



Peer-to-peer lending in Vietnam

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Introduction

With technology and artificial intelligence gradually taking over the traditional banking and finance market, it is inevitable that Vietnam, a country with a population of 96 million and a 70% internet penetration rate, should be golden ground for fintech investors. In particular, in recent years peer-to-peer (**P2P**) lending has made its presence known, with more than 40 companies, both domestic and foreign owned, claiming to provide P2P lending services to local citizens.

In this report, we discuss the current operation of P2P companies in Vietnam, the relevant legal restrictions and the outlook for P2P regulation.

The model P2P business vs the Vietnam P2P market

Under the P2P business model (**model P2P business**) currently operating in neighbouring countries – in particular, Indonesia and China – P2P lending companies, in addition to connecting peer borrowers to peer lenders, are permitted to do a host of activities that are associated with traditional banking. These include conducting disbursement of loans on behalf of lenders, lending against the P2P companies' own balance sheet, provision of guarantees for the repayment of the loans, and trading and collection of overdue debts.

However, regulators have not caught up with the model P2P business, so Vietnam still has no legal framework for it. As a result, P2P companies in Vietnam are limited in their business activities and require registration of several conditional business lines if they wish to conduct some functions of a model P2P business.

This is because the additional activities listed above are still classified as banking-related activities, and may only be engaged in by credit institutions, intermediary payment services companies and other specialised companies. These entities must satisfy stringent qualifications to be licensed by the State Bank of Vietnam (the **SBV**) or the local Department of Planning and Investment (the **DPI**) to conduct the relevant activities.

As a result, P2P companies in Vietnam can only offer the most basic function of the model P2P business: the connecting of borrowers and lenders via their platforms. This is done through having licensed business lines such as financial management consulting, IT service and 'brokerage' (all of which are open for foreign investment in Vietnam).

While this approach is legal, the regulators have expressed reservations about the rise of P2P lending in the Vietnamese market. The SBV has cautioned Vietnamese credit institutions against partnering with P2P companies, and is in the process of creating pilot legislation for conducting and investing in P2P lending (see below for more details).

Legal issues

Lending by the P2P companies and by peers using P2P companies and peer lenders

Under Vietnamese law, entities, including those operating P2P platforms that are not licensed as credit institutions, are prohibited from conducting any 'banking activities', which are defined as the '*regular business and provision*' of credit extension (including lending and providing guarantees), receipts of deposits and payment services.

However, according to the SBV, 'peer' lenders using a P2P platform may lawfully lend if the transaction is a '*civil lending transaction*' under the Civil Code of Vietnam. In this case, the lender is not required to obtain a banking licence.

A transaction will not be a 'civil lending transaction' if it is conducted by a person as part of its regular business for profit making. Therefore, if a peer lender frequently lends, the transactions may no longer be classified as a 'civil lending transaction' and the lender may be found to have conducted banking activities illegally without a banking licence.

Debt trading and debt collection

A model P2P business may guarantee repayment of the peer lenders' loans by an agreement to acquire overdue debts. However, debt trading is a conditional business line under Vietnamese law. To conduct this business activity, a company must have a minimum charter capital of VND100 billion (c. US\$4.3 million) and managerial personnel satisfying certain qualifications.

Likewise, debt collection on behalf of lenders is a conditional business line. The law requires a company engaging in debt collection to have a minimum charter capital of VND2 billion (c. US\$86,000) and managerial personnel satisfying certain qualifications. Furthermore, due to the sensitive nature of this activity, which has attracted concern from the Government, the public and the media, after a debt-collecting company is established it must also satisfy a number of stringent requirements related to social security before it can officially commence business.

Vietnam has not made any commitments to open up debt trading and debt collection services to foreign investors. Therefore, the Vietnamese authorities have full discretion in licensing foreign investment in these sectors on a case-by-case basis, even if the above formal qualification criteria are satisfied. In practice, obtaining such a discretionary approval is not straightforward and is usually time consuming.

Future development

While P2P lending can create significant socio-economic benefits, it may also cause socio-economic instability, due to borrower defaults and money-laundering risks. These downsides are especially concerning in Vietnam, due to the preference for cash transactions, and 'loan shark' practices.

Therefore, the Vietnamese Government has taken a very cautious approach to opening up the P2P lending market, and only recently announced that a pilot P2P program, to provide a clearer framework for P2P lending in Vietnam, will be issued. The pilot program is expected to cover the following key points:

- a company with a P2P lending licence would be restricted to connecting lenders and borrowers, as currently performed by most P2P lending companies in Vietnam;
- no direct lending or mobilisation of capital by P2P companies will be allowed, with the result that credit institutions cannot participate in the pilot program; and
- peer lenders (which are not credit institutions) will not be allowed to carry out banking activities (eg providing loans on a regular basis for a profit-making purpose, as discussed above).

When the draft regulations will be made public is not clear. According to the SBV, the regulations will need to be issued after amendments to the investment law (on conditional businesses for foreign investors), tax law and banking law.

While investors who wish for a more open P2P lending market may find the proposed scope of the pilot program limited, in the grand scheme of things the Government's move towards legalising P2P lending demonstrates an effort to keep up with development of the fintech market globally. The issue continues to be whether the regulators will be able to keep an appropriate balance between maintaining social stability and allowing technology innovations in the market.

Please do not hesitate to contact us if you would like further information on Vietnam's P2P lending and fintech and on investing in this sector.

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