notification within 30 days of any change on owners, charter capital or ownership ratios of IPS providers.

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

21 | Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Yes. The Law on the Prevention of Money Laundering applies to non-financial institutions engaged in fintech service and payment services, among other things. The Department of Anti-Money Laundering under the State Bank of Vietnam (SBV) monitors and regulates Vietnam's anti-money laundering regime. Entities subject to the anti-money laundering regime must report certain transactions to it, including high-value transactions, suspicious transactions and transactions involving entities or individuals in the countries and territories on the 'blacklist' published by the Ministry of Public Security. Moreover, in addition to know-you-client procedures, entities subject to the anti-money laundering regime must perform an enhanced due diligence investigation on high-risk parties, including foreign individuals on the list of 'politically influenced persons' and persons conducting transactions using new technologies (eg, technology enabling remote transactions).

Guidance

22 | Is there regulatory or industry anti-financial crime guidance for fintech companies?

Payment transactions involving digital assets or cryptocurrency between the credit institutions are prohibited under current laws.

In 2018, the PM issued Directive No. 10/CT-TTg on management and control of virtual currency in Vietnam, pursuant to which, the PM prohibits trading or use of virtual currency. Following which, the SBV also issued Directive No. 02/CT-NNHH, which bans credit institutions and payment service providers from becoming involved with or providing any services that may transfer, trade or exchange virtual currency. In addition, they must inform the competent authorities when aware of any suspicious transactions relating to virtual currency.

In 2021, the SBV issued Directive No. 02/CT-NHNN requiring all credit institutions (including banks, non-bank credit institutions, micro-finance institutions and people's credit funds) and IPS providers to check and apply appropriate methods to control risks of money-laundering, terrorist sponsorship and tax evasion during the performance of payment services, card payment services or any payment relating to illegal acts, gambling and virtual currency transactions.

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

23 | What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

Under the Law on Credit Institutions and Circular 39, execution of loan agreements and security agreements must satisfy certain conditions as follows:

- loan agreement must be made in writing and include the following compulsory contents, among others: the loan amount or credit line, the loan purpose, currencies for lending or repayment, the lending method, the lending term, interest, the rights and obligations of the borrower in providing documents and information in the assessment and decision on lending. Normally, bank loans must be made in writing and conducted physically at the banks to verify the borrower through checking the borrowers' documents, verifying conditions for borrowing and supporting documents, and deciding on lending. Recently, the State Bank of Vietnam (SBV) introduced electronic know-your-client procedures to verify customers for opening payment accounts, and this may lead to further opening in other banking products; and
- security arrangements for loans are subject to agreement between the lender and borrower; however, secured assets must be identifiable, owned by the securing party, not be prohibited from being traded or assigned, and not be subject to any disputes. If the collateral is real property, it must be notarised and recorded in title document.

As peer-to-peer (P2P) lending is a new business model in Vietnam where loan execution relies on the platform, the involved parties cannot identify the information and status of other side. Currently, there is no specific requirement on execution loan agreements and security agreements entered into on a P2P platform. In the authorities' view, the P2P platform does not sufficiently protect consumers.

Assignment of loans

24 | What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

A P2P or marketplace lending platform is not yet recognised in Vietnam; thus, there is no legal framework on assignment of loan originated on a P2P or marketplace lending platform.

Securitisation risk retention requirements

25 | Are securitisation transactions subject to risk retention requirements?

Securitisation is not regulated or recognised in Vietnam.

Securitisation confidentiality and data protection requirements

26 | Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

Securitisation is not regulated or recognised in Vietnam.

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

Artificial intelligence

27 | Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

In 2021, the PM issued Decision 127/QĐ-TTg promulgating a national strategy on research, development and application of artificial intelligence up to 2030, which assigns various ministries goals and targets on artificial intelligence-related programmes. The Ministry of Science and Technology is the key ministry coordinating with the relevant ministries, and will report on them to the PM.

However, there is still no regulation on artificial intelligence in Vietnam as well as draft regulations on the same.

Distributed ledger technology

28 | Are there rules or regulations governing the use of distributed ledger technology or blockchains?

Under Decree No. 101/2012/ND-CP, any payment method that has not been approved by the State Bank of Vietnam (SBV) is prohibited. Distributed ledger technology or blockchain may fall into non-cash payment, which needs the SBV's approval. Currently, there are no specific rules or regulations governing the use of distributed ledger technology or blockchain. Thus, the use of distributed ledger technology or blockchain in Vietnam is prohibited.

However, in 2021, the PM promulgated Decision No. 942/QĐ-TTg, by which the SBV is assigned to study, develop and test for the use of digital currency on the basis of blockchain. The SBV has included blockchain in the Fintech Draft Decree.

Crypto-assets

29 | Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

Digital wallets are governed by Decree No. 101/2012/ND-CP (Decree 101), and licensed IPS providers can provide digital wallets. Cryptoassets have not been recognised in Vietnam. In particular, only non-cash payments provided in Decree 101 and other payment methods approved by the SBV are permissible under Vietnamese law; otherwise, they are prohibited. In 2017, the SBV, through its Official Letter No. 5747/NHNN-PC, firmly stated that digital currency is prohibited in Vietnam. The Non-cash Payment Draft Decree, which would replace Decree 101, introduces new concepts of 'e-currency', 'mobilised currency' and 'pre-paid card'.

Digital currency exchanges

30 | Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

Virtual currency trading is generally prohibited in Vietnam, and digital currency exchanges and brokerages are also banned. In addition, credit institutions must inform the competent authorities if they are aware of any suspicious transactions relating to virtual currency.

Initial coin offerings

31 | Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

ICOs are not considered securities under Vietnamese law and thus, ICOs or token generation events are not recognised in Vietnam. In 2018, the

SSC under the MOF responded to a Vietnam-based company that the current legal framework does not allow fundraising by issuance of virtual currencies and such a company should not carry out any activities relating to this fundraising.

DATA PROTECTION AND CYBERSECURITY

Data protection

32 | What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

The Law on Cyberinformation Safety: it sets out the main requirements and principles on, among other things, data protection in the cyberspace to all entities, including fintech companies. Its key principles on data protection relating to data protection include:

- collecting personal information if consented to in advance by the owner on scope, for the purpose of collection and use;
- using collected information for the purposes consented to by the owner, and only use for other purposes if agreed to by the owner;
- not transferring, sharing or publishing collected information, unless agreed to by the owner or requested by competent authorities;
- any organisation engaging in processing personal information is responsible for protection of such data; and
- applying necessary measures for data protection.

Personal information must be kept confidential, and any transfer or disclosure must be consented to in advance.

The Law on Cybersecurity: it requires overseas and local companies that (1) are providing services on telecommunication networks, the internet and other value-added services in the cyberspace in Vietnam, (ie, cyberspace service providers); and (2) are involved in the collection, exploitation, analysis and processing of personal information, users' relationships and data generated by users in Vietnam to store personal data within the territory of Vietnam for a period specified by the government.

Certain authorities (eg, the Ministry of Public Security) are assisting the government in drafting a decree guiding the Law on Cybersecurity. Under the draft decrees on cybersecurity and personal data protection that have been open for public comment, there may be new requirements for data localisations, data protection officers and government approvals prior to cross-border transfers of personal data.

Cybersecurity

33 | What cybersecurity regulations or standards apply to fintech businesses?

There is no specific regulation on cybersecurity related to fintech business. The Law on Cybersecurity applies to all sectors involved in cyberspace, including the fintech sector. In particular, personal information collected, analysed or processed by either domestic or foreign enterprises providing services in the telecommunications network, the internet and value-added services in the cyberspace in Vietnam must be stored in Vietnam. In addition, this personal information of users must be protected.

In addition, the Law on Cybersecurity prohibits the use of the cyberspace (by anyone) to conduct the following acts:

- using the cyberspace, IT and electronic media to breach laws on national security, social order and safety;
- organising, activating, colluding, instigating, bribing or cheating or tricking, manipulating, training or drilling people to oppose Vietnam;

- distorting history, denying revolutionary achievements, destroying the national solidarity block or conducting offences against religion, gender discrimination or racist acts;
- providing false information, causing confusion among citizens, causing harm to socio-economic activities, causing difficulties for the operation of state agencies or of people performing public duties, or infringing the lawful rights and interests of other agencies, organisations and individuals;
- providing or introducing activities being prostitution, social evils or human trafficking; publishing information that is lewd, depraved or criminal; or destroying the fine traditions and customs of the people, social ethics or the health of the community; and
- inciting, enticing or activating other people to commit crime.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

34 | Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

Credit institutions (including foreign bank branches) must ensure safety and confidentiality in e-banking operations under State Bank of Vietnam's guidance. Credit institutions can lease technical infrastructure from third parties and must be responsible for performing e-transactions through these facilities, including preserving confidentiality of personal information and information of enterprises and organisations, ensuring security of information system, participating in response to incidents and taking remedial actions in accordance with the law.

Cloud computing

35 | Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

Cloud computing service in banking operation means the delivery of computer system resources (including computing, networks, storage and software applications, and other computer system resources) through a network environment that enables ubiquitous users to access, adjust and pay according to user demand.

Institutions using cloud computing services must:

- carry out an assessment of information technology risks and operating risks;
- classify activities and professional operations expected to be performed on cloud computing based on the assessment of impacts;
- develop backup plans for components of information systems of level 3 or higher;
- establish criteria for the selection of third parties providing cloud computing services; and
- review, amend and apply information security methods, and limit access through cloud computing to its information systems.

Third parties providing cloud computing services must:

- be enterprises; and
- own information technology infrastructure corresponding to the service requested by the institution, which must: (1) comply with the laws of Vietnam; and (2) have been granted a valid international certificate of information security.

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

36 | Which intellectual property rights are available to protect software, and how do you obtain those rights?

Software can be deemed as a computer program, which means a set of instructions expressed in the form of commands, codes, diagrams and other forms that, when incorporated in a device readable by a computer, are capable of enabling the computer to perform a job or achieve a specific result in accordance with Law on Intellectual Property No. 50/2005/QH11 as amended in 2009 and 2019 (the IP Law). Accordingly, software can be protected under copyright, irrespective of whether the software is expressed in the form of source codes or machine codes.

Copyright of software includes moral rights (ie, the right to give titles, the right to attach real name or pseudonyms, the right to publish or authorise to public and the right to protect the integrity) and economic rights (ie, the right to make derivative, display, reproduce, distribute, communicate and lease works). Rights holder can make registration to the Office of Intellectual Property to protect their intellectual property right. Copyrights of works arise from the time the specific work is created and expressed in a certain material form, regardless of the content, quality, form, medium, language, whether it is published or unpublished or whether it is registered or unregistered.

IP developed by employees and contractors

37 | Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

The owner of IP rights over a particular work and the author of this work are not necessarily the same. Under the IP Law, unless otherwise agreed, (1) for copyright (including computer programs), any entity that assigns the task to an employee, contractor or consultant for the creation of a work shall be considered as the owner of copyright with respect to this work and (2) for other industrial property right (ie, patent, industrial design and layout design), any entity that provides funding and facilities to the author through the task assignment or employment shall be considered as the owner of the industrial property rights.

If the copyright owner over a particular product is not also the author of this work, the owner is entitled to (1) all the economic rights pertaining to this work and (2) only the moral right to publish his or her works or to authorise other persons to publish his or her works.

Joint ownership

38 | Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

The author retains the moral rights. Joint owners are not restricted from using, licensing, charging or assigning if both agree to do so.

Trade secrets

39 | How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Trade secrets are protected under industrial property rights. Industrial property rights to a trade secret are established on the basis of lawfully obtaining a trade secret and keeping it confidential. Thus, industrial property rights to trade secrets are established without the need for registration with the competent authority. However, protection requires the following conditions: (1) it is neither common knowledge nor easily

obtainable; (2) when used in business activities, it will create for its holder advantages over those who do not hold or use it; and (3) the owner of the trade secret maintains its secrecy by necessary means so that it will neither be disclosed nor be easily accessible.

Litigation authorities and officers must keep professional secrets, trade secrets and personal secrets of the involved parties pursuant to their legitimate petitions.

Branding

40 | What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

Branding may not be protected if it stands independently, but it is protected as trademarks or trade names.

- Industrial property rights to trademarks shall be granted based on decisions issued by competent authorities in accordance with registration procedures specified in the IP Law or on the basis of international registration granted in accordance with international agreement to which Vietnam is a signatory. Industrial property rights to well-known trademarks shall be granted based on their use instead of registration. The trademark search is an important step in the process of industrial property protection registration to avoid the situation that the trademark application is returned due to duplicate or misleading issues.
- Industrial property rights to a trade name shall be established on the basis of lawful use thereof.

Remedies for infringement of IP

41 | What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Any intellectual property rights holder shall have the right to apply the following measures for protection:

- to apply technological measures to prevent acts of infringement including: (1) giving instructional information that the product is the subject of intellectual property rights and to warn others not to infringe; and (2) using means or technical measures to mark, identify, distinguish and protect the protected product;
- to request any infringing party to terminate such act, make a public apology or rectification, and pay damages;
- to request the competent state body to deal with acts of infringement in accordance with the law; and
- to initiate a lawsuit at a court or a claim at an arbitration centre.

COMPETITION

Sector-specific issues

42 | Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

The competition laws apply generally to all forms of businesses.

TAX

Incentives

43 | Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

The Investment Law provides investment incentives such as lower corporate income tax rate for certain periods (eg, 10 per cent corporate

income tax for 15 years), exemption from import tax, and exemption from land fees and land rent, and accelerated depreciation applicable to:

- start-up projects, national innovation centres and research and development centres; and
- high-tech enterprises and projects involving high technology that are prioritised for investment (eg, blockchain, cloud computing, big data technology and analytics, and artificial intelligence).

Fintech can fall into either of the two categories, depending on the conditions of the actual project.

Increased tax burden

- 44 | Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

There is no new or proposed tax law or guidance that could significantly increase tax or administrative costs for fintech companies in Vietnam.

IMMIGRATION

Sector-specific schemes

- 45 | What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

There are no immigration regimes specifically for fintech talent. Enterprises, organisations, individuals and contractors must only employ foreigners to hold positions of managers, executive directors, specialists and technical workers when the professional requirements for which cannot be met by Vietnamese workers.

UPDATE AND TRENDS

Current developments

- 46 | Are there any other current developments or emerging trends to note?

Vietnam is still a country where fintech regulations are relatively new and vague. The prospect of a regulatory sandbox has attracted many new players; however, given the difficulties in obtaining licences, many have opted to acquire existing licensed IPS providers to build out their services.

Coronavirus

- 47 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

There are no special regimes for fintech businesses.

Circular No. 01/2020/TT-NHNN, as amended in 2021, provides instructions for credit institutions and foreign bank branches on debt rescheduling, exemption or reduction of interest and fees, retention of debt category to assist borrowers affected by the covid-19 pandemic for outstanding balances of debts arising before 10 June 2020, from credit extension activities (except for activities of purchasing and investing in corporate bonds) in which:

- the principal or interest, or both, is due between 23 January 2020 and 31 December 2021; and



Le Thi Loc

loc.le@ykvnlaw.com

Nguyen Ngoc Bich Tram

tram.nguyen@ykvnlaw.com

Nguyen Duy Duong

duong.nguyen@ykvnlaw.com

Ta Nguyen Nhu Quynh

quynh.ta@ykvnlaw.com

Ho Ngoc Quynh Anh

anh.ho@ykvnlaw.com

The Metropolitan
Suite 1102, 235 Dong Khoi Street
Ben Nghe Ward, District 1
Ho Chi Minh City
Vietnam
Tel: +84 28 3822 3155
www.ykvnlaw.com

- customers are unable to repay on time the principal or interest, or both, according to the contract or agreement because of the decrease in revenue and income caused by the covid-19 pandemic.

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)