



Special Alert

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Government Plans to Launch Regulatory Sandbox for Fintech

Vietnam is one of the most dynamic countries in the East Asia region and it has seen dramatic growth in the financial technology (Fintech) industry over the past few years. It has attracted 36% of regional investment, second only to Singapore with 51%¹. The Fintech regulatory framework in Vietnam is still in its early years of development, however, and most of Fintech services have not been formally regulated under the current laws of Vietnam. This has created several obstacles in terms of State management. The operation of certain Fintech services raises concerns over black credit operations, money laundering, terrorism financing, cybersecurity and data breach, and consumer rights protection.

Policymakers in Vietnam have systematically introduced crucial legislation and policy documents to support and facilitate Fintech's development. Notably, in early June 2020, the State Bank of Vietnam (the "SBV") released the first version of a draft decree (the "Draft Decree") on the regulatory sandbox for Fintech ("Sandbox") for public comments. It should be finalized and submitted to the Government this month². The Sandbox is expected to provide a pilot mechanism for Fintech services that already operate to now do so under the color of law and the supervision of relevant competent authorities. It is hoped this will lay the foundation for a more comprehensive and effective legal framework in the near future.

There are several key issues of the Draft Decree that will be discussed in this Special Alert.

¹ Fintechnews Vietnam, "A Review of Vietnam's Fintech Industry in 2019", <https://fintechnews.sg/35968/vietnam/a-review-of-vietnams-fintech-industry-in-2019/>, last visited on 9 October 2020.

² VTV Digital, "Trình Chính phủ Nghị định thử nghiệm công nghệ tài chính (Fintech) trong tháng 10", <https://vtv.vn/kinh-te/trinh-chinh-phu-nghi-dinh-thu-nghiem-cong-nghe-tai-chinh-fintech-trong-thang-10-20200921073734097.htm>, last visited on 9 October 2020.

Fintech Definition Adopted

Despite the popularity of Fintech and its promise in an emerging market, there is still a lack of a concrete and universally accepted definition of Fintech. Along with the absence of the additional legal framework, this is a major challenge in the determination of business models and state management of Fintech activities.

In the Draft Decree, the SBV proposes three criteria for defining Fintech / Fintech services. In particular:

- (a) Fintech is the application of innovative, creative and modern technology;
- (b) Fintech services / solutions must be in finance-banking sectors (payment, funds transfer, peer-to-peer lending, assets management, etc.); and
- (c) It must provide customers with transparent, effective and convenient financial services at a lower cost than traditional financial services.

Limitation on Fintech Services and Eligible Players

According to the SBV's draft proposal letter issued in May 2020 with reference to a proposal on establishing the Draft Decree for the Sandbox (the "**Draft Proposal Letter**"), even though Fintech services are diverse, 90% of the Fintech companies and Fintech solutions support banking activities. Such a market practice seems to be the reason why the Draft Decree merely focuses on regulating Fintech services and solutions supporting banking activities, or in the nature of several types of banking services.

The Draft Decree thus limits entities eligible (the "**Eligible Entities**") to participate in the Sandbox as follows:

- (a) legal entities duly established and operating in Vietnam, which can be either (i) credit institutions, including banks, non-bank credit institutions, microfinance institutions and people's credit funds; or (ii) Fintech companies / Fintech solution providers partnered with banks; or (iii) independent Fintech companies / Fintech solution providers (i.e. entities not partnered with banks but directly providing services to end users); and
- (b) entities providing Fintech services in the following sectors covered by the Sandbox:
 - (i) payment;
 - (ii) credit;
 - (iii) peer-to-peer lending (P2P Lending);
 - (iv) services of customer identification support;
 - (v) open API;
 - (vi) innovative and creative-technologies-based solutions (e.g. Blockchain); or
 - (vii) other services supporting banking activities (e.g. credit rating, savings, capital

mobilization, etc.)

Fintech services / solutions not on this list will be subject to the Prime Minister's approval (to be issued on a case by case basis) for participating in the Sandbox, and the eligibility shall be evaluated and determined based on the potential and social-economic benefits such services may offer.

Regulatory Requirements and Approval for Sandbox Participation

In order to be approved to participate in the Sandbox, Fintech services / solutions offered by the Eligible Entities must satisfy the following requirements:

- (a) Fintech solutions are wholly or partially unregulated by the Vietnamese laws;
- (b) Fintech solutions must be applied in Vietnam for the first time or applied for new services, which are highly creative and beneficial to Vietnamese users, especially solutions supporting and promoting financial inclusion;
- (c) Fintech solutions must be equipped with a good risk management mechanism, with no or with little possibility of having negative effects on financial institutions and the financial system of Vietnam, and capable of tackling and reducing risks during their trial run under the Sandbox;
- (d) The function, use and helpfulness of the Fintech solutions have been properly evaluated by the Eligible Entities themselves, and have been deemed appropriate and accurate to achieve its intended purpose;
- (e) Fintech solutions must be highly feasible and commercialized with a detailed plan on distribution into the mass market upon completion of the trial run under the Sandbox; and
- (f) Fintech solutions do not pose any risks of possibly resulting in financial and economic disorders.

Eligible Entities which satisfy the above regulatory requirements shall obtain the Certificate of Registration of Sandbox Participation (the "**Participation Registration Certificate**") to be issued by the Prime Minister and thereby be recognized and approved as participants of the Sandbox (the "**Sandbox Participants**"), but shall be subject to the prior review and assessment by the SBV in coordination with certain line ministries (such as Ministry of Finance, Ministry of Public Security, Ministry of Science and Technology, Ministry of Information and Communications, etc.).

During such assessment, based on specific Fintech solutions, the SBV will engage the Eligible Entities in discussions, and accordingly may impose restrictions as to the scope of operation during the Sandbox in terms of (a) geography applied, (b) transaction limits and (c) number of end-users of the Fintech services.

The Draft Decree seems to put a further limitation in this regard, where there may only be a number, but not all, of the Eligible Entities to be approved as the Sandbox Participants. Such a maximum number of the Sandbox Participants will be ultimately decided by the Prime Minister.

Sandbox Duration

Duration of the Sandbox is proposed to be from one to two years from the issuance date of the Participation Registration Certificate, to be decided by the Prime Minister at his sole discretion, for specific Fintech services and sectors.

Risk-Based Approach Taken in Examination of Fintech Solutions

The SBV (possibly in coordination with specialized Ministries) will examine Fintech solutions provided during the trial run (“**Sandbox Examination**”) so as to come to a final decision upon completion of the Sandbox. As far as the policy view is concerned³, the risk-based approach would likely be taken as a main criteria for this Sandbox Examination. In particular, the following potential risks (if they arise from or in relation to any Fintech services offered by the Sandbox Participants) may be taken into account⁴:

- (a) Market abuse;
- (b) Financial exclusion;
- (c) Security and data breach;
- (d) Anti-money laundering (AML) and combating the financing of terrorists (CFT);
- (e) High intermediary fees;
- (f) Lack of transparency; and
- (g) Illegal debt collection.

Summary Report and Sandbox Completion

Upon the end of the Sandbox Participant’s participation, they must submit a comprehensive summary report, including information about (a) the outcome products, (b) metrics / benchmarks for measurement of success or failure of the trial results, (c) incidents and results of handling customers’ complaints, and (d) experiences and lessons learned from the trial run (the “**Summary Report**”).

Upon completion of the Sandbox and based on the Summary Report and the results of the Sandbox Examination, the SBV shall deliberate, decide and present to the Prime Minister a plan for the next phase of a particular Fintech service provided by a particular Sandbox Participant, and the Prime Minister will make the final decision on such plan, which can be:

- (a) Suspension of the trial run under the Sandbox;
- (b) Extension of the Sandbox duration, for a maximum of one year per request by the respective Sandbox Participant, provided that such request is submitted to the SBV two months prior to the end of the Sandbox duration; or
- (c) Issuance of a certificate of completion of the Sandbox (the “**Completion Certificate**”), which will serve as the grounds for the Fintech service to be legally and officially provided to the Vietnamese market.

³ Policy No. 5, the Draft Proposal Letter.

⁴ Policy No. 1, the draft Policy Impact Assessment Report of the SBV on establishing the Draft Decree for Sandbox, as attached to the Draft Proposal Letter.

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