

Highlights of the new Circular on intermediary payment services

By PHAM Nghiem Xuan Bac, NGO Trung Hieu, DANG Trong Hieu (Vision & Associates)

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On 17 July 2024, the Governor of the State Bank of Vietnam issued Circular No. 40/2024/TT-NHNN, regulating the provision of intermediary payment services (“**Circular 40**”). Circular 40 took effect on 17 July 2024 and replaced Circular No. 39/2014/TT-NHNN dated 11 December 2014 of the Governor of the State Bank of Vietnam, providing guidelines for intermediary payment services, as amended from time to time (“**Circular 39**”).

Circular 40 specifically regulates the provision of intermediary payment services, which are generally regulated in Law on Credit Institutions adopted by the National Assembly on 18 January 2024; and Decree No. 52/2024/ND-CP dated 15 May 2024, on non-cash payments (“**Decree 52**”). According to Decree 52, intermediary payment services include: financial switching services, international financial switching services, electronic clearing services, electronic wallet services, collection and payment support services, and electronic payment gateway services.

Circular 40 has many following notable new regulations compared with Circular 39:

1. Scope of use of intermediary payment services

Circular 40 clarifies that intermediary payment services (except for financial switching services) are used for lawful payment transactions for goods and services in accordance with Vietnamese laws; including those of payment for foreign goods and services.

2. Electronic clearing services

(a) Commitment to the SBV

Circular 40 amends the regulation that the clearing firm must have a written commitment with the Transaction Center directly managed by the State Bank of Vietnam (“**SBV**”) (instead of the Clearing house as provided in Circular 39) on implementing the clearing loan in case of inability to pay at the time of settlement and take full responsibility for accepting the debt and repaying the loan (including principal and interest) to the SBV.

(b) Clearing limit

Circular 40:

- (i) adds the regulation that the Clearing house must develop and promulgate internal rules and regulations on organization and operation of the Clearing System, including the content of the process of establishing, adjusting and managing the clearing limit for settlement members participating in the Clearing System
- (ii) amends the regulation on establishing the clearing limit; accordingly, the clearing limit for settlement members will periodically be set by the clearing house every month on the first working day of the month, instead of once as provided in Circular 39;
- (iii) adds the following regulations:

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>

- During the working day, the settlement member is requested to adjust in increasing the temporary clearing limit for the day to meet payment needs; and
- In the case where it is necessary to ensure the payment capacity of the settlement member, the Clearing house shall consider adjusting in decreasing the temporary clearing limit of the settlement member for the day:
 - The method for determining the temporary clearing limit for the day is implemented in the same way as the method for determining the temporary net debt limit for the day of members participating in the low-value payment service of the Interbank Electronic Payment System;
 - At the end of the transaction day, the temporary clearing limit for the day is adjusted back to the clearing limit.

3. Electronic wallet service

(a) Customers using e-wallets

Circular 40 clearly stipulates that e-wallet service providers are not allowed to open e-wallet accounts for themselves.

(b) Application for e-wallet account opening

Circular 40 adds

- (i) Agreement on opening and using an e-wallet account, which must include at least the mandatory contents, to the application for e-wallet account opening and electronic identity (through access to the level 2 electronic identification account) to documents, information, and data on the customer's identification papers.
- (ii) Regulations that the collection and storage of applications for e-wallet account opening must meet the requirements, including allowing the cases where documents, information, and data in this application are in foreign languages, the e-wallet service provider can agree with the customer on whether or not to translate them into Vietnamese, but must ensure the following principles: The e-wallet service provider must check, control, and be responsible for confirming the contents of documents, information, and data in foreign languages to ensure that they meet the information requirements provided for in Circular 40; The above documents, information, and data must be translated upon request by a competent authority; The translation must be certified by an authorized person of the e-wallet service provider or must be notarized or certified.

Circular 40 also stipulates for the first time that in the case of an agreement on opening and using e-wallet account according to a model or general trading conditions, the e-wallet service provider must:

- (i) Publicly display the model contract or general trading conditions at the transaction location and post them on the e-wallet service provider's website, e-wallet transaction application software on the Internet and mobile phones (if any);
- (ii) Provide full information on the model contract or general trading conditions to customers and take measures to confirm that the customer has read and agreed to be provided with full information.

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(c) Process of and procedures for opening an e-wallet account and linking the e-wallet with the customer's own Vietnamese Dong account and debit card at an affiliated bank

Circular 40 provides more specific and clear regulations on process of and procedures for opening an e-wallet account, especially opening an e-wallet account by electronic means, requiring the e-wallet service provider to:

- (i) Collect biometric information of the e-wallet account holder regarding individual customers and biometric information of the custom's legal representative regarding institutional customers; and
- (ii) Self-decide on measures, forms, and technologies for opening an e-wallet account by electronic means, bear all arising risks (if any) and must meet at least the following requirements: (i) Measures, forms, and technologies selected by the e-wallet service provider must ensure standards on security, safety, and confidentiality according to the regulations of the SBV; (ii) The customer confirms that he/she/it has agreed to the contents of the agreement on opening and using an e-wallet account;

as well as linking the e-wallet with the customer's own Vietnamese Dong account and debit card at the affiliated bank.

(d) Use of e-wallet services

Circular 40:

- (i) Clearly states that e-wallet service providers are not allowed to receive cash from customers to deposit money into e-wallet accounts; and adds that depositing money into e-wallet accounts is made in the following manners: Depositing cash into the payment assurance account of the e-wallet service provider (for e-wallet services) opened at the associated bank; Receiving money from a Vietnamese Dong account opened at a bank or foreign bank branch; Receiving money from an outsider e-wallet account (opened by another e-wallet service provider).
- (ii) Adds that e-wallet account holders are allowed to use e-wallets to transfer money to an outsider e-wallet (opened by another e-wallet service provider);
- (iii) Clearly specifies the obligations of the e-wallet service provider to refund the e-wallet account holder in several cases such as: The e-wallet service provider stops providing e-wallet services to customers, stops its business operations, has its license revoked, is dissolved or goes bankrupt according to the provisions of the laws; and to pay inheritance according to the provisions of the laws when the e-wallet account holder who is an individual dies or is declared dead; At the request of a competent State agency according to the provisions of the laws.

(e) Transaction limit via e-wallet

Similarly to Circular 39, Circular 40 provides that the total limit of transactions via personal e-wallets of 1 customer at 1 e-wallet service provider is a maximum of VND 100 million in one month; but it adds that the said total limit does not apply to the following transactions: Online payment on the National Public Service Portal; Electricity; Water; Telecommunications; Fees, prices, and service charges related to traffic activities of road vehicles; Tuition; Hospital fees; Payment of social insurance, health insurance, and other insurance premiums as prescribed in the Law on Insurance Business; Payment of due or overdue debts and interest, and other costs incurred to banks and foreign bank branches.

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(f) Use of a payment assurance account for e-wallet services

In addition to the circumstances already specified in Circular 39, Circular 40 adds the followings:

- (i) Money is transferred to a payment assurance account for e-wallet services of another e-wallet service provider;
- (ii) An e-wallet service provider is allowed to withdraw fees which the parties deduct from the payment assurance account for e-wallet services in the cases where the related parties directly deduct service fees from e-wallet. The e-wallet service provider must agree with the associated bank on measures to prove and ensure that the amount withdrawn from the payment assurance account is the amount of fees deducted by the parties in the e-wallet transaction.

4. Collection and payment support services

Circular 40 adds the regulation that before providing services to customers, collection and payment support services providers must:

- (a) Sign a contract or agreement with an associated bank and related parties in accordance with the contents of the License granted by the SBV and the provisions of Circular 40;
- (b) Implement the contents on ensuring safety in providing intermediary payment services as provided in Circular 40;
- (c) Have measures to periodically monitor and inspect to ensure the payment capacity for payment acceptance unit;

and clarifies that the collection and payment support services providers must coordinate with the associated banks to develop a mechanism to ensure payment capacity, including at least the following contents: (i) Mechanism to open and maintain the balance of the payment assurance account for the collection and payment support services, ensuring separation of such account from the payment assurance accounts for other services and other payment accounts opened at the associated banks; (ii) Purpose of using the payment assurance account for collection and payment support services; (iii) Other measures to ensure other payment capacity (if any) in addition to the payment assurance account.

5. Ensuring safety and security in providing intermediary payment services

Circular 40 requires ensuring safety and security in providing intermediary payment services; accordingly, before providing services to customers, intermediary payment service providers must:

- (a) issue internal processes related to intermediary payment services, including at least:
 - (i) Technical professional process of intermediary payment services, including at least mandatory contents;
 - (ii) Internal inspection and control process, including the following contents: purpose(s); requirements; implementation sequence; responsibilities of relevant departments;
 - (iii) Risk management process, ensuring safety and security, including mandatory contents;
 - (iv) General principles and internal regulations on preventing and combating money laundering, terrorist financing, and financing of proliferation of weapons of mass destruction;

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- (v) Processes of and procedures for handling requests for verification, complaints and disputes, which comply with the SBV's regulations on providing non-cash payment services and must clearly specify mandatory contents;
- (vi) For e-wallet services: internal regulations on handling measures to prevent customers from using e-wallet when e-wallet is not yet linked or no longer linked to the customer's own Vietnamese Dong account or debit card, etc.;
- (vii) For international financial switching services: internal regulations on standards for selecting international payment systems to connect in order to perform financial switching for international payment transactions; internal regulations on professional processes with risk management measures for international financial switching services;

and regularly review and update the above-mentioned internal processes, ensuring that they are consistent with the actual provision of intermediary payment services and comply with the relevant regulations of the current laws;

- (b) make publicly available on the official website of that service provider the following contents: intermediary payment services licensed by the SBV; the form of its provision of intermediary payment services; the name/brand of its intermediary payment services;
- (c) comply with technical requirements on security and safety for equipment for bank card payments; requirements on information system security in banking operations; requirements on safety and security for providing online services in the banking industry; implementation of safety and security solutions in online payments and bank card payments;
- (d) ensure that the accounting and monitoring of revenues/expenditures related to the provision of payment services are separated from other business activities (if any) of the intermediary payment service provider; ensure that the accounting and monitoring of each of intermediary payment services licensed by the SBV are separated;
- (e) fulfill its responsibilities towards the payment acceptance unit as the responsibilities of the payment service provider towards the payment acceptance unit according to the SBV's regulations on the provision of non-cash payment services if signing a contract or agreement directly with a payment acceptance unit (the associated bank is not a contracting party of that contract or agreement);
- (f) enter into a contract or agreement with another organization which is a product or service provider ("**partner**"), which includes at least the mandatory contents, if cooperating with the partner. In particular, before providing services to customers, an e-wallet services provider must enter into contracts or agreements with the associated bank and related parties in accordance with the contents of the License granted by the SBV.

6. Provision of intermediary payment services involving foreign elements

Circular 40 adds the following provisions:

- (a) Payment transactions for goods and services in Vietnam

In the case where a foreign organization provides intermediary payment services to non-resident customers and foreigners residing in Vietnam to make payment transactions for goods and services in Vietnam:

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- (i) The foreign organization must enter into a contract or agreement with a commercial bank or foreign bank branch (approved by the SBV to participate in the international payment system of that foreign organization) to make payment transactions for goods and services in Vietnam.
- (ii) When cooperating with a foreign organization, a commercial bank or foreign bank branch must have authentic information about the foreign organization being subject to management and supervision by competent authorities in the country where the foreign organization is headquartered or licensed (including management of and supervision over anti-money laundering, terrorist financing, and financing of proliferation of weapons of mass destruction); require the foreign organization to undertake that it complies with legal provisions on customer identification, storage of information, records, documents and reports and ensure confidentiality of information, records, and reporting documents in accordance with the provisions of the law on anti-money laundering, terrorist financing, and financing of proliferation of weapons of mass destruction of Vietnam or relevant recommendations of the Financial Action Task Force (FATF).
- (iii) Contracts or agreements between commercial banks or foreign bank branches and foreign organizations must include at least mandatory contents.
- (iv) Foreign organizations providing payment services and intermediary payment services to non-resident customers and foreigners residing in Vietnam to make payment transactions for goods and services in Vietnam are not allowed to make direct payments to the intermediary payment services provider.

(b) Payment transactions for foreign goods and services

In the case where the intermediary payment services provider (except for the financial switching services) provides services to customers to make payment transactions for foreign goods and services:

- (i) The intermediary payment services provider must enter into a contract or agreement with a commercial bank or foreign bank branch (already approved by the SBV to conduct foreign exchange activities on the international market) on making payments and settling payment transactions for foreign goods and services.
- (ii) The intermediary payment services provider must take monitoring measures to ensure that the implementation of payment transactions for foreign goods and services through intermediary payment services is legal according to the provisions of Vietnamese laws and complies with the provisions of the laws on foreign exchange control.

(c) Internal regulations when cooperating to provide intermediary payment services involving foreign elements

When cooperating with intermediary payment service providers, commercial banks and foreign bank branches must develop internal regulations on anti-money laundering in compliance with the provisions of the laws on anti-money laundering, anti-terrorism financing, and anti-financing of proliferation of weapons of mass destruction; on checking and keeping documents and accounting records related to actual transactions to ensure that payments in foreign currency and international payments are made for the right purposes, in compliance with the provisions of the laws on foreign exchange control and other relevant provisions of the current laws.

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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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