

Highlights of a new Decree on non-cash payments

By Vision & Associates

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On 15 May 2024, the Government issued Decree No. 52/2024/ND-CP regulating non-cash payments (“Decree 52”). Decree 52 shall take effect from 1 July 2024.

Compared to Decree No.101/2012/ND-CP dated 22 November 2012, on non-cash payments, as amended by Decree No. 80/2016/ND-CP dated 1 July 2016 and Decree No. 16/2019/ND-CP dated 1 February 2019 (“Decree 101”), Decree 52 has some notable new points as follows:

1. Regulated entities:

Decree 52 expands the entities to be regulated, including *not only* those providing non-cash payment services (NPS), those providing payment intermediary services (PIS), and organizations and individuals using NPS and PIS as previously stipulated in Decree 101, *but also* those related to the supply activities of NPS and PIS.

2. Some new and notable terms:

(a) Decree 52 redefines:

(a) PIS include financial switching services, international financial switching services, electronic clearing services, electronic wallet services, collection and payment support services and electronic payment gateway services (*instead of (a) Provision of electronic payment facilities, including: Financial switching services; Electronic clearing services; Electronic payment gateway services; (b) Payment service support, including: Services of authorized collection, authorized payments; Electronic money transfer support services; Electronic wallet services and Other payment intermediary services according to the regulations of the State Bank as stipulated in Decree 101 and its guiding Circular*); and

(b) Electronic wallet service is a service provided by banks, foreign bank branches, and organizations providing PIS to customers to deposit money into electronic wallets, withdraw money from electronic wallets, and make payment transactions (*for comparison, Decree 101 defines electronic wallet service as a service that provides customers with an identifiable electronic account created by PIS providers on a items containing information such as electronic chips, mobile phone sims, computers..., allowing the storage of a monetary value guaranteed by the deposit value equivalent to the amount transferred from the customer's payment account at the bank to the payment guarantee account of the organization providing electronic wallet services at a ratio of 1:1*).

(b) Decree 52 adds payment services without payment accounts of clients, including not only money transfer, authorized collection, authorized payment services as provided in Decree 101 but also other payment services without accounts implemented according to the regulations of the State Bank of Vietnam (SBV);

(c) Decree 52 also adds some new definitions such as:

(i) Electronic money is the monetary value in Vietnamese Dong stored on electronic media (including electronic wallets, prepaid cards) provided on a reciprocal basis

Hanoi Office

Add: Unit 308-310, Floor 3, Hanoi Towers
49 Hai Ba Trung St., Hoan Kiem Dist., Hanoi, Vietnam
Tel: +84-24-3934 0629 Fax: +84-24-3934 0631
Email: vision@vision-associates.com

Ho Chi Minh City Office

Add: Unit 905, Floor 9, CitiLight Tower
45 Vo Thi Sau St., District 1, HCMC, Vietnam
Tel: +84-28-3823 6495 Fax: +84-28-3823 6496
Email: hcmvision@vision-associates.com

Website: <http://www.vision-associates.com>

with the amount prepaid by customers to the banks, foreign bank branches, PIS providers providing electronic wallet services;

- (ii) International financial switching service is the connection to the international payment (IP) system to transmit and process electronic data of IP transactions.

3. NPS providers:

Decree 52 continues to define NPS providers including the State Bank, banks, foreign bank branches, people's credit funds, and microfinance institutions; but has changed "some other organizations" as provided for in Decree 101 to "enterprises providing public use postal services".

4. Requirements for providing PIS:

If commercial banks and foreign bank branches are still allowed to provide electronic wallet services, then according to Decree 52, in order to obtain a License for provision of PIS from the SBV, other organizations than commercial banks or foreign bank branches must fully meet and ensure to maintain the following new conditions throughout the process of providing PIS:

General conditions:

- (a) (Actually contributed or minimum allocated) Charter capital: is VND 50 billion for electronic wallet services, services of authorized collection, authorized payments and electronic payment gateway services; VND 300 billion for financial switching services, international financial switching services, electronic clearing services (*Decree 101 required a minimum charter capital of VND 50 billion for all services*); PIS providers shall take solely responsibility for the legality of contributed or allocated capital source;

- (b) Human resources: The legal representative (LR), General Director (or Director) of the applicant must have a university degree or higher in one of the fields of economics, business administration, law, information technology (*this is new industry added by Decree 52*) and least 5 year working experience (*at least three year direct working* as required by Decree 101) as a manager or operator of an organization in the field of finance and banking; and must not be prohibited entities according to the provisions of the law. The applicant must ensure that there is always at least one LP residing in Vietnam (When there is only one LP residing in Vietnam, this person must authorize in writing another individual residing in Vietnam to perform the rights and obligations of the LP when he/she leaves Vietnam).

Deputy General Director (or Deputy Director) and key staff implementing the Project on providing PIS (including Head of Department (Division) or equivalent and technical staff) have a junior college degree or higher in one of the following fields: economics, business administration, law, information technology or specialized fields (*Decree 52 replaces the two fields of finance and banking under Decree 101 with business administration and law*);

- (c) Techniques: A written description of the technical solution for the provision of PIS applied for licensing, which has been approved by a competent authority is still required in the applicant's Charter, is kept by Decree 52; and it is further required that it must ensure level 3 information system security according to the provisions of the law.

Specific conditions (applicable to each specific service):

- (d) For electronic wallet services and authorized collection, authorized payment services for customers with accounts at many banks and foreign bank branches: PIS providers must

Hanoi Office	Ho Chi Minh City Office
Add: Unit 308-310, Floor 3, Hanoi Towers 49 Hai Ba Trung St., Hoan Kiem Dist., Hanoi, Vietnam Tel: +84-24-3934 0629 Fax: +84-24-3934 0631 Email: vision@vision-associates.com	Add: Unit 905, Floor 9, CitiLight Tower 45 Vo Thi Sau St., District 1, HCMC, Vietnam Tel: +84-28-3823 6495 Fax: +84-28-3823 6496 Email: hcmvision@vision-associates.com

engage a financial switching and electronic clearing services provider licensed by the State Bank to perform financial transaction switching and clearing of obligations arising in the process of its provision of PIS;

- (e) For financial switching services, electronic clearing services: In addition to the condition that the finalization of clearing results between related parties must be performed by an organization as required by Decree 101, PIS providers must also enter into connection agreements with at least 50 banks and foreign bank branches whose the total charter capital in the year immediately preceding the year of submitting the application dossier for the License accounts for over 65% of the total charter capital of the banks and foreign bank branches in the system of credit institutions and at least 20 PIS providers; have an information infrastructure that meets the minimum requirements for ensuring level 4 information system security as required by law, ensuring the ability to integrate into and connect with the technical systems of participating parties in connection agreements; have a server system that complies with legal regulations and meets the capacity to process at least 10 million payment transactions/day. Participating parties are not allowed to connect more than 02 organizations providing financial switching services and electronic clearing services.
- (f) International financial switching services: In addition to the condition that that the finalization of clearing results between related parties must be performed by an organization as required by Decree 101, PIS providers must also have internal regulations on standards for selecting connections to international payment systems to perform financial switching of international payment transactions as well as internal regulations on technical professional processes for international financial switching services applied for licensing and an organization operating an international payment system connected to organizations providing international financial switching services must be legally established and operating abroad.

5. Application dossier for a License to provide PIS:

In addition to the documents already specified in Decree 101, Decree 52 adds the following documents:

- (a) Written commitment and proof documents of the owner, founding member, founding shareholder of the applicant on ensuring maintenance of the actual value of its charter capital;
- (b) For financial switching services and electronic clearing services: the plan on the finalization of clearing results between related parties performed by an organization in standard Form No. 08 accompanying Decree 52; written connection agreements with participating organizations, with a commitment not to connect more than 2 organizations providing financial switching services and electronic clearing services; documents showing that the information infrastructure and server system meet the regulations in Decree 52; and
- (c) For international financial switching services: Internal regulations on standards for selecting international payment systems to connect and carry out financial switching of international payment transactions; Internal regulations on business processes with risk management measures for international financial switching services applied for licensing; copies of documents showing that the organization operating the international payment system is legally established and operating abroad, which must be issued by a competent authority of the country or territory where such organization is established or headquartered; the plan on the finalization of clearing results between related parties performed by an organization in standard Form No. 08 accompanying Decree 52.

Hanoi Office	Ho Chi Minh City Office
Add: Unit 308-310, Floor 3, Hanoi Towers 49 Hai Ba Trung St., Hoan Kiem Dist., Hanoi, Vietnam Tel: +84-24-3934 0629 Fax: +84-24-3934 0631 Email: vision@vision-associates.com	Add: Unit 905, Floor 9, CitiLight Tower 45 Vo Thi Sau St., District 1, HCMC, Vietnam Tel: +84-28-3823 6495 Fax: +84-28-3823 6496 Email: hcmvision@vision-associates.com
Website: http://www.vision-associates.com	

6. The procedures for issuing a License to provide PIS:

Instead of the maximum period of 60 days from receiving the complete and valid application dossier as provided in Decree 101, a more detailed process is stipulated by Decree 52, specifically as follows:

- (a) Within 90 working days from receiving the complete and valid dossier, the SBV will review the dossier. Within 60 days from the date on which the SBV makes a written request to explain and complete the dossier, if the applicant does not resubmit the dossier, the SBV shall issue a document to return the dossier to the applicant;
- (b) Within 90 working days from the date of receiving additional dossier from the applicant, the SBV shall review and issue a License according to the regulations. In case of not issuing a License, the SBV will send a written response to the applicant, stating the reasons; and
- (c) From the date on which the SBV receives all valid dossier components, the organization applying for the License may submit additional dossiers up to 2 times; The maximum period of time for the applicant to submit additional dossiers must not exceed 60 days from the date on which the SBV sends a document to the applicant confirming receipt of all valid dossier components.

7. Commencement of operations after obtaining the License to provide PIS:

Compared to Decree 101, Decree 52 stipulates more clearly, specifically as follows:

- (a) At least 30 working days prior to the expected date of providing PIS to the market and no more than 6 months from the date of issuance of the License by the SBV, an organization that has been granted a License by the SBV to provide PIS must notify and provide proof documents to the SBV evidencing that: Its technical system meets the conditions specified in Decree 52; a copy of the written minutes of technical acceptance for licensed PIS with a cooperating bank for electronic wallet services, authorized collection, authorized payment support services and electronic payment gateway services according to Form No. 10 accompanying Decree 52; documents proving that the finalization of clearing results between related parties is performed by an organization and meets the conditions stipulated in Decree 52 for financial switching services, electronic clearing services, and international financial switching services; and
- (b) Within 15 working days from receiving completely dossiers and documents, the SBV shall conduct a physical inspection at the PIS provider and issue a written notice of whether or not it meets the regulations stipulated in Decree 52. In case of failure to comply, the SBV will consider revoking the License to provide PIS.

8. Term of the Licenses to provide PIS:

Decree 52 still keep the operation term to be stated on the License, of 10 years as from the date on which the SBV issues the License to the applicant as stipulated by Decree 101; but adds a new regulation that for international financial switching services, the operation term must not exceed the operating period stated on the License to provide financial switching services.

9. Amendment to the License to provide PIS:

Decree 52 adds the following regulations:

- (a) In case of requesting for additional connection to the international payment system, the organization providing international financial switching services shall add the documents specified in Section (c), Part 4 above to the application dossier for amending the License;

Hanoi Office	Ho Chi Minh City Office
Add: Unit 308-310, Floor 3, Hanoi Towers 49 Hai Ba Trung St., Hoan Kiem Dist., Hanoi, Vietnam Tel: +84-24-3934 0629 Fax: +84-24-3934 0631 Email: vision@vision-associates.com	Add: Unit 905, Floor 9, CitiLight Tower 45 Vo Thi Sau St., District 1, HCMC, Vietnam Tel: +84-28-3823 6495 Fax: +84-28-3823 6496 Email: hcmvision@vision-associates.com

- (b) The SBV receives and considers the validity of the application dossier for amending the License within 05 working days from the date of receipt of the application dossier and decides to amend the License to provide PIS within 30 working days from receipt of complete and valid dossier. In case of refusal to amend the License, the SBV will respond in writing to the applicant, stating the reasons;
- (c) The operation term stated on the amended License must not exceed the operation term stated on the License to provide PIS;
- (d) For the provision of PIS which is requested to stop, the PIS provider must stop providing these services after the SBV amends the License and within 30 days from the date on which the SBV amends the License, the PIS provider must send a written notice to relevant organizations and individuals to liquidate the contract and complete the obligations and responsibilities between the parties involved in accordance with the provisions of the law; and
- (e) In case of changing one of the following contents: Change of the LR, change of charter capital, change of the owner's equity ratio in charter capital; implementation of a division, separation, consolidation, merger, or conversion of enterprise, then, within the validity term of the License, the PIS provider does not have to carry out procedures to request for amending the License but must send to the SBV a written notice thereof and documents proving relevant information (if any) within 30 days from the date of the above changes.

10. Revocation of the License to provide PIS:

(a) Cases of revocation:

In addition to three cases already specified in Decree 101, including:

- (i) During the process of inspection, examination and supervision of activities of providing PIS, it is discovered that within 06 consecutive months, the organization fails to provide licensed PIS to customers;
- (ii) After 03 months from the date on which the SBV issues to the organization a written notice of violation of one of the conditions during the service provision process, the technical system's failure to meet regulations and the organization fails to rectify it; and
- (iii) The PIS provider is dissolved or bankrupt as prescribed by the laws.

Decree 52 adds the following cases:

- (iv) The PIS provider submits an application to revoke the License due to termination of its provision of licensed PIS according to Form No. 15 accompanying Decree 52;
- (v) There is a valid judgment, judgment enforcement decision, or a competent State authority's decision on sanctioning administrative violations; a criminal judgment enforcement agency's request for revoking the License of the PIS provider, or a written demand from a competency State authority or criminal judgment enforcement agency requesting for revocation of the License of the PIS provider;
- (vi) The PIS provider uses or abuses payment accounts, payment instruments, payment services, and PIS to gamble; organize gambling; commit fraud; do illegal business, and money laundering, terrorism financing, financing the proliferation of weapons of mass destruction;
- (vii) The PIS provider fails to meet one of the conditions for providing PIS mentioned in Part 4 above, cannot provide proving documents, or the proving documents do not meet the provisions of Decree 52 and after a period of 03 months from the date on

Hanoi Office	Ho Chi Minh City Office
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which the SBV issued a written notice requesting the organization to rectify but the organization fails to rectify it; and

- (viii) The PIS provider repeats the violation of dishonestly reporting the balance and number of electronic wallets according to the regulations.

(b) Conditions for reissuing the License:

After a period of 03 years from the date of revocation of the License (provided that the organization whose the License has been revoked has completed the obligations and responsibilities between the parties as required by law), the organization whose License is revoked may apply for re-issuance of a License to provide PIS (*while Decree 101 stipulated a period of 6 months from the date on which the cause of the License's revocation is completely rectified*)./.

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Add: Unit 308-310, Floor 3, Hanoi Towers 49 Hai Ba Trung St., Hoan Kiem Dist., Hanoi, Vietnam Tel: +84-24-3934 0629 Fax: +84-24-3934 0631 Email: vision@vision-associates.com	Add: Unit 905, Floor 9, CitiLight Tower 45 Vo Thi Sau St., District 1, HCMC, Vietnam Tel: +84-28-3823 6495 Fax: +84-28-3823 6496 Email: hcmvision@vision-associates.com

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