



**Tilleke
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**Fintech Law
in Southeast Asia**

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As the use of fintech in Cambodia continues to flourish, technology developers should look to existing frameworks established by the National Bank of Cambodia (NBC) and Securities and Exchange Commission of Cambodia (SECC) for guidance on best practices. The 2019 E-Commerce Law, which went into effect at the start of 2020, marks a considerable step forward for regulatory standards for e-payments and transfers. However, as the Cambodian market for various fintech services is still in its nascent stages, a framework of firm regulations specific to these new technologies has not yet been fully established.

Crowdfunding

The regulatory framework for crowdfunding platforms in Cambodia is not highly developed.

According to the Prakas on Granting of Licenses and Management of Business on Collective Investment Scheme, crowdfunding involves collecting funds through collective investment projects or intermediaries of a fund management company. To engage in crowdfunding activities, individuals must obtain a license as a crowdfunding representative.

The Securities and Exchange Commission of Cambodia (SECC) announced in June 2018 that a license is required for “crowdfunding representatives” in the country. These crowdfunding representatives are individuals who have been licensed by the SECC to provide services or conduct business activities on behalf of a fund management company.

Those activities include:

- ◆ Establishing and managing public or private funds for collective investment projects—including through technology systems such as digital platforms, mobile apps, or other technologies;
- ◆ Managing real estate investment trust for collective investment projects;
- ◆ Conducting crowdfunding activities by acting as an intermediary between securities issuers and investors; and
- ◆ Engaging in other business activities as determined by the SECC.

To engage in crowdfunding activities, entities must have a license for a fund management company. The SECC has granted licenses to fund management companies, and these licenses are attributed to companies that have the right to raise money from the public to invest in any project. As of 2024, the SECC had issued fourteen such licenses.

Cryptocurrency

Cambodia does not currently have a clear regulatory regime in effect for cryptocurrency. Though the NBC, the SECC, and the General-Commissariat of the National Police released a statement in June 2018 indicating that each of these authorities may play a role in creating a regulatory scheme in the future, none have yet put forth a regulatory framework.

Official statements have made clear that unlicensed cryptocurrency operations—including the buying, selling, and trading of digital coin—are illegal. While a license is therefore required, there has been no guidance from the SECC or the NBC on the application procedure. Statements indicate that those who participate in cryptocurrency-related activities without obtaining a license from competent authorities

may be subject to penalties in accordance with applicable laws, but the scope and severity of these punishments have not been defined.

Until 2019, public statements implied that the government was reluctant to adopt the use of cryptocurrencies. However, the NBC began using blockchain technology and distributed ledger technology in payment systems in 2016, and in mid-2019 publicly announced Project Bakong—the creation of a central bank digital currency. Named after a prominent Khmer temple, Project Bakong is a blockchain-based, peer-to-peer payment and money transfer platform that utilizes a new form of digital coin to create a closed system backed by the country’s banks and financial authorities. Bakong wallets are linked to individual bank accounts, allowing users to exchange digital Bakong coins for national currency. The Bakong digital coin concluded its pilot testing in 2019 and announced a public launch in the first quarter of 2020.

Government officials have clarified that, despite the NBC’s implementation of the Bakong digital coin, the permission use of decentralized cryptocurrencies (like Bitcoin) without permission is still not expressly authorized. Since late 2017, the NBC—with an eye toward mitigating risk and enhancing cybersecurity—has banned all domestic banks and microfinance institutions from trading in or advertising decentralized cryptocurrencies. Authorities have warned that such cryptocurrencies are volatile, vulnerable to cybercrime, not backed by collateral, and lack investor protections. As early as 2014, the NBC chose not to recognize Bitcoin as a valid form of currency because it was not issued by a central bank. Due to this history, the advent of the Bakong project does not necessarily mark a change in the country’s willingness to begin engaging with, allowing use of, or regulating other forms of cryptocurrency.

In early 2024, Royal Group Exchange was approved by the Securities and Exchange Regulator of Cambodia as an exchange for trading digital assets, including Bitcoin.

Mobile Banking

The NBC, which operates the country’s national payment system and provides bank services to governmental bodies and commercial banks, is responsible for supervisory oversight of all mobile banking systems. As a result, all third-party processors and payment service providers are required to obtain licenses from the NBC.

The 2019 E-Commerce Law, which went into effect on May 2, 2020, regulates electronic fund transfers and payments. Chapter nine of the new law imposes certain obligations and liabilities on banks and financial institutions concerning electronic fund transfers and payments. For instance, when a banking and financial institution has received a customer’s notification that their electronic payment instrument has been lost or stolen, banking and financial institutions are now liable for any transactions occurring after the notification.

According to the NBC’s Prakas on Third Party Processors, which went into effect on August 25, 2010, third-party processors can act on behalf of banks in providing several services, including money remittance, clearing and settlement of debit and credit payments, and sending and receiving orders to banks. These third-party processors must “tie-in” with banking institutions and are entrusted by those institutions to conduct parts of its payment services. Outsourcing to a third-party processor requires prior approval from the NBC.

Currently, the Bakong system, initiated by the NBC, allows customers to perform various transactions among Bakong members on the mobile app. These transactions include transferring funds between Bakong accounts, transferring funds from a Bakong account to a bank account or an e-wallet, making payments via QR code, and receiving money from other Bakong accounts.

Payments and Money Transfer

Fintech growth in Cambodia, which is home to a significant unbanked population, has been the most rapid in the area of cashless payment transfer services and digital wallets.

In accordance with the NBC's Prakas on the Management of Payment Service Providers ("PSP Prakas"), which went into effect on June 14, 2017, the provision of payment services through payment transaction accounts—including debit transfers and electronic payment systems—is now a licensed activity. Payment service providers must seek the NBC's approval and licensing to provide these services.

In keeping with the PSP Prakas, payment services in Cambodia include:

- ◆ Services enabling cash to be placed in and withdrawn from a payment account, and any operations required for operating a payment account;
- ◆ Payment transactions involving transfer of funds in a payment account with the user's payment service provider or with another payment service provider, including execution of direct debits, execution of payment transactions through a payment card or a similar device, and execution of credit transfers and standing orders;
- ◆ Payment transactions where funds are covered by a credit line for a payment service user, including execution of direct debit, execution of payment transactions through a payment card or a similar device, and execution of credit transfers (e.g., standing orders);
- ◆ Issuing payment instruments, such as issuance of electronic money and acquisition of payment transactions;
- ◆ Money remittance;
- ◆ Payment initiation services; and
- ◆ Other payment services as defined by the NBC.

In mid-2019, Cambodia announced plans to launch a distributed ledger technology network that will utilize blockchain technology to facilitate real-time transactions between Cambodia's payment businesses and across payment service providers' platforms.

Peer-to-Peer Lending

Cambodia does not have any specific laws or regulations regarding peer-to-peer (P2P) lending.

Thus far, only two public P2P platforms have been launched in Cambodia. One of the platforms, Karprak, was founded in 2016, and Rai Capital was launched in 2020. In both cases, however, their operations have since been shuttered. There is no evidence to suggest that the platforms were forced to cease operations due to any regulatory or compliance issues.

As mentioned above, the NBC has launched Project Bakong, a peer-to-peer payment system that is internally regulated by select member banks in Cambodia (see cryptocurrency section above for more details).

Though cash is still predominant in daily activities and financial transactions, Laos has seen developments in the country's capacity for digital financial services in products for savings, credit, insurance, and electronic payments—matched by increased development of digital infrastructure. To guarantee the country's financial security, the Lao government has taken the initiative to use fintech in effectively collecting taxes (e.g., payment of customs duties, land tax, and road tax) and tackling corruption. Moreover, Lao authorities have supported a sustainable e-commerce environment in the country, and a draft law on e-commerce is currently under review and open for public comment. Meanwhile, the country's existing laws and regulations encourage foreign and local investors to develop electronic payment systems using QR codes to facilitate financial transactions and improve the quality of services.

In recent years, the Bank of the Lao PDR (BOL) has addressed a legal vacuum regarding the country's payment system in general, and digital payments in particular, by actively promoting the use of fintech. The BOL, which supervises the country's banking operations, established the Payment Systems Department in 2018 to supervise the national payment system and the operation of digital payment systems and services. This was formalized by an amended Law on Bank of Lao PDR No. 47/NA, dated June 19, 2018, which also restructured the BOL's internal governance. In addition, the BOL has collaborated actively with some foreign banks, such as the Bank of Thailand and the National Bank of Cambodia, to promote financial innovation, efficient payment services, and cross-border transactions; in 2019, both agencies entered into a memorandum of understanding to reform their respective countries' laws on payment systems.

Crowdfunding

Without regulations specifically governing the use of online crowdfunding platforms, crowdfunding in Laos has been used to support donations and charities but not to finance private companies' for-profit projects. Instead, the Law on Enterprises No. 33/NA, dated December 29, 2022, only opens the possibility of raising public funds by way of bond issuance or shares negotiated via the Lao Stock Exchange, for companies listed on the exchange and licensed by the Lao Securities Commission. Law on Securities No. 79/NA, dated December 3, 2019, and its subsequent regulations, do not address equity crowdfunding.

Cryptocurrency

Prior to September 2021, local authorities were extremely cautious about cryptocurrency, and focused on warning against the potential misuse of cryptocurrency (e.g., financing of terrorism and money laundering). In this regard, the BOL issued Notification No. 314 (dated August 29, 2018), which declared that cryptocurrency is not an officially recognized currency in Laos and cannot be used, for instance, as evidence to prove debt repayment—this is still the case. Similar notices warned the public of the risks of cryptocurrencies and encouraged commercial banks, financial institutions, and businesses not to transact or support the use, purchase, or sale of cryptocurrencies.

Furthermore, the BOL prohibited financial institutions from possessing, transacting in, or encouraging the use of cryptocurrency in the country.

In September 2021, the Prime Minister's Office issued Notification No. 1158 to launch a pilot program for mining and trading cryptocurrency. The notification authorized six companies to conduct businesses

related to cryptocurrency mining and trading. These two activities are subject to different licensing requirements. Since the issuance of the notification in 2021, approximately 15 companies have reportedly been licensed—two for trading and the others for mining. The Prime Minister’s Office also clarified the authorities overseeing cryptocurrency businesses and appointed the Ministry of Technology and Communications as the coordinator among the different administrations related to the pilot project (e.g., Bank of Lao PDR).

In the meantime, the Ministry of Technology and Communications issued Decision No. 888 on the Trial of Digital Asset Transactions. The decision specifies the licensing requirements for participation in the pilot program as laid out in Notification No. 1158. for mining and trading of cryptocurrency. On December 13, 2021, the BOL issued Decision No. 777/BOL on the Trial of Operating Cryptocurrency Trading. This decision primarily concerns cryptocurrency trading and provides that the BOL is responsible for authorizing cryptocurrency trading platforms. The decision outlines the required registered capital and other prerequisites for operating a cryptocurrency trading business. Notably, a company engaged in trading cryptocurrencies must ensure that at least 51% of its shares are held by Lao shareholders (while for mining activities, only 100% Lao-owned companies can hold a license).

Since the issuance by the BOL of Notification No. 42 in January 2023, commercial banks were instructed to suspend loans for projects related to mining and other activities related to cryptocurrency and similar digital assets. Additionally, the notification mandated the suspension of loan provisions for all cases that had not yet signed a loan agreement, with the aim of reducing financial risks, maintain the financial stability of commercial banks, and promote the allocation of credit to the production sector.

On August 28, 2023, Électricité du Laos (EDL) suspended its acceptance of applications for electricity usage by digital asset mining projects. The notice cites Laos’ experience of drought conditions during the first six months of 2023, causing high electricity demand due to extreme heat while hydropower plants struggled to generate sufficient electricity. The suspension remains in effect until EDL is ready to resume electricity supply or until a replacement notice is issued. As a power purchase agreement must be signed with EDL for mining to operate, mining activities cannot be allocated the electricity necessary to operate with applying to EDL.

Mobile banking

While the implementation of mobile banking is still in a nascent stage, there has recently been a marked expansion. Today, several commercial banks support mobile banking systems that offer unique QR-code payment systems and provide a growing list of financial services covering common payments (such as at restaurants, supermarkets, and fitness centers).

Mobile banking applications are increasingly used for various payments, such as bills, mobile top-up, and money transfers, that have previously relied on cash and the Lao traditional banking system. Under the Law on Commercial Banks, mobile banking applications in Laos must be licensed and authorized by the BOL. First launched in 2018 under the BOL’s supervision, mobile banking applications initially allowed users to transfer money between accounts and to pay for goods and services. At first, the Banque Pour Le Commerce Exterieur Lao Public (BCEL) dominated the country’s mobile banking sector and faced little competition. However, Laos has now welcomed banks from neighboring countries (such as Thailand’s Kasikornbank) to participate in the country’s mobile banking activities and proliferation of digital platforms.

Legal framework on electronic payments and money transfer

The growing popularity of digital payments has led to a bolstering of the country's legal framework on fintech.

The Law on Payments No. 45/NA, dated November 20, 2023, structures the country's digital payments for services such as card payments, prepaid cards, electronic money (e-money), electronic acceptances, e-money transfers, and QR-code payments. Before the Law on Payments, the Lao legal framework generally addressed digital payments but did not include comprehensive provisions on money transfers and the process by which such payments and transfers are authorized.

The BOL has issued regulations clarifying the necessary technical requirements for entities to administer electronic payments. Decision on Payment Systems for Retail Businesses No. 293/BOL (dated April 1, 2019), Decision on Service Providers of Payments No. 288/BOL (dated March 17, 2020), and other legislation has elaborated on the documents and requirements (e.g., minimum registered capital) needed to be licensed for administration of electronic payments.

Service providers developing electronic payments for commercial banks and financial institutions require a business operating license from the BOL before proposing the service. Payment service providers offering their systems to companies operating on an e-commerce system, on the other hand, are required to notify the BOL in writing before commencing operations. Recommendation No. 648/DPS, dated August 24, 2020, further clarifies which types of payment services require a business license, and which types only require submission of a "notification" to the BOL before being introduced—wording that can be understood to mean that the BOL's approval is necessary before these payment service providers offer their services.

Moreover, Decision on Payments by Lao QR Standards no.74/BOL, dated January 28, 2020, provides many types of authorized payments that can be conducted via QR code in Laos, including credit fund transfers, bill payments, e-donations, e-commerce, and so on. In order to confirm secure transactions and provide valid receipts, service providers must follow certain requirements for QR codes (e.g., data object, value field, ID, sub-ID, length, etc.). For this reason, QR code payments must record information such as application identifiers, issuer identification numbers, payment types, receiver and invoice IDs, terminal IDs, and transaction reference numbers.

In June 2020, the BOL formally launched the Lao Payment and Settlement System (LaPASS) to administer a secure financial environment for payment platforms and commercial banks in the country. LaPASS is an integrated real-time gross settlement and automated clearing house that can support high volumes of simultaneous transactions. More recently, the LAPNet network now allows its members, composed of locally established commercial banks to use a joint QR payment service that supports payments between different banks, instead of the previous requirement that seller and purchaser use the same bank.

Peer-to-peer (P2P) lending

In Laos, whether P2P lending is deemed a banking business requiring the BOL's license or authorization is unclear, as the country does not have an official record of P2P-lending business operators or the volume of P2P-related transactions. Moreover, laws such as the Law on Commercial Banks and the Law

on Payment Systems have yet to address this issue. Most recently, the BOL has stated that it does not issue business operating licenses for P2P lending in Lao PDR. Because of this uncertainty, consulting the local authorities about the Lao legal framework on P2P lending would be the most prudent course of action for anyone seeking to operate in this space.

Regulations in Myanmar generally have not caught up with current fintech trends, with the result that operators and regulators are left attempting to apply laws and regulations that were not designed for technology and fintech tools in common use in advanced economies. While Myanmar is currently undertaking a rigorous legal reform program, and there is hope that fintech will be addressed at some point, dedicated legislation for fintech has not yet been deemed a priority.

The only areas where there is clear regulation through existing measures are mobile banking and credit card issuance.

Crowdfunding

There are no laws and regulations in Myanmar that deal with crowdfunding directly.

Debt crowdfunding is essentially peer-to-peer lending, but in Myanmar only commercial banks, licensed non-banking financial institutions, licensed microfinance institutions, and registered moneylenders are able to lend money with interest. Thus, debt crowdfunding would not be permissible in the country.

If debt crowdfunding were to take place offshore into Myanmar, then each loan would require Central Bank of Myanmar (CBM) approval, which can take several weeks and may therefore not be practical. In fact, it is by no means certain that such a loan would be granted approval at all.

An equity crowdfunding scenario, in which a private company wishes to offer shares to the public, is strictly prohibited by section 202(b) of the Myanmar Companies Law (2017) (MCL).

Thus, in order for a company to be able to offer shares to the public it would have to comply with the requirements of a public company, including the strict prospectus requirements of the MCL.

It therefore seems that, until there is specific legislation permitting crowdfunding in Myanmar, it is unlikely to be a successful means of raising finance.

Cryptocurrency

We are aware of no commercial banks, non-banking financial institutions, or any other Myanmar entities trading in cryptocurrencies in Myanmar. All cryptocurrency dealings from Myanmar would therefore take place offshore (and online).

There is no regulatory scheme for cryptocurrencies, cryptocurrency exchanges or initial coin offerings. However, the CBM is the central regulatory body for all currency-related issues, and it did publish an announcement on May 3, 2019, confirming that the CBM is the sole issuer and manager of domestic currency under the law governing the CBM. The announcement states that the CBM does not recognize any cryptocurrency as legal tender in Myanmar and has not given approval to any financial institution to buy, sell, or exchange cryptocurrencies. The announcement notes that any dealing in cryptocurrencies is at consumers' own risk.

In addition, on May 15, 2020, the CBM issued Notification No. 9/2020, which states that committing any acts provided under the CBM announcement of May 3, 2019, will be subject to criminal charges under section 42 of the Foreign Exchange Management Law (2012) (FEML) and section 171 of the Financial Institutions Law (2016) (FIL). Penalties include imprisonment, fines, or both.

There are likewise no punishments in place for trading in cryptocurrencies, although if any commercial banks or non-banking financial institutions were to do so they would likely be subject to administrative sanctions from the CBM.

However, if buying and selling cryptocurrencies were used to avoid the foreign exchange regime, that person could arguably be prosecuted for conducting foreign exchange business without a license under the FEML. Similarly, if money-laundering were involved, under the Anti-Money Laundering Law (2014) up to 10 years' imprisonment could be imposed on the person.

The tax obligations of individuals trading in cryptocurrencies would depend on their tax domicile. In Myanmar, if a person is resident in Myanmar for 183 days or more, they are resident for tax purposes and therefore must pay income tax on their worldwide income. This means that any profits made from cryptocurrency trading would be taxable in Myanmar as income by examination of the tax officer. Similarly, any companies domiciled in Myanmar must pay tax on their worldwide income in Myanmar.

Mobile and Internet Banking

Mobile banking has rapidly taken off in Myanmar. The largest providers, who have experienced marked success, are KBZPay, part of Kanbawza Bank (the largest bank in Myanmar), and Wave Money, a joint venture between ATOM (formerly Telenor) and Yoma Bank.

Mobile banking is regulated by the CBM under provisions of the FIL. Section 132(a) of the FIL states that the CBM is responsible for regulating internet banking services, mobile banking, and other forms of electronic banking.

Pursuant to section 132 of the FIL, on March 30, 2016, the CBM issued its Regulation on Mobile Financial Services, which defines mobile financial services as “the provision of payments and financial services through the use of mobile technology infrastructure.” Any commercial bank or company wishing to provide mobile financial services must obtain the approval of the CBM.

In addition, the regulation established the following requirements:

- ◆ Service providers must have a minimum capital of MMK 3 billion (approx. USD 2.1 million);
- ◆ Service providers must inform the CBM of the appointment of each agent;
- ◆ Service providers must comply with the Anti-Money Laundering Law and Counter Terrorism Law;
- ◆ Service providers must keep a float of 100% of their liabilities to customers in a trust account at a bank;
- ◆ All transactions must be in MMK;
- ◆ Mandatory daily, monthly, and absolute limits are linked to know-your-customer (KYC) requirements; and
- ◆ Sufficient authentication and security procedures must be in place.

Non-compliance with any of these requirements is subject to administrative sanctions from the CBM, including revocation of approval. Internet banking, which is also controlled by the CBM, has also taken off in Myanmar, although not to the extent of mobile banking. There are no specific notifications for so-called i-banking/e-banking, but the CBM usually allows local banks to operate i-banking/e-banking

services if there is sufficient capacity, technology, and infrastructure. According to section 52 (p) of FIL, only Commercial Banks can operate i-banking/e-banking.

Payments and Money Transfer

The CBM currently operates the CBM Financial Network System 2 (an automated clearing system) in parallel with a paper-based end-of-day clearing system.

All banks are members of the Myanmar Payment Union, which permits ATM cardholders of any bank to use the ATMs of any other bank.

Money transmission services are regulated by the FIL. They may not be conducted by any person other than a commercial bank or a licensed non-banking financial institution.

All payments using credit or debit cards must be carried out in accordance with CBM Directive 2/2012 on e-Card Payments.

Peer-to-Peer Lending

As mentioned earlier, peer-to-peer lending that charges interest would not be lawful in Myanmar because the only entities that are permitted to lend money and charge interest are commercial banks, licensed non-banking financial institutions, licensed microfinance companies, and registered moneylenders.

In Thailand, there is no single, overarching fintech law; rather, the industry is governed by various regulations depending on the specific activity. Various authorities, such as the Bank of Thailand (BOT) and the Securities and Exchange Commission (SEC), oversee the regulatory approach for different types of fintech business activities.

Virtual Banks

Crowdfunding activities in Thailand are generally regulated by the SEC. The country's crowdfunding regulations cover equity and debenture crowdfunding.

The SEC has issued a crowdfunding notification that defines "crowdfunding portals" as websites, mobile phone apps, or other similar electronic media developed for offering securities for sale. Crowdfunding portals operator must be incorporated in Thailand, have a minimum paid-up registered capital of THB 5 million, and must have crowdfunding portal systems ready for use upon submitting an application to the SEC for approval to operate.

Regulatory Sandbox

The BOT has established a well-defined framework to promote fintech advancements. This framework includes a regulatory sandbox, which allows for the testing and development of innovative financial products and services in a controlled environment.

The sandbox provides a safe space for fintech entrepreneurs to experiment with their ideas for a period of 6–12 months. This facilitates innovation while safeguarding consumer rights, managing risks, and ensuring the stability of the financial system. The BOT sandbox offers a streamlined application process compared to obtaining specific licenses based on transaction types. This eliminates unnecessary hurdles and encourages more participation from the fintech community. Additionally, participants within the sandbox are exempt from needing a full BOT license during the testing phase.

Thailand's widely adopted QR code payment system is a prime example of a successful innovation nurtured within the regulatory sandbox. Peer-to-peer lending platforms, private blockchain solutions, and cross-border transfer systems have also benefited from this testing ground.

Buy Now, Pay Later Financing

While there are no specific regulations overseeing the provision of buy now, pay later (BNPL) services, the relevant regulations overseeing the provision of payment and lending services should be observed, depending on the business model adopted by the operator.

Crowdfunding

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5 million, and must have crowdfunding portal systems ready for use upon submitting an application to the SEC for approval to operate.

Digital Assets

Thailand was the first country in mainland Southeast Asia to have a regulatory regime for cryptocurrency and other digital assets. The SEC supervises the offering and dealing of digital assets, including cryptocurrencies and digital tokens, which are regulated by the 2018 Emergency Decree on Digital Asset Businesses. Under this decree, issuers of certain types of digital tokens (e.g., investment tokens) must register with the SEC and obtain the appropriate approvals. This process includes the submission of a draft prospectus to the SEC.

The decree provides legal definitions for two main concepts: initial coin offerings (ICOs) through approved ICO portals (defined as electronic system providers for the offering of newly issued digital tokens), and digital asset businesses (such as digital asset exchanges, brokers, and dealers).

Issuers offering certain types of digital tokens to the public must apply for approval by submitting a registration statement and a draft prospectus. When approval is received, they must only issue tokens through approved ICO portals according to the categories specified in the SEC approval.

In 2023, the SEC held a public hearing regarding draft regulations for ready-to-use utility tokens. The SEC proposed that issuers of ready-to-use utility tokens should be categorized into two groups: one pertaining to ready-to-use utility tokens for consumption purposes or as a digital representation of a certificate, and another pertaining to other types of ready-to-use utility tokens (e.g., native/governance tokens and exchange tokens). For the latter group, the SEC will impose more stringent regulations, including an ICO requirement if the token will be listed on a licensed digital asset exchange. In regard to the secondary market, business operators (such as exchanges, brokers, and dealers) are subject to digital asset licensing requirements for operating or providing regulated services related to this group of utility tokens.

Apart from the draft regulations, the SEC has also proposed revising certain sections of the Emergency Decree on Digital Asset Businesses, including adding addition clarity to the definition of digital assets, adjusting penalty, and revising ICO procedures.

Payments and Money Transfers

The BOT's support of fintech developments through initiatives regarding payment system efficiency, risk mitigation, and consumer protection led to the Payment Systems Act, issued in October 2017. Under the Payment Systems Act, the BOT regulates two major types of electronic payment businesses: payment systems and payment services.

Payment Systems

Payment systems fall within the ambit of "designated payment systems," which require specific licenses (or registration, as the case may be) from the BOT. Payment systems are defined as follows:

1. Payment systems that act as a center, or a network, between the system's service users for fund transfers, clearing, or settlements, such as a system for retail fund transfers between service users, or payment card networks or settlement systems; or
2. Any other payment system that may affect public interest, public confidence, or the stability and security of the payment system.

Payment Services

Some types of designated payment services are regulated by the BOT, and thus, specific licenses (or registration, as the case may be) must be obtained from the BOT. These are:

1. Provision of credit cards, debit cards, or ATM card services;
2. Provision of an electronic money service;
3. Provision of a service relating to receiving electronic payments for and on behalf of others;
4. Provision of a service relating to the transfer of money by electronic means; and
5. Other provisions relating to payment services that may affect financial systems or public interest.

If a business operator wishes to provide a payment system or payment service, the operator must register with or obtain a license from the Ministry of Finance by recommendation of the BOT, in accordance with the Payment Systems Act, and operate the businesses in accordance with the relevant regulations under the BOT's supervision.

Peer-to-Peer Lending

The BOT first announced their intention to regulate P2P lending in September 2018, and on April 30, 2019, BOT Notification 4/2562 Re: The Determination of Rules, Procedures, and Conditions for Peer-to-Peer Lending Businesses and Platforms took effect. This has roughly coincided with a precipitous decline in the P2P lending market in China, which underlines the importance of regulating this nascent industry. Thailand—like some of its fellow ASEAN members—has chosen to move ahead carefully and establish a sound regulatory framework at an early stage in the local sector's development.

A "P2P platform provider" is defined as a person who provides an electronic system or network for peer-to-peer lending.

Borrowers must be natural persons who:

- ◆ have the capability to perform debts;
- ◆ are not platform providers;
- ◆ are not directors or authorized persons of, or major shareholders in, the provider; and
- ◆ have not already obtained personal loans from three lenders.

Unlike borrowers, lenders can be either natural or juristic persons. They must show that they understand loans and the risks associated with P2P lending platforms by conducting client suitability assessments before providing loans. Additionally, platform providers may not also be lenders. There are credit limits proposed for lenders under the notification, but materially for individual lenders the amount should not exceed THB 500,000 within one year.

Vietnam's fintech industry is experiencing rapid growth, driven not only by a post-COVID socioeconomic transition and a population increasingly comfortable with digital transactions, but also by the government's gradual shift toward an innovation-friendly policy approach. While the regulatory landscape is still evolving, the government has been actively working to create a framework that fosters innovation while simultaneously protecting consumers.

The government's efforts in this regard are evident in recent policies such as Prime Minister's Decision 149 on the country's national financial inclusion strategy, Decision 1813 on noncash payments, and the the Law on Credit Institutions 2024, which establishes a legal framework for controlled testing mechanisms in the banking sector. Most notably, the State Bank of Vietnam (SBV) has issued an updated draft decree on a fintech regulatory sandbox. This draft fintech sandbox decree covers prominent fintech solutions such as peer-to-peer (P2P) lending, credit scoring, and open APIs (application programming interfaces). The SBV has also announced its plan to issue a total of 14 circulars in 2024, including significant and long-awaited circulars such as a replacement for Circular 39 on intermediary payment services.

Investment and Fundraising

Crowdfunding. Even though crowdfunding has gained popularity among businesses in Vietnam, there is currently no established regulatory framework for crowdfunding activities, including lending-based and equity-based crowdfunding. There is still uncertainty surrounding whether equity-based crowdfunding is considered a "public offering" and thus subject to security law requirements. Given this ambiguity under the law, it appeared to be a positive development when the SBV suggested adding crowdfunding as a new fintech solution eligible for testing under the second version of the aforementioned draft fintech sandbox decree in 2022. However, crowdfunding was excluded from the list of eligible fintech solutions in the 2024 version of the draft.

ICOs. An initial coin offering (ICO) is a form of equity-based crowdfunding applicable to startup businesses using cryptocurrencies and other crypto assets and underlying blockchain technology. Crypto assets are currently not considered securities under Vietnam's law, and thus, ICOs are not specifically regulated under the law. Nevertheless, the SBV and the Ministry of Finance (MOF) did respond to a query from a Vietnamese company in 2018 by noting that the current legal framework does not permit fundraising activities through the issuance of crypto assets. While this may have reflected the enforcement approach of these authorities at that time, there is still no regulation under the current legal framework that explicitly states this restriction.

Asset Management. Asset management fintech solutions leverage software to track and manage users' financial attributes, such as spending patterns, assets, and investment portfolios. Through asset management, fintech companies can help users create customized savings plans, investment strategies, and fund management approaches through various financial instruments like certificates of deposit, deposit contracts, bonds, shares, debentures, and so on. Generally, Vietnam's laws permit individuals and businesses to trade financial instruments. Nevertheless, some specific asset management activities might fall within the scope of the regulatory framework concerning securities. In these scenarios, fintech companies may be viewed as securities brokerages and need a license from Vietnam's State Securities Commission (SSC) to operate within the legal framework.

Blockchain and Digital Assets

Crypto Assets. Vietnam’s legal landscape surrounding crypto assets is far from clear. While several regulations touch on the subject—and Vietnamese authorities have explicitly banned the use of crypto assets as a form of noncash payment—none of the existing regulations define the nature of crypto assets.

Some of Vietnam’s key regulations in the crypto space are three decisions issued by the prime minister between 2017 and 2021 to manage virtual property, electronic currencies, and enhance the management of activities related to Bitcoin and other virtual currencies, alongside approving strategies for e-government development towards digital government (Decision No. 1255/QD-TTg of August 21, 2017, Directive No. 10/CT-TTg of April 11, 2018, and Decision No. 942/QD-TTg of June 15, 2021, all). The SBV and the SSC also issued their own directives and guidelines (e.g., Official Dispatch 5747 and Official Dispatch 4486) warning lower-level banks, securities firms, and public companies to strengthen measures to control and deal with illegal crypto-related transactions. Nevertheless, these legal instruments do not establish a definitive legal status for crypto assets.

Crypto assets do not seem to fit neatly into any existing legal categories. They do not fall squarely within the definitions of either property/assets, securities, or goods/commodities under relevant laws and regulations. There are also no clear guidelines on tax obligations arising from crypto-related transactions.

Nonfungible Tokens (NFTs). Vietnamese law is similarly silent on the legality of NFTs, and it is uncertain whether NFTs may be classified as a type of property/assets or goods/commodities that can be freely traded or exchanged. Given the fact that most NFTs must be tied to another asset (such as an image, artwork, collection, antique artifact, etc.), they appear to be more of an anticounterfeiting certificate than an asset in and of itself. That said, within the realm of play-to-earn blockchain games, NFTs could be subject to certain restrictions. Specifically, many of these games enable players to transfer their in-game rewards in the form of NFTs beyond the virtual world of the game. Players can even sell these NFTs on secondary markets like OpenSea, Rarible, or Mintable for crypto assets (which can then be traded for fiat money). However, Circular 24 sets out that virtual items, virtual currency, and game points must be used only within the game in accordance with the purposes presented in the contents as approved by the authorities and cannot be exchanged for cash, game cards, coupons, or other items with value beyond the game. Hence, exchanging NFTs as in-game items for crypto assets, fiat money, or other valuable items outside of the game would be a violation of the online game legal regime.

Smart Contracts. The legality of smart contracts is also still a gray area in Vietnamese law. Since smart contracts are essentially computer codes capable of automatically executing actions based on “if-then” statements, it is unclear whether they can be considered valid substitutes for traditional contractual formats. Furthermore, smart contracts function autonomously, presenting liability concerns in the event of disputes. It is unclear who would be held accountable: the developers who wrote the code, the platforms that hosted the smart contracts, or the parties involved in the transactions.

Mobile Money and Mobile Banking

Mobile Money. Starting in 2021 with Prime Minister’s Decision 316 instituting a two-year pilot period for the implementation of mobile money, users have been able to open a mobile money account

attached to their mobile phone number (but separate from their telecommunication account) to trade for small-value goods and services, with a monthly maximum value of VND 10 million (approx. USD 405) and without having to use cash or bank accounts. Enterprises can provide mobile money services if they satisfy a number of stringent requirements—most notably, having a license to provide e-wallet services or having a license to establish a terrestrial public telecommunication network using a radio frequency (or being a subsidiary of such a licensee permitted to use telecommunication infrastructure, network, and data). The mobile money pilot program was extended to December 31, 2024, by the government’s Resolution 192, which also assigned the SBV and other relevant authorities to review, study, and report on the promulgation of legislation regulating mobile money by May 2024.

Mobile Banking. Mobile banking is considered an internet banking service, and service providers are required to implement certain security measures and prevent cyber threats. One of the measures is that the mobile application must authenticate users upon access and must not remember the access passcodes. In addition, entering incorrect passcodes too many times in a single session will result in the user being temporarily locked out of the application. The SBV’s Decision 2345, issued in 2023, provides specific authentication measures for online payments on the internet (including internet banking and mobile banking), applicable to credit institutions, branches of foreign banks, and providers of intermediary payment services. Notably, Decision 2345 requires an authentication mechanism using biometric data for certain types of transactions.

Noncash Payments and Intermediary Payment Services

Noncash Payments. Noncash payments are currently regulated by Decree 101 (from 2012) and its guiding legal instruments, most notably Circular 46 (from 2016). In 2020, the government issued Directive 22 on promoting the implementation of noncash payment solutions in Vietnam—a clear signal of the government’s intent to accelerate adoption of noncash payments in Vietnam. This directive tasked the SBV with, among other things, leading the development of a new decree to replace Decree 101. Furthermore, Circular 46 is among the 14 circulars that the SBV may revise and reissue in 2024.

Intermediary Payment Services. Circular 39 divides intermediary payment services (IPSs) into two broad categories:

- ◆ Services that provide electronic payment infrastructure, including financial switching services, electronic clearing services, and electronic payment gateway services; and
- ◆ Payment support services, covering collection and payment support services, electronic fund transfer support services, and electronic wallet/e-wallet services.

IPS providers must obtain a license from the SBV, and this is currently only available to onshore providers. Applicants for a license must meet strict technical and personnel conditions, including a minimum charter capital amount of VND 50 billion (about USD 2 million). The conditions may be altered, however, as the SBV’s legislative development strategy for 2024 includes the revision and replacement of Circular 39.

Lending

P2P Lending. In Vietnam, P2P lending platforms exist in a state of regulatory uncertainty. Traditionally, lending money falls under the purview of licensed institutions like banks. However, P2P companies

often position themselves as financial advisors, and individual investors who lend their money to other parties over the P2P lending platforms would claim their activities as “civil lending transactions” that are subject to the Civil Code. However, there is a risk that P2P lending activities might be considered unlicensed banking activity, and the SBV has previously warned against companies using misleading registered business lines to provide P2P lending services. P2P lending also inherently carries some serious risks such as credit risk, information security vulnerabilities, and money laundering. To address these risks, the SBV has released a draft Fintech Sandbox Decree, which would provide a controlled environment where certain fintech solutions including P2P lending could be tested. P2P companies participating in the sandbox would need to obtain a certificate of participation in the trial mechanism and comply with certain operating principles. This trial period would last two years, and the SBV would rely on the participants’ summary reports, as well as the monitoring, supervision, feedback, and comments from relevant ministries, to determine whether to discontinue the trial, certify its completion, or extend the trial period.

Buy Now, Pay Later. Buy now, pay later (BNPL) has emerged as a popular payment option, especially for online purchases. It entices consumers with the possibility to divide their purchases into smaller installments, often without incurring interest, along with a quick approval process. However, the core concern lies in whether BNPL falls within the definition of lending as outlined in the Law on Credit Institutions 2024 or is merely considered “purchases by deferred payment or payment in instalments” under the Civil Code, which allows traders to provide this payment option without a license.

However, if a BNPL arrangement incurs interest, it could potentially fall under the regulatory reach of the Law on Credit Institutions. Accordingly, any traders that provide a BNPL payment option may need to follow the stringent regulations and obligations set out in the Law on Credit Institutions 2024. Alternatively, traders may cooperate with a licensed credit institution to offer BNPL options. Nevertheless, neither the Law on Credit Institutions 2024 nor its related legislative instruments directly address BNPL. This ambiguity may impede the growth and development of Vietnam’s BNPL sector, as both providers and consumers have to navigate uncertainties regarding compliance and potential risks.

Other Fintech Services

Robo-advising. The current lack of specific regulations for robo-advisory services in Vietnam creates a situation where companies offering robo-advisory services may register under various business categories, such as financial consulting or market research. However, companies offering these services must still comply with certain relevant regulations, such as those on personal data protection and information security. This includes obtaining users’ consent for the collection and use of their personal data, ensuring its proper and secure storage, and implementing safeguards to prevent theft, leakage, and destruction of data.

Credit Scoring. Credit scoring is one of the three fintech solutions in the banking sector that falls within the scope of the draft Fintech Sandbox Decree. The provisions relating to credit scoring outlined in the draft Fintech Sandbox Decree only apply to the services provided by a credit scoring organization and do not cover the internal credit scoring activities of credit institutions. Similar to P2P lending providers, companies providing credit scoring services that wish to participate in the trial mechanisms described in the draft Fintech Sandbox Decree will have to comply with certain requirements regarding standards, licensing rules, and reporting obligations.

Insurance Technology. Insurance technology, or “insurtech,” aims to use technology to simplify and enhance the quality of the insurance industry and is a relatively new industry in Vietnam. Although it has not been specifically regulated yet, the Law on Insurance Business 2022 (Law No. 08/2022/QH15 dated June 16, 2022) has paved the way for further development of an insurtech legal framework in Vietnam by setting out (1) a database on insurance business activities, (2) principles for the application of technology in insurance business activities, and (3) the provision of insurance services and products in cyberspace. In addition, the MOF has been tasked with issuing legal instruments related to digital securities, which may include insurtech development.

Regulatory Technology. Regulatory technology—sometimes called “regtech”—helps providers of financial services comply with financial regulations, such as anti-money laundering regulations and know-your-customer (KYC) procedures to prevent fraud. While regtech-related regulations in Vietnam are still taking shape, Circular 16 on the opening and use of checking accounts with payment service providers represents a positive legislative development step by permitting electronic KYC processes. Now, a more comprehensive legal framework is needed to foster the growth and adoption of regtech solutions in Vietnam.

Open Banking. Open banking is gaining traction in Vietnam, with open banking APIs acting as the technological backbone for this development. These open APIs allow secure and efficient connections between customer applications, software, and digital platforms on the one hand and banking services on the other. Many credit institutions are already preparing to implement open APIs, including external APIs that connect with third-party applications. However, Vietnam currently lacks a comprehensive legal framework on open APIs, and the SBV is actively working to address this gap. Several key regulations are in the pipeline, including a draft decree replacing Decree 101 (the 2012 decree that regulates noncash payments), the draft Fintech Sandbox Decree, and a draft circular specifically regulating open APIs. These regulations are expected to address data sharing, information confidentiality, permissible API types, API standards, customer verification, and the rights and obligations of all parties involved in open banking. The draft circular on open API is expected to be promulgated by the end of 2024, alongside a separate circular guiding customer data sharing by banks in July 2024. These regulations will significantly impact the development and implementation of an open API framework in Vietnam.

Data Protection and Fintech

The burgeoning fintech industry thrives on the collection and processing of personal data. From providing insights into financial habits to enabling identity verification, this data fuels the innovative solutions that are reshaping the financial landscape. It is therefore crucial for fintech companies, related organizations, and individuals to prioritize personal data protection, especially with the issuance of Vietnam’s first-ever legal instrument focusing on personal data protection, the Personal Data Protection Decree (Decree No. 13/2023/ND-CP dated April 17, 2023).

The PDPD outlines several key principles that fintech companies must adhere to, including:

- ◆ Obtaining voluntary and explicit consent from data subjects before processing their personal data;
- ◆ Honoring the statutory rights of data subjects;

- ◆ Preparing and submitting a data protection impact assessment and a Cross-border transfer impact assessment (if necessary);
- ◆ Appointing a data protection officer and establishing a data protection department;
- ◆ Implementing managerial and technical measures to protect personal data; and
- ◆ Notifying necessary parties about breaches of personal data protection.

To streamline compliance with these principles and the broader framework established by the Personal Data Protection Decree, fintech companies in Vietnam should design and implement comprehensive, legally sound data protection strategies.

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