

TND LEGAL

INVESTMENT GUIDE HANDBOOK

MARKETPLACE LENDING IN VIETNAM

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INTRODUCTION

1 Quick Overview of TND Legal

Founded in 2015, **TND Legal** is a commercial law firm based in Ho Chi Minh city. Driven by our backbone philosophy of clear pricing and defined outcome, we offer our clients a wide array of legal services, from legal opinion and transactional drafting to licensing work and so on.

We established ourselves as a trusted advisor with a broad spectrum of legal expertise covering inward investment, corporate and commercial, mergers and acquisitions, real estate, labour and employment, dispute resolution and taxation.

We currently assist various Fintech specialised clients with their investment, regulatory compliance, and daily operations in Vietnam.

Read more [HERE](#).

2 Purpose and Structure of the Investment Guide Handbook

2.1 Marketplace lending (also known as online lending) in Vietnam is emerging at an incredibly rapid pace. This fertile business sector attracts lots of investors, both local and foreign, and has disrupted the conventional market which is heavily reliant on bricks and mortar financial institutions. Nonetheless, the development of marketplace lending is not currently being followed by an equivalent cohesive set of regulations. Bearing that in mind, this Investment Guide Handbook (the **Handbook**) is intended to provide an overview on the current regulatory landscape, selective legal issues, and prospective future regulatory developments in respect of marketplace lending in Vietnam.

2.2 This Handbook is crafted by our Fintech-oriented and experienced attorneys whose information can be found on the credit page hereof (Section “Authors & Contact” on page 19). The Handbook will focus on the below areas:

- 2.2.1 Overview market and regulatory landscape
- 2.2.2 Functions, registered business lines and market access conditions
- 2.2.3 Selective legal issues
- 2.2.4 Sandbox regime – Prospective regulating approach

3 Abbreviations

AML/CFT	Anti-money Laundering/Combating the Financing of Terrorism
CPC	Central Product Classification issued by the United Nations

DPI	Department of Planning and Investment
Government	Government of Vietnam
MOIT	Ministry of Industry and Trade
Platform	Marketplace lending platform controlled and operated by the Platform Operator
Platform Operator	Operator of marketplace lending platform
Sandbox	Controlled Testing Mechanism in Financial Technology Area
SBV	State Bank of Vietnam / Central Bank of Vietnam
VSIC	Vietnam Standard Industrial Classification

4 Exclusions and Disclaimers

- 4.1 This Handbook, or any part hereof, is published for information purposes only and does not in any way constitute formal legal advice nor legal opinion of TND Legal in respect of any matter covered hereunder.
- 4.2 To make informed decisions in respect of any investment in the areas covered by this Handbook, it is highly recommended that the reader seek formal legal advice and opinion from legal counsels licensed to practice in Vietnam.
- 4.3 TND Legal is not responsible for nor being held with liabilities in relation to or arising from any matters or issues contained in this Handbook.

5 Feedback

- 5.1 All feedback regarding the content of this Handbook is warmly welcomed and greatly appreciated.
- 5.2 Feedback, where appropriate, will be taken with thanks and, if appropriate, included in any subsequent update of this Handbook.
- 5.3 Kindly send all feedback to the contact address specified in “Authors & Contact” section of this Handbook.

OVERVIEW MARKET AND REGULATORY LANDSCAPE

Vietnam as a promising land for marketplace lending

Vietnam is quickly becoming a hotspot for marketplace lending based upon the below central pillars:

1. Young population

The Millennials (aged between 18 to 38) accounted for approximately 35% of the total population in 2021¹. In addition, a report from PricewaterhouseCoopers (PwC) has shown that those demographically designated as “Generation Z” (aged between 15 to 24) are likely to make up one-third of the total Vietnamese workforce by 2025². The Millennials and Gen Z are those who have been born in era driven by the internet and hence, their dominant influence in Vietnam will create a perfect environment for online services in general and online lending in particular.

2. High internet penetration rate

Vietnam is one of the developing countries that has an exceptionally high internet penetration rate, being around 70% in 2020³. This essentially means that at least 7 in 10 people are currently using the internet, hence, the potential outreach of marketplace lending is huge.

3. Low-level of credit accessibility

Despite the rise in the number of those being able to interact formally with the financial system, credit accessibility remains very low in Vietnam, especially in the context of young individuals and small and medium enterprises (SMEs)⁴.

4. Supportive macro-policy

In 2020, the Prime Minister of Vietnam approved the National Financial Inclusion Strategy (the **NFIS**) by 2025 with orientations towards 2030 through Decision 149. One of the main objectives of the NFIS is to promote digital technology applications and innovative

¹ “How Vietnam’s millennials will shape the country’s consumer economy” UK Investor Magazine <<https://ukinvestormagazine.co.uk/how-vietnams-millennials-will-shape-the-countrys-consumer-economy/>> accessed 23 Nov 2022.

² “How digital ready is Generation Z?” PwC <<https://www.pwc.com/vn/en/publications/2021/pwc-vietnam-digital-readiness-genz-en.pdf>> accessed 23 Nov 2022.

³ “Individuals using the Internet (% of population) – Vietnam” World Bank <<https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=VN>> accessed 23 Nov 2022

⁴ More than 70% of the SMEs have been unable to access credit granted by conventional banks (See: Phuong Anh Nguyen, Thuy Anh Tram Uong và Quang Dung Nguyen, “How Small- and Medium-Sized Enterprise Innovation Affects Credit Accessibility: The Case of Vietnam” 12 MDPI 2020 <<https://www.mdpi.com/2071-1050/12/22/9559>> (accessed 23 Nov 2022).

changes to deliver the financial services focusing on SMEs, low-income individuals, etc.

Common forms of marketplace lending platform in Vietnam

Since the conduct of professional lending activity is conditional upon the holding of specific *lending license*, the marketplace lending platform in Vietnam usually acts only as platform provider / technology facilitator and leaves the lending functions to its partners and customers comprising of *professional lenders* (e.g., conventional credit institutions and pawnshops) and *non-professional lenders* (e.g., individuals).

Overview regulatory landscape

No comprehensive set of regulations have been tailored to deal with the emergence of marketplace lending⁵. The incorporation, operation and mutual interaction with customers of the Platform Operator are primarily based on the generally existing provisions of laws (e.g., customary civil laws). Given that the general rules are broad and open to different interpretations, it is a common practice that the Platform Operator attempts to justify its own business model by fitting it (with certain modifications where required) into the existing legal concepts and regimes.

Despite much attention having been given to Fintech recently, there has not yet been any significant development in terms of a regulatory framework uniquely articulated for marketplace lending. Governing initiative (i.e., regulatory sandbox) has been proposed but nothing has yet been formalised.

⁵ This is affirmed by the SBV in its Official Letter No. 5228/NHNN/CSTT dated 8 July 2019.

FUNCTIONS, REGISTERED BUSINESS LINES AND MARKET ACCESS CONDITIONS

Functions of the Platform Operator

Subject to the precise pursued business model, each Platform Operator may run its Platform with certain unique functions. Nonetheless, in general, the Platform Operator usually acts either in any or all of the roles noted below.

Platform Operator as a loan broker

Matching lenders and borrowers via the marketplace lending platform – the Platform Operator takes the role of a loan broker.

Platform Operator as an operator of an e-commerce platform

Managing and operating the marketplace lending platform in the form of website or mobile app whereby lenders can opt to fund any listed loan through their account registered thereon – the Platform Operator takes the role of an operator of an e-commerce trading platform.

Platform Operator as a credit scorer

Running creditworthiness checks in respect of the borrowers and requested loans prior to listing the same in the marketplace – the Platform Operator takes the role of a credit scorer.

Platform Operator as a loan originator and servicer

Arranging loans to be originated in accordance with its terms (e.g., fixing interest rate and loan tenure), disbursing funds, managing the use of proceeds, collecting the principal sum and interest, following-up and facilitating debt collection efforts – the Platform Operator takes the role of a loan originator and servicer.

Business lines to be registered for the Platform Operator

When operating in Vietnam, a company is required to register for one or multiple business lines under the VSIC. Though the approach of the VSIC is rather open than limited, it is practically difficult, not least impossible, to pinpoint the precise category of VSIC that covers all the intended roles of the Platform Operator.

In absence of the same, separating each role of the Platform Operator and registering for the business line corresponding to such role has once been proposed as the most compliant approach. However, marketplace lending is often referred to as one unified business model rather than to each separate component thereof. In other words, any functional separation should be purported only to dissect the practical operation of the Platform Operator itself but not for the business registration purpose⁶. Therefore, in our opinion, registration of all business lines corresponding to every single function of the Platform Operator is neither advisable nor practically viable.

Viewing marketplace lending from a macro level, the Platform Operator actually provides financial services⁷ via the use of a digital platform connecting lenders and borrowers for lending activities. To that end, a Platform Operator is recommended to at least register for the key business lines outlined in the table below⁸.

No.	Business lines	VSIC	Rationale for registration
1.	Management consultancy activities	7020	<p>Main reason for the registration of VSIC 7020 does not lie in the substance thereof, but in the substance of its CPC counterpart.</p> <p>VSIC 7020 is considered to be equivalent to CPC 865 under which a sub-section of CPC 865 (i.e., CPC 86502 – financial management consulting services (except business tax)) provides a general description that the Platform Operator may, to a certain extent, fit its business model into the same⁹.</p>
2.	Activities auxiliary to financial service not elsewhere classified	6619	<p>Due to the generality of VSIC 7020 and its easy registration, it has been abused by the vast majority of Fintech stakeholders as an effective way to do finance related businesses in “grey-areas” in Vietnam. However, as the functions of marketplace lending reveal themselves through time, it is expected that VSIC 7020</p>

⁶ Unless in the case that certain unique function is offered as independent feature.

⁷ Marketplace lending is a supportive service for financial industry. This matches the definition of “financial services” provided in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) <<http://cptpp.moit.gov.vn/data/e0593b3b-82bf-4956-9721-88e51bd099e6/userfiles/files/11%20Chuong%20Dich%20vu%20tai%20chinh%20-%20VIE%20-%20revised.pdf>> accessed 28 Nov 2022.

⁸ To note that a majority if not all of the Platform Operator currently also registers for IT-related services and data processing service. However, as such business activities are not the main ones of the Platform Operator (as well as there are no significant legal issue in their registration), the Handbook will not cover the analysis thereof.

⁹ The explanatory notes of CPC 86502 reads as “Advisory, guidance and operational assistance services concerning decision areas which are financial in nature, such as working capital and liquidity management, determination of an appropriate capital structure, analysis of capital investment proposals, development of accounting systems and budgetary controls, business valuations prior to mergers and/or acquisitions, etc., but excluding advisory services on short-term portfolio management which are normally offered by financial intermediaries.”

		<p>will soon no longer be the key business line that the Platform Operator may rely upon.</p> <p>Focus has now been gradually shifted to VSIC 6619, especially as of the 2020 Investment Law coming into effect¹⁰, a business line linked directly to financial services and dedicated for business not specifically identified in other VSICs.</p> <p>That said, licensing practice varies quite differently among local DPIs in respect of this business line. Several local DPIs, as at the date hereof, take the view that VSIC 6619 may only be appropriate in the context of <i>finance companies</i>. As such, the registration of such VSIC 6619 for the Platform Operator may practically be rejected by such local DPIs.</p>
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One particular concern is whether the Platform Operator is subject to the e-commerce licensing regime, and whether relevant e-commerce related business lines should be registered for the Platform Operator. Considering the manner in which the Platform Operator delivers their services, it can unarguably be concluded that the Platform Operator is engaging in e-commerce activities. However, it should be noted that not all e-commerce activities are subject to the licensing regime governed by the Decree 52. Accordingly, Decree 52 excludes from its applicability, among other things, *financial services* which have been covered under specific laws¹¹. Though marketplace lending has not yet been governed by any specific law, MOIT seems quite sceptical about bringing it under the scope of Decree 52. Despite ambiguity, some prudent Platform Operators, mostly local rather than foreign-owned¹², have opted to register for VSIC 6312 (Web Portals) and/or VSIC 8299 (Other business support not elsewhere classified) - those considered as e-commerce-related lines of business. Nonetheless, such registration, in our opinion, does not substantially raise the level of compliance for any Platform Operator because obtaining either the “registration badge” or the “notification badge”¹³ (as the case may be) from the MOIT, which are the key requirements from a compliance perspective, remains merely impossible in the current practical context¹⁴.

Market entry conditions

¹⁰ This is because there seems to be no limitation on the ratio of foreign ownership imposed on this business line (See our analysis in the below sub-section of *market entry conditions* for further analysis)

¹¹ Decree 52, Art. 1.2.

¹² The main reason is because of the technical barrier as outlined in the “market entry” section below.

¹³ Subject to the nature of the e-commerce website, the operator will be required to obtain either the “notification badge” or a more complex “registration badge” from the MOIT (Decree 52, Art. 27.1 and Art. 36.1)

¹⁴ This is because, as outlined above, MOIT seems to be uncertain whether the Platform falls under the applicability of Decree 52.

Since the 2020 Investment Law came into effect, Vietnam, at least in theory, has significantly opened its market for foreign investors. In essence, the foreign investors will be granted with access to any business sector as if they were the Vietnamese investors, provided that such business sector is not the inaccessible or conditional one specifically set out by law.

Management consultancy service

Management consultancy service (VSIC 7020 / CPC 865) is entirely opened up for the foreign investors without any market access limitations, either by virtue of the WTO commitments or the new approach adopted by the 2020 Investment Law.

Activities auxiliary to financial service not elsewhere classified

Certain market access conditions are explicitly imposed on several financial services including insurance, banking, securities and related services thereof¹⁵. However, it is unclear whether marketplace lending falls under the category of *banking related services*. In our opinion, given the recent development as can be seen in the European Union (EU) – Vietnam Free Trade Agreement (the **EVFTA**), it can be implied that emerging financial services such as marketplace lending may not be categorised as a banking related service but rather be defined as a new financial service¹⁶. Accordingly, Vietnam reserves the right to impose “a pilot testing program for a new financial service, and in doing so may impose either a cap on the number of financial service suppliers that may participate in pilot testing or restrictions on scope of pilot testing program. These measures shall not be more burdensome than necessary to achieve their aim”. This reservation also fits the last section of the list of conditional business lines for market access provided by Decree 31 which is read as “business line in which investment is under pilot mechanisms of the National Assembly, Standing Committee of the National Assembly, the Government or the Prime Minister”¹⁷.

In general, taking into account the existing legal framework as well as the reasonably predicted legal development in Vietnam, marketplace lending under VSIC 6619 may not be restricted in terms of foreign ownership ratio but may likely be imposed with other market access conditions as briefly addressed under the EVFTA (as well as the Draft Sandbox Decree set out in Section “Sanbox regime – Prospective regulating approach” hereunder).

E-commerce activities

E-commerce activities fall under the list of business activities conditional for market access of a foreign investor¹⁸. The vast majority of the conditions focus on foreign investment made to the top 5 leading e-commerce enterprises in Vietnam (mainly concentrating on the issues of national and public security)¹⁹. The laws provides almost no market access conditions for investment outside of these giants. That said,

¹⁵ Decree 31, Item 4 of Appendix I(B).

¹⁶ See more in Appendix 8-B of EVFTA, section 7 “financial services”.

¹⁷ Decree 31, Item 59 of Appendix I(B).

¹⁸ Decree 31, Item 55 of Appendix I(B); Decree 52, Art. 67c.1.

¹⁹ Top 5 leading e-commerce enterprises in Vietnam are announced by MOIT from time to time (See Decree 52, Art. 67c).

technical barriers remain an obstacle for a foreign investor as all foreign-invested companies carrying out e-commerce activities in Vietnam is required to obtain the sub-license namely *business license* under Decree 09. The process of which in practice is arbitrarily tightened or loosened from time to time. As at the date hereof, and from our practical experience, it is highly likely that the licensing authority shall seek supporting opinions from MOIT, and other relevant Ministries prior to granting permission to provide e-commerce services.

SELECTIVE LEGAL ISSUES

Non-lender status of the Platform Operator

The Platform Operator acts only in the role of a service provider that provides the Platform as well as add-on services to the lenders and borrowers transacting via the Platform. Any Platform Operator without a proper lending license that takes the on role of a professional lender itself is deemed to be illegal under the laws of Vietnam.

Eligible lenders onboarding the Platform

When investing on the Platform, a lender may opt to fund a loan or series of loans in respect of one or multiple borrowers on an occasional or a frequent basis. While occasional lending should not raise any particularly notable legal issue, frequent lending may be treated as a *banking operation*²⁰, and therefore is prohibited under the Law on Credit Institution unless it is conducted by a licensed credit institution²¹. Though such prohibition applies to both individuals and organisations, the risk of being challenged, from a practical perspective, may be much more significant in the context of the organisational lender²².

Nonetheless, it is vital to understand that, not in all cases, an ordinary company can be prohibited from lending. The Law on Credit Institution provides a frequency test whereby only an act of lending that is conducted on a frequent basis shall be considered as a banking operation. Unfortunately, up to the date hereof, no parameters have been set to determine such frequency.

Given such, reluctance remains high in bringing ordinary companies to onboard the Platform as the lender. From a market perspective, common lenders on the Platform comprise of (i) individuals; and (ii) those professionally licensed to lend (e.g., credit institutions (usually banks and finance companies) and pawnshops).

A less common lender is a fund management company²³, engaging in lending activity on the basis of managing trust assets of (i) foreign trustors; or (ii) trustors that are also owners of trust assets²⁴. However, since the relevant regulations do not explicitly mention which lending mechanism (e.g., direct lending or

²⁰ Law on Credit Institution, Art. 4.12.

²¹ Law on Credit Institution, Art. 8.2.

²² This is simply because an organisation is managed and overseen in much stricter manner in comparison with individual ones (e.g., a company is required to prepare financial statement or under the supervision of the relevant DPI while seemingly individuals are not required to be subject to any reporting duties, save for tax related matters).

²³ Under Art. 2.3 of Circular 99, “*Fund management company*” means an enterprise that has been issued with the securities trading license by the State Securities Commission of Vietnam, and takes charge of managing securities investment fund and securities portfolio, and providing securities investment consulting services.

²⁴ Circular 99, Art. 11.6(d).

via-third-party lending or else) would be acceptable, the extent to which this can be deployed in practice remains largely at doubt.

Personal income tax (PIT) for individual lenders

Individual lenders receiving interest from loan through the Platform will be subject to the PIT. The question remains as to whom will be burdened with liaising with the tax authority for fulfilling the same. Tax laws provide a general concept of *income-paying organisation* which essentially requires the organisational income tax payer to be liable to deduct from the income of the individual payee and make payment of the applicable PIT to the State²⁵. In marketplace lending business model, the income-paying organisation may either be the Platform Operator (since the Platform Operator manages and distributes funds) or the borrower (in case the borrower is an organisation) (since the origination of the income is from the borrower). This, however, confused both the local tax authority as well as the Platform Operator on the appropriate approach to deal with PIT of the individual lenders investing through the Platform.

Our practical recommendation is that the Platform Operator should proactively take the role of *income-paying organisation*. This is not only to ensure the level of compliance with the tax laws but also to address the concern from the SBV in terms of minimising the tax evasion risk²⁶. That being said, in absence of clear guidelines, several local tax authorities remain sceptical about allowing the Platform Operator to act in the role of an income-paying organisation.

Loan interest

As loans on the Platform are contracted on the basis of it being the civil transaction (unless the lender involved on the Platform is a credit institution which is not a common practice in Vietnam), then the capped interest rate permitted by law is 20% per annum²⁷. Any rate beyond such a ceiling may be considered null and void and might even be considered as a criminal offense²⁸.

AML and CFT compliance

Money laundering and financing terrorism have been widely accepted as being amongst the most material risks associated with the operation of marketplace lending²⁹. However, it is not clear as to which AML/CFT requirements the Platform Operator will be subject under the existing AML/CFT legal framework of Vietnam. Vietnam adopts a risk-based approach to dealing with each particular type of subject. In other words,

²⁵ Circular 111, Art. 25.1(d).

²⁶ Tax evasion is one of the main concern in respect of the operation of marketplace lending indicated in the official statement of SBV with respect to marketplace lending (See: https://www.sbv.gov.vn/webcenter/portal/vi/menu/trangchu/ttsk/ttsk_chitiet?leftWidth=20%25&showFooter=false&showHeader=false&dDocName=SBV355385&rightWidth=0%25¢erWidth=80%25&_afLoop=5104035753677100)

²⁷ Civil Code, Art. 468.1.

²⁸ See Art. 201 of the Criminal Code.

²⁹ See Official Letter No. 5288/NHNN-CSTT dated 8 July 2019 of the SBV regarding the operation of marketplace lending.

depending on the level of AML/CFT risk being exposed to, each particular subject must adhere to the corresponding level of AML/CFT compliance, either a standard or enhanced requirement. Under the AML Law, most, if not all, AML compliance requirements are only applicable to *financial institutions*³⁰ and *organisations and individuals doing business in relevant non-financial sectors*³¹. However, considering different categories listed therein, fitting the Platform Operator into any of the aforementioned group seems to imply a forced requirement to comply. Therefore, there lacks of a unified approach on what mandatory AML/CFT requirements should be adhered to by a Platform Operator.

Data storage

Personal data of the service users, data created by such service users and data on the relationships of the service users in Vietnam are required to be stored in Vietnam³². However, the form of data storage in Vietnam may be selected by the Platform Operator at its own discretion³³. Data storage requirements in Vietnam are mainly supervised by the Ministry of Public Security.

Exercising of services of collection and payment on behalf

As most Platform Operators receive funds deposited by the lenders, manage and then disburse the same to the borrowers through the Platform, it is legally debatable on whether the Platform Operator in that sense acts as a *payment service provider*, the conduct of which requires a proper sub-license to be obtained beforehand³⁴. Considering the operation of the Platform as a whole, this fund managing function is not an independent service provided by the Platform Operator and is only a small part of a whole business model. Hence, taking out a function thereof to determine the nature of the whole business is neither correct nor logical. Therefore, we take the view that it would be odds if the Platform Operator is treated as a payment service performing the collection and payment on behalf as a stand-alone service.

³⁰ Under Art. 4.3 of the AML Law, the *financial institutions* comprise of the organisations licensed to (i) receiving deposits; (ii) lending; (iii) financial leasing; (iv) payment services; (v) issuing the instruments of assignment, credit cards, debit cards, money orders, electronic money; (vi) bank guarantee and financial undertaking; (vii) providing foreign exchange services and monetary instruments of the monetary market; (viii) consulting & guaranteeing the securities issuance and agency of securities distribution; (ix) managing investment capital portfolio; (x) managing cash and securities for other organisations and individuals; (xi) providing insurance services and investment operation related to life insurance; and (xii) money change.

³¹ Under Art. 4.4 of the AML Law, the *organisations and individuals doing business in relevant non-financial sectors* comprise of those (i) doing business in games with prizes, casino; (ii) doing business in the services of real estate management, the brokerage of real estate, real estate trading floor; (iii) trading in precious metal and stone; (iv) providing notary and accounting service, legal services of lawyer and lawyer practising organisation; and (v) investment trust services, services of establishment, management and executive of enterprise; services of director and secretary provision of the enterprise to a third party.

³² Decree 53, Art. 26.1; Cybersecurity Law, Art. 26.3.

³³ Decree 53, Art. 26.5.

³⁴ See Circular 46.

SANDBOX REGIME – PROSPECTIVE REGULATING APPROACH

Sandbox initiative

As a global concept, sandbox in general is referred to as a “framework set up by a financial sector regulator to allow small scale, live testing of innovations by private firms in a controlled environment (operating under a special exemption, allowance, or other limited, time-bound exception) under the regulator’s supervision”³⁵.

As with many other developed countries (e.g., the United Kingdom or Singapore), the Government in Vietnam also proposed sandbox as an appropriate approach to regulate Fintech. Accordingly, the first draft of the sandbox legislation, known as Draft Decree on Controlled Testing Mechanism in Financial Technology Sector (the **Draft Sandbox Decree**), was released in around June 2020. Most recently, on 5 April 2022, SBV released the second draft of the Draft Sandbox Decree which provides much greater details of the guidelines for sandbox scheme³⁶.

Despite high expectation and continuing market pressure on releasing the same, as of the date of this Handbook, the Draft Sandbox Decree has not yet been finalised.

Interim sandbox application guidelines

The interim sandbox application guidelines hereunder are provided on the basis of the second draft of the Draft Sandbox Decree, and are for reference purposes only. Guidelines hereunder may no longer be appropriate in case the officially issued sandbox legislation is different from the second draft of the Draft Sandbox Decree.

Sandbox entry criteria³⁷

No.	Standard criteria	Brief elaboration
1.	Being a solution whose technical and professional content is completely not	The explanation should concentrate on analysing the grey area of the laws in terms of regulating

³⁵ Mark Fenwick, Steven Van Uytsel, Bi Ying, *Regulating Fintech in Asia – Global Context, Local Perspective* (Springer 2020), 13.

³⁶ The most recent version could be found at:

https://www.sbv.gov.vn/webcenter/portal/m/menu/trangchu/ddnhnn/lykdtvbqpp/ctlykdtvbqpp?leftWidth=0%25&dID=483454&showFooter=false&expired=true&showHeader=false&dDocName=SBV493426&rightWidth=0%25¢erWidth=100%25&_afLoop=33957473132968311#%40%3F_afLoop%3D33957473132968311%26centerWidth%3D100%2525%26dDocName%3DSBV493426%26dID%3D483454%26expired%3Dtrue%26leftWidth%3D0%2525%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26_adf.ctrl-state%3Dvl5qnjkee_40 <accessed on 28 August 2022>

³⁷ Draft Sandbox Decree, Art. 9.3.

	<p>specified in any legal documents or the prevailing legal regulations do not have specific and clear instructions for implementation</p>	<p>marketplace lending, showcasing the comprehensive knowledge of the Platform Operator in respect of the current legal framework.</p> <p>In doing so, reference to certain existing banking and finance regulations, as well as to what extent and how they are applied to the marketplace lending activities, is highly recommended.</p>
2.	<p>Being an innovative solution that brings benefits and added value to service users in Vietnam, especially solutions to support and promote the goal of financial inclusion</p>	<p>Specific benefits for service users, both lenders and borrowers when using marketplace lending, should be thoroughly addressed. Comparison to the competitors or conventional credit institutions should also be made, where relevant.</p> <p>One of the important factors with respect to this criterion is to demonstrate how the business model adopted by the Platform Operator promotes the goal of financial inclusion as set out in Decision 149 (on approving NFIS by 2025 with orientations towards 2030).</p>
3.	<p>Being a solution designed and built with a risk management framework, limiting negative impacts on the banking system and banking – currency – foreign exchange activities; having developed a reasonable plan on handling and overcoming risks occurring in the appropriate testing process</p>	<p>The Platform Operator must demonstrate that it is capable of (i) identifying risks; (ii) having proper risk prevention measures; and (iii) having a reaction plan if risks occur.</p> <p>Risks to be covered herein may include but not limited to (i) liquidity risk, (ii) credit risk, (iii) operational risk, (iv) legal risk, (v) reputational risk, (vi) moral hazards, (vii) cybersecurity risk, (viii) AML/CFT risk, (ix) security, confidentiality, and data leakage risk.</p> <p>As can be inferred from the specific guidelines in relation to this criterion, the key concerns of SBV lie upon (i) maintaining the stability of the banking and financial system of Vietnam and (ii) enhancing the level of customer protection. Hence, all explanatory statement for this criterion should take into account these concerns.</p>

4.	Being a solution that has been fully reviewed and evaluated by the Platform Operator, in terms of operation and function, utility and usefulness	<p>The Platform Operator should be able to demonstrate that its business could bring benefits to the service users and other stakeholders participating in the model. For those models supporting existing businesses, the delivery of those existing businesses should be enhanced by way of applying such model.</p> <p>The substance of this criterion, however, remains vague and is expected to be further elaborated by the SBV to avoid duplication with the second criterion.</p>
5.	Being a feasible solution that can be supplied to the market upon completion of testing process	<p>Satisfaction of this criterion may be demonstrated through the following factors (i) a clear medium and long-term financial plan for deployment of the business model (including but not limited to capex and opex, owner's equity and mobilised funds), projected loss and expected profitable period; (ii) experience and capacity of the Platform Operator, in terms of financial and technical resources as well as human resources.</p> <p>All of the above factors must justify the deployment of the business model on a mass scale upon sandbox "graduation".</p>

Sandbox testing boundaries

The Platform Operator may proactively propose the boundaries to which its operation may be limited. The boundaries relate to geographical limitation, transactional limit, quantity of customers, platform fee and loan interests³⁸. SBV will have the final say on these boundaries and such cannot be varied during the testing period³⁹.

Restrictions

³⁸ Draft Sandbox Decree, Article 15.4(b).

³⁹ Draft Sandbox Decree, Article 12.2.

Upon the participation in Sandbox, the Platform Operator and its key personnel would be imposed with several restrictions which are also the operational principles that they have to maintain during the term of testing the mechanism, particularly as noted below⁴⁰:

The Platform Operator itself would not be permitted to

- ✓ provide loan security measures;
- ✓ provide information brokerage services for borrowing money for stock investment and other high-risk activities;
- ✓ illegally use customers' money;
- ✓ include the pawning activities in its business registration.

and

Platform Operator's key personnel would assure the following conditions:

- ✓ The founding personnel, and executive managers do not participate in borrowing and lending and are not guarantors through the Platform operated by themselves, taking advantage of management and operating knowledge to change information through the Platform, performing acts of fraud, appropriating customers' assets;
- ✓ The management and operation personnel of the Platform Operator to act concurrently as the owner and management personnel of the enterprises providing financial, credit services, being pawnbroker, multi-level marketing enterprise, being owners of "hui/ho"⁴¹ chain or working in the banking sector, doing business in areas related to payment intermediaries, e-wallets.

Treatment to non-participant of sandbox

Those Platform Operators that fail to enter into sandbox or opt not to participate in the same would not be required to cease its operation, or be explicitly prevented from carrying out its business so long as they comply with the applicable laws⁴². From a practical perspective, it is unclear as to whether any technical measure that would be taken by the State authorities to limit the operation of non-participant of sandbox. This question may only be answered upon the sandbox being formally deployed.

⁴⁰ Draft Sandbox Decree, Articles 13 and 14

⁴¹ A type of transaction based on customary practice, see Art. 471 of the Civil Code.

⁴² Draft Sandbox Decree, Article 6.

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SCHEDULE – LIST OF LEGISLATIONS USED IN THIS HANDBOOK

Civil Code	Civil Code No. 91/2015/QH13 issued by the National Assembly on 24 November 2015
Criminal Code	Criminal Code No. 100/2015/QH13 issued by the National Assembly on 27 November 2015, amended and supplemented by Law No. 12/2017/QH14 issued by the National Assembly dated 20 June 2017
2020 Investment Law	Law on Investment No. 61/2020/QH14 issued by the National Assembly dated 17 June 2020
Law on Credit Institution	Law on Credit Institution No. 47/2010/QH12 issued by the National Assembly dated 16 June 2010, as amended and supplemented by Law No. 17/2017/QH14 issued by National Assembly on 20 November 2017
Cybersecurity Law	Law on Cybersecurity No. 24/2018/QH14 issued by the National Assembly dated 12 June 2018
AML Law	Law on Anti-Money Laundering No. 07/2012/QH13 issued by the National Assembly dated 18 June 2012
Decree 09	Decree No. 09/2018/ND-CP on commerce and law on foreign trade management regarding sale of goods and other activities directly related to sale of goods of foreign investors and foreign-invested business entities in Vietnam issued by the Government dated 15 January 2018
Decree 52	Decree No. 52/2013/ND-CP on e-commerce issued by the Government dated 16 May 2013, amended and supplemented by Decree No. 85/2021/ND-CP issued by the Government dated 25 September 2021
Decree 31	Decree No. 31/2021/ND-CP on guidelines of some articles of the 2020 Investment Law issued by the Government dated 26 March 2021
Decree 53	Decree No. 53/2022/ND-CP on guidelines of some articles of the Cybersecurity Law issued by the Government dated 15 August 2022

Decision 27	Decision No. 27/2018/QD-TTg promulgating Vietnam Standard Industrial Classification issued by the Prime Minister dated 6 July 2018
Decision 149	Decision No. 149/QD-TTg introducing national financial inclusion strategy by 2025 with orientations towards 2030 issued by the Prime Minister dated 22 January 2020
Circular 111	Circular No. 111/2013/TT-BTC on the implementation of the Law on Personal Income Tax and the Government's Decree No. 65/2013/ND-CP elaborating a number of articles of the Law on Personal Income Tax and the Law on the Amendments to the Law on Personal Income Tax issued by the Ministry of Finance dated 15 August 2013, amended and supplemented by Circular No. 119/2014/TT-BTC, Circular 151/2014/TT-BTC, Circular No. 92/2015/TT-BTC, Circular 25/2018/TT-BTC and Circular 80/2021/TT-BTC
Circular 99	Circular No. 99/2020/TT-BTC on providing guidance on operation of securities investment fund management companies issued by the Ministry of Finance dated 16 November 2020
Circular 46	Circular No. 46/2014/TT-NHNN on guidelines on non-cash payment services issued by the SBV dated 31 December 2014

