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Investing in e-payment businesses in Vietnam

Introduction

In the last few years, online businesses have been booming in Vietnam, with the digital economy growing by more than 25 per cent in the past 12 months. Further, according to a recent study by Google and Temasek covering online taxi services, e-commerce, online travel and online media, in the past year Vietnam's internet economy has had the largest 'gross merchandise volume', relative to GDP, in South East Asia.

This rise of the digital economy (coupled with regulatory reform) has accelerated the uptake and use of electronic payments (or e-payment) in Vietnam. Over the past few years, e-payment activities in Vietnam have been developing rapidly, especially after the issue of Decree 101/2012/ND-CP in 2012 and, Circular 39/2014/TT-NHNN in 2014, which set out the legal framework for such e-payment activities.

As a result, there has been a sharp increase in foreign investment in the e-payment sector in Vietnam. Foreign investors have invested in more than one third of the licensed e-payment companies in the market (eg Momo, 1Pay, Paypoo, Mobivi and Ngan Luong), and about half of these companies now have majority foreign ownership.

However, despite the rapid growth in the market, e-payment companies face difficulties in making stable profits and attracting new customers. This is mainly due to the long-standing habit in Vietnam of using physical cash. Further, the current regulatory restrictions on cash top-up and withdrawal have prevented e-payment companies from expanding their reach to the significant portion of the population who do not have bank accounts.

In this report, we discuss Vietnam's legal framework for e-payment activities; the key legal issues and options for foreign investment in this sector; and the proposed changes to the e-payment regulations. While e-payment services can be provided, or invested in, by both bank and non-bank entities, our focus here is non-bank entities.

Overview of Vietnamese e-payment regulations

E-payment services: The provision of e-payment services (or *intermediary payment services*, as they are referred to in Vietnamese law) requires the State Bank of Vietnam (the ***SBV***) granting a separate licence (***IPS Licence***), which has a term of 10 years and can be renewed upon its expiry.

The current Vietnamese law recognises the following e-payment services:

(a) Payment support services (***Payment Support Services***), which include:

(i) *E-wallet service*: provision to customers of an e-wallet with which they can top up, withdraw money, and make online payments for online/offline products/services;

(ii) *Collection and payment support services*: provision of services to assist banks in providing collection and payment services (eg payment of water, electricity or TV cable fees) for customers with bank accounts; and

(iii) *Support services for electronic money transfer*: provision of services to assist the transfer of electronic money by banks, by allowing customers to transfer money between bank accounts using e-payment platforms.

(b) E-payment infrastructure services (***E-payment Infrastructure Services***): this service covers the provision of technical infrastructure that is essential to operate an e-payment system, such as data-processing, information communication, automated clearing or interbank settlement systems. By law, these services are classified as follows:

(i) *Financial switch*: provision of infrastructure for payments via ATMs, POS machines, and via the internet and mobile phones;

(ii) *Electronic clearing*: provision of infrastructure for payment data clearing processes; and

(iii) *Payment gateway*: provision of infrastructure to connect banks, Payment Support Service providers and customers, for online payments.

Conditions for an IPS Licence

An e-payment service provider is required to satisfy the following key requirements to obtain an IPS Licence:

(a) *Minimum charter capital*: VND50 billion (c. US$2,173);

(b) *Technical requirements*: having internal rules, the mechanism and infrastructure to guarantee payments, internal auditing, risk management, data storage, and IT and accounting management systems that are suitable for specific e-payment services;

(c) *Qualified personnel*: the general director and personnel in charge of an e-payment business must have expertise, and practical experience, in business management and/ or the e-payment business;

(d) *AML system*: to formulate and maintain internal rules for identifying customers (KYC), and for preventing and combating money laundering (AML); and

(e) Other requirements specific to each e-payment service.

E-wallet – most common e-payment service

E-wallets are the most popular e-payment service in Vietnam. However, unlike in some other countries in the region, such as Cambodia or Myanmar, e-wallet providers are required to partner with banks (which are also effectively their competitors) to provide e-wallet services, as they are not allowed to accept cash top-ups to, or cash withdrawal from, their e-wallets. This results in certain difficulties in their operations and in expanding their customer network, as follows:

(a) **No access to non-bank customers**: by law, customers are required to have bank accounts linked to their e-wallets to use an e-wallet service. This requirement prevents e-wallet providers from expanding their reach to a large market of non-bank customers in Vietnam.

(b) **Limit on top-up and withdrawal methods**: currently, the only official method to top up, or withdraw money from, an e-wallet is by using an account with a bank that is partnered with the e-wallet provider. To allow customers to top up and withdraw money using bank accounts at non-partnered banks, the e-wallet provider must connect with an entity providing E-payment Infrastructure Services (such as Napas) to allow access to banks in that entity's network.

E-wallet providers have a few options to deal with the above limitations and increase convenience for their customers:

(a) **Pilot program for cash top-up/withdrawal**: The SBV has approved a pilot program that allows an e-wallet provider to cooperate with banks to, through the banks' agents, accept cash top-up/withdrawal and transfer using such agents' e-wallets. However, so far, only Momo's e-wallet, in cooperation with Vietcombank, is known to have been granted this pilot licence. The SBV is considering providing an official legal framework for this program in its proposed new regulations on e-payment (see below for more details).

(b) **Top-up using pre-paid mobile cards**: A number of e-wallet operators allow top up using pre-paid mobile cards. However, the legal basis for such top-ups is still arguable and should be assessed on a case-by-case basis.

(c) **Building an e-co system to facilitate the use of e-wallet**: while the above limitations may result in customer reluctance to use e-wallet services in Vietnam, e-wallet providers commonly expand their customer base by: building their own business ecosystem (such as associated e-commerce and delivery platforms); or cooperating with third party service providers to promote the use of their e-wallets in connection with the use of the services they, or such third party service providers, provide. Eg Grab users are now required to use Moca (otherwise, payment must be made in cash with no discount); the SenPay wallet supports the Sendo e-commerce platform; and Zalo Pay cooperates with the Tiki e-commerce platform.

Foreign investment in the e-payment sector

Currently, there are no foreign ownership limits on the e-payment sector in Vietnam. However, since e-payment is not a sector of the domestic market that Vietnam, under its commitments to the World Trade Organization, is opening for foreign investment, the decision to allow foreign investment in the e-payment sector is subject to the Vietnamese licensing authorities' discretion, on a case-by-case basis. To date, there is a track record of e-payment companies being allowed to have more than 90 per cent foreign ownership. However, it has been rumoured a limit on foreign ownership may be introduced under the proposed new regulations on e-payment services, as discussed below.

Technically, foreign investors can invest in the e-payment sector in Vietnam either by setting up a new e-payment company or acquiring a stake in an existing e-payment company. That said, in practice, there is to date no record of a foreign- invested e-payment company having successfully been established as a greenfield investment. This is probably because it is more difficult for foreign investors to build connections with local banks in Vietnam and to prove they have satisfied the technical requirements, as discussed above.

Given this situation, M&A investment has proven to be the quickest and easiest way for foreign investors to penetrate the local e-payment market. In recent years, there has been an increasing trend of foreign investors acquiring interests in local e-payment companies: eg NTT Data acquiring a 64 per cent stake in Payoo in 2011; UTC Investment acquiring a 64.99 per cent stake in VNPT EPAY in May 2017; and Ascend Money acquiring a 90 per cent stake in 1Pay in October 2017.

The key regulatory steps for acquiring an existing e-payment company include:

Obtaining an M&A approval: the foreign investor is required to obtain an M&A approval from the local Department of Planning and Investment (***DPI***) before acquiring an equity interest in an e-payment company. The statutory timeline for obtaining an M&A approval is 15 days, though it may take longer in practice, as the DPI may decide to seek a further opinion from the SBV before giving approval.

Notification process with the SBV: although not expressly required by law, it is commonly expected that the e-payment company notify the SBV of 'substantial changes' to the content of its initial application for its IPS licence. This may be interpreted to include a change of control following the M&A process, or changes of e-payment product features, which normally result from the involvement of a new foreign investor.

Proposed changes to e-payment regulations

The SBV is in the process of preparing a new draft decree to replace Decree 101/2012/ND-CP (the ***New Decree***). When it will be issued is still unclear, but the current proposed draft includes the following notable changes:

Additional controls on e-payment services: it is proposed that e-payment services be added to the list of conditional business lines for stricter control, and more specific conditions for each e-payment service are expected to be introduced.

Limit on foreign ownership: it is proposed that a certain foreign ownership cap will be set for foreign investment in the e-payment sector. However, the proposed cap has not been disclosed. It is expected that if such a cap is introduced, a transition period, or separate grandfathering regulations, might be required for companies that already have foreign ownership exceeding the cap.

Cash top-up unleashed: by introducing the new concept of 'banking agents', which allows non-bank entities to perform payment activities on behalf of banks (such as accepting cash top-up and withdrawal), the New Decree opens up a new top-up option for e-wallet providers. This new proposal aims to facilitate payment activities in areas that have limited banking access, and may help facilitate the use of e-wallet services in Vietnam.

In addition to the New Decree, Vietnamese lawmakers are considering the creation of a regulatory sandbox, to support start-up companies in testing innovative products within a certain period of time, under the SBV's close supervision. Start-up companies, including fintech companies, may be able to use this regulation, if issued, to test new products. However, no detailed information on this draft regulation is available .

These proposed new regulations demonstrate the Government's efforts to keep up with the rapid pace of development of e-payment activities. They are aimed at better managing the risks involved with e-payment businesses, as well as facilitating the growth of e-payment businesses in Vietnam.

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Please do not hesitate to contact us if you would like further information on Vietnam's e-payment businesses and investing in the e-payment sector.

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