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Legal Update on the Draft Decree on Regulatory Sandbox for Fintech in Vietnam

In the past few years, Vietnam has witnessed a major increase in the number of fintech companies. According to the State Bank of Vietnam (SBV), there are more than 150 fintech start-ups currently active; of them, 34 operate in payment, 40 in P2P lending while others provide banking support services without directly collecting fees on end-users. However, most of the fintech services are not governed by any current legal framework, leading to the authority's concern over the market abuse, financial exclusion, security and data breach, money laundering, terrorism financing, and rights of end-users. In order to promote the development of fintech in Vietnam while eliminating the threats to financial and banking stability, the Prime Minister issued Decision No. 999/QĐ-TTg dated 12 August 2019 approving the development scheme for sharing economy, in which assigns the SBV prepare a scheme to govern matters in relation to the fintech and financial-related services. Finally, on 01 June 2020, the SBV released the first draft decree on regulatory sandbox for fintech (**Draft Decree**) for public's comments. The first version of the Draft Decree consists of 21 articles divided into 05 chapters.

In this legal update, we will highlight some major points under the Draft Decree that, from our point of view, fintech service providers should stay alert on.

1. Fintech sectors under the sandbox mechanism

The current Draft Decree lists out seven (07) fintech sectors governed by the sandbox mechanism. Such sectors are:

- (a) Payment;
- (b) Credit;
- (c) Peer-to-peer lending (P2P lending);

- (d) Customer identification support;
- (e) Open application programming interface (open API);
- (f) Tech-based solutions such as blockchain; and
- (g) Other banking support services (credit scoring, savings, crowdfunding).

The Draft Decree clarifies that only governed sectors are eligible for participating in the sandbox mechanism. For other sectors/services that wish to be included in the sandbox, the Prime Minister will review, evaluate and grant a special approval on a case-by-case basis, with the conditions that such sectors/services have potential and offer real socio-economic benefits.

2. Conditions to participate in the sandbox mechanism

The Draft Decree sets out numerous conditions that a fintech service provider must fulfil before registering to participate in the sandbox mechanism. Below are the conditions proposed by the SBV:

- (a) The fintech service provider must be (i) a credit institution¹, **or** (ii) a fintech company² cooperating with banks, **or** (iii) an independent fintech company (*i.e.*, company not cooperating with banks to provide services for end-users). In addition, the service provider must be established and duly operated in Vietnam.
- (b) Fintech solutions provided must:
 - be within the governed sectors of the decree or otherwise be approved by the Prime Minister;
 - not be governed wholly or partly by the current legal framework;
 - be firstly applied in Vietnam or be used for a new service, be highly creative, contributing to benefit Vietnamese customers, especially solutions supporting and promote financial inclusion;
 - have a good risk mitigation measure, not to or less likely to impose threats to financial institutions and systems, have measures to deal with risks during the trial;
 - be tested, evaluated and recognized by fintech companies and credit institutions in relation to the suitability, functions, purposes and usefulness;
 - be feasible and commercially effective, having deployment plan to the mass market after the trial ends; and
 - not impose potential threats to financial – banking market and the economy.
- (c) The fintech service provider is approved by the Prime Minister to participate in the sandbox mechanism.

3. Steps to participate in the sandbox mechanism

¹ According to Article 4.1 of the Law on Credit Institutions, credit institutions include banks, non-bank credit institutions, microfinance institutions and people's credit funds.

² Under the current Draft Decree, a fintech company (or “fintech organization”) is defined as “a non-bank institution, established and operating in Vietnam in accordance with the Law on Enterprises 2014; directly provides some banking services based on fintech solutions and/or provides fintech solutions to support the operation of credit institutions.”

In order to participate in the sandbox mechanism, a fintech service provider shall follow the below steps:

Step 1: A fintech service provider submits a registration dossier to the Payment Department under the SBV. A registration dossier includes:

- (a) Registration form to participate in the sandbox;
- (b) Establishment license or enterprise registration certificate issued by the competent authority;
- (c) Description of organizational and managerial structure of fintech service provider and fintech solutions; and
- (d) Description of fintech solutions to demonstrate that such solutions are qualified and fulfilled all conditions under the decree.

Step 2: Within 05 business days from the receipt of the registration dossier, the SBV shall issue a confirmation that it has received the adequate and duly dossier. Otherwise, the SBV will request the fintech service provider to supplement the dossier.

Step 3: Within 60 business days from the date of the confirmation in Step 2, the SBV shall conduct the dossier appraisal, communicate with a fintech service provider which submits the registration dossier, and propose in full the dossier to the Prime Minister for approval. In case the SBV considers that the dossier does not meet the conditions, it will notify in writing the same to the service provider within the next 05 business days from the last day of the 60-day period.

Step 4: Within 15 business days from the receipt of proposal by the SBV, the Prime Minister shall grant the service provider either a Certificate on Fintech Regulatory Sandbox Participation (**Sandbox Approval**), or a rejection letter with explanation.

Step 5: Within 180 days from the date of the Sandbox Approval, the approved service provider must implement the trial in the scope as permitted. If the service provider does not conduct the trial within the statutory time frame, the Sandbox Approval will automatically cease its effect.

4. Other highlights

- (a) The trial period will last 01 to 02 years and can be extended to the maximum of 01 year for each time of request.
- (b) Based on the specific fintech solutions, the SBV may impose restrictions to the service provider on 01 or all 03 factors: (i) geography, (ii) transaction limit and (iii) number of customers using the service during the trial.
- (c) At the end of the trial, the sandbox participant shall submit a comprehensive report to the SBV. The report includes the information on (i) the trial products, (ii) the benchmark to evaluate and decide the success or failure of the project and the trial result, (iii) incidents and results of handling customer complaints, and (iv) the experience and lessons from the trial.
- (d) Based on the report submitted by the participant, the SBV will report to the Prime Minister to decide the next phase of the fintech project. The Prime Minister may then decide to suspend the trial, **or** certify the completion of the trial, **or** extend the trial period. If the

Prime Minister decides to certify the completion of the trial, it will become the basis for the fintech service provider to provide its service officially to the mass market.

5. Conclusion

The SBV intends to submit the official proposal of the decree on regulatory sandbox for fintech to the Prime Minister in 2020 and start receiving registration to participate in the sandbox mechanism from 2021.

As it is the first version, the Draft Decree still contains some vague and incomplete provisions. Many provisions are still required further clarifications from the Government to have a practical effect of supporting the development of fintech in Vietnam, especially the benchmark to quantify the “effectiveness” in commercial operation and risk mitigation measures, as well as the “uniqueness” of the fintech solution. We do hope that the official decree can solve the abovementioned ambiguousness. Lexcomm will constantly update the promulgation schedule of the official decree.

Key contacts

If you have any questions or would like to know how this might affect your business, please contact the key contacts.



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