

Perfecting The Legal Framework for Digital Banks in Vietnam

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ARTICLE INFO	ABSTRACT
<p>Published Online: 12 April 2025</p> <p>Corresponding Author: Ms. Luong Thanh Binh</p> <p>KEYWORDS: Digital Bank, Law, Finance, Banking</p>	<p>With the current explosive development trend of science and technology, change and adaptation will have to occur daily. The economy, society, people, as well as all aspects of social life are changing. A digital economy and a digitized society are inevitable. Therefore, the digital transformation process is taking place across all sectors, and the application of digital technology to banking operations is no exception. This process has led to a structural change in the financial and banking market with the emergence of large financial technology companies that compete with traditional banks in providing financial and banking products. In this context, digital banking is the direction for commercial banks facing significant competition from financial technology companies. However, the lack of a complete legal framework for the establishment of digital banks is a hindrance to the development of digital banking in Vietnam.</p>

I. OVERVIEW OF DIGITAL BANKS

In the current context, the banking sector is the backbone and foundation of the economy for most countries worldwide. With its extensive services and networks, the banking industry has partly demonstrated its importance to the economy and society. However, in the last few decades, the unprecedented development of science and technology such as Cloud, Blockchain, AI, etc., has created significant transformations in the financial and banking industry. In the field of credit provision, with the participation of Fintech and Bigtech companies, new online transaction protocols are gradually gaining dominance over traditional financial activities. In reality, "digital bank" is a relatively common term in research as well as business within the financial and banking market. Currently, there are also many views from scholars on the concept of digital banks. For example, according to Gaurav Sharma (2017), a digital bank is a form of banking that digitizes all traditional banking operations and services. Chris Skinner (2014) argues that a digital bank is a bank's operating model in which the core activities are based on electronic platforms and data, with digital technology being the core value of banking operations. Thus, according to the aforementioned interpretations, digital banks are generally understood as banks that still provide the same products or services as traditional banks. However, the special point here is that digital banks will be established, managed, and operated based on digital platforms or technologies to provide customers with services and products in the most convenient and fastest way. Nevertheless, one

should not simply understand digital banking as the digitization of a particular product or service of a bank; rather, it is a comprehensive innovation from the way of organizing, operating, and managing the activities of the entity providing banking services and products based on modern technology. In other words, a digital bank digitizes all activities that can be performed at a traditional bank. This is completely different from e-banking, which is merely a supplementary service to the regular operations of traditional banks, or online banking, which is a banking service that allows customers to use services via the internet such as Mobile Banking, Internet Banking, etc.

Therefore, one can envision the fundamental characteristic of a digital bank is that digital technology is applied from the way services are provided to the bank's internal management operations. Some of the advanced technologies currently being widely applied in the operations of digital banks include: cloud computing, Blockchain, big data, and artificial intelligence.

II. THE NECESSITY OF A LEGAL FRAMEWORK FOR DIGITAL BANKS FOR THE ECONOMY

In a world undergoing a strong shift towards a digital economy, and with digital banking becoming an inseparable part of the global economy, establishing a complete legal framework for digital banks is truly necessary in the current context of Vietnam.

Firstly, a legal framework is needed for the operation of digital banks

Currently, digital banks are operating in an environment without a complete legal framework. Therefore, founders find it difficult to develop new services and products when there are still barriers to the legality of these products or services. On the other hand, without a clear legal framework regulating a new business model, attracting investors will face considerable difficulties. Furthermore, once the legal basis for the operation of digital banks is established, legal recognition of a new business model will grant these entities full legal status to participate in legal relations with other individuals and organizations in the economy. Thus, building a legal framework that includes specific standards for determining the legal status, establishment, and operation of digital banks is a prerequisite for digital banks to provide products and services safely and efficiently.

Secondly, a legal framework is needed to protect consumer rights concerning digital banking services.

Given the nature of digital banks as deploying products and services on a digital platform, the banking services or products that apply digital technology are complex and have specific professional processes. Moreover, the rapid development and change of science and technology, especially in digital banking operations, has led to consumers not having enough time to adapt and having limited understanding of this issue. When accessing financial services, consumers will face issues ranging from access costs, the complexity of financial services, the novelty of high-tech financial services, as well as legal contracts (World Bank, 2017). Due to these factors, consumers will always be at a disadvantage, leading to the risk of personal information being exposed or lost, or other violations. Therefore, establishing legal regulations to protect consumer rights regarding digital banking services is absolutely necessary.

Thirdly, a legal framework is needed to prevent and deter violations of the law.

Unlike traditional banks, all operations of digital banks are based on digital platforms. Therefore, digital banking operations will face concerns about cybersecurity. Consequently, the operation of digital banks may bring new risks unprecedented in the past. Moreover, if banking services or products are provided in large quantities, the risk of illegal acts infringing upon the legitimate rights and interests of related individuals and organizations may increase not only in number but also become more complex than usual. Therefore, creating regulations that clearly define violations and sanctions is essential. Solving this problem will help prevent and deter violations from occurring.

III. SOME RECOMMENDATIONS FOR PERFECTING THE LEGAL FRAMEWORK FOR DIGITAL BANKS IN VIETNAM

Firstly, establish regulations defining the legal status of Digital Banks.

Establishing regulations that define the legal status of digital banks is a crucial step to ensure transparency, fairness, and security in digital banking operations. First and foremost, there needs to be a regulation clearly defining the status of a digital bank as an independent legal entity. Simultaneously, it is necessary to establish regulations and standards that these entities must adhere to in order to operate in the digital banking sector. Current practice shows that Vietnamese law only acknowledges the concept of internet banking services (Clause 1, Article 2 of Consolidated Document 21/VBHN-NHNN in 2018, which consolidates Circulars regulating the safety and security for the provision of internet banking services issued by the State Bank); or electronic banking (Article 97 of the Law on Credit Institutions 2010, as amended and supplemented in 2017). However, "digital bank" is a term with a broader scope, as it refers to a model where not only products and services but also the organizational management methods and banking operations are digitized. Therefore, adding regulations on an independent digital bank model to the Law on Credit Institutions is entirely necessary. In addition, it is essential to develop registration and licensing procedures and standards for digital banks. This includes regulations related to ensuring that these entities meet requirements regarding business capital, management capacity, and information security before being granted an operating license. The licensing process for digital banks will not be the same as for traditional Credit Institutions and will require a procedure appropriate to the specific characteristics of this new model. Due to the uncertainty surrounding the risks involved, a two-stage licensing process for digital banks could be considered as follows:

The first stage is to grant a trial license aimed at relaxing conditions and standards compared to traditional banks, such as requirements for capital adequacy ratios or charter capital. However, digital banks will be more limited in the process of providing products or services.

The second stage is to grant a digital banking operating license. Upon completion of the trial period, the competent authorities will have a basis to fully assess the risks or limitations faced by digital banks. From there, the State agency will make appropriate adjustments towards ensuring that digital banks also operate according to the same standards as traditional banks.

Secondly, establish regulations creating a technological environment for the operation of digital banks.

One of the important and necessary things after establishing the legal basis for determining the legal status of digital banks is to create a technological environment for their operation. Specifically, these are regulations related to: electronic customer identification (eKYC); the use of blockchain technology; the use of distributed ledger technology (DLT); the use of open application programming interfaces (Open API); and artificial intelligence (AI). For example, regarding

regulations on electronic customer identification, current Vietnamese law only regulates eKYC for opening payment accounts. Specifically, Circular No. 16/2020/TT-NHNN amending and supplementing Circular No. 23/2014/TT-NHNN of the Governor of the SBV guiding the opening of payment accounts at payment service providers, which adds Article 14a regulating the opening of payment accounts for individual customers using electronic customer identification (eKYC). However, there are no truly specific guidelines on measures that can minimize the risks of eKYC such as: biometric identification, secure digital signatures, or real-time online video calls. Therefore, developing regulations on these additional customer identification measures is very necessary in the current context. In addition, regarding new technologies such as Blockchain, Open API, or AI, the competent State agency, in coordination with associations in the financial and banking sector, can issue sets of standards or recommendations to ensure that these new technologies are implemented in digital banking operations effectively and safely.

Thirdly, establish regulations on protecting consumer rights regarding digital banking services.

Currently, regulations on protecting consumer rights in banking operations in general are still scattered across various legal documents such as the Law on Protection of Consumer Rights 2010, the Law on Credit Institutions 2010 as amended and supplemented in 2017, and Decree 117/2018/ND-CP on keeping confidential and providing customer information of credit institutions and foreign bank branches, without a specific document on protecting consumers in the process of participating in and using financial and banking products and services. Even in documents containing regulations on protecting consumer rights, many contents are still unspecific and superficial. In essence, protecting the rights of consumers regarding digital banking services will also have to follow the same legal mechanism as protecting the rights of consumers of traditional banking services. However, with the specific nature of digital banks being the provision of services and products entirely based on digital platforms, customer information is authenticated through electronic customer identification (eKYC). Therefore, the issue of protecting consumer rights regarding digital banking services will also have its own specific characteristics. Therefore, it is necessary to develop specific regulations on protecting consumer rights regarding digital banking services, including the following contents: Firstly, regulations on protecting consumers of banking products and services in general. Secondly, separate regulations on protecting consumers of digital banking services, in which the main focus is regulations on the responsibilities of digital banks in the process of authenticating and using customers' personal information as well as ensuring the security of the information provided by customers. In addition, from the perspective of service providers, digital banking

organizations need to establish security measures to protect consumers' personal information through the use of encryption technologies, establish data management policies, and ensure compliance with data protection regulations. Besides, conducting regular security checks, monitoring suspicious transactions, and providing guidance to consumers on how to protect their personal information is absolutely necessary.

Fourthly, develop legal regulations on preventing and deterring violations of the law.

Developing legal regulations on preventing and deterring violations of the law in digital banking operations is extremely important to ensure transparency, security, and fairness in the digital financial system. To address security threats and risks encountered in the digital environment, digital banking law needs to have regulations on cybersecurity and risk management. This involves requiring financial institutions to implement security measures such as data encryption, transaction monitoring, and ensuring system reliability. Digital banking law needs to clearly define violations of the law in this specific area such as money laundering, terrorist financing, tax evasion, and violations of personal data protection. Establishing measures to prevent and deter violations through regulations requiring digital banking organizations to implement internal control measures, train employees on risk prevention, and promote ethical standards in the industry is crucial. In addition, an effective oversight and supervision mechanism needs to be established to monitor and evaluate the operations of digital banking organizations. This involves strengthening supervision by regulatory authorities and defining indicators and criteria for evaluating the performance of digital banking organizations.

IV. CONCLUSION

Like many other countries around the world, Vietnam is witnessing a revolution in the financial and banking sector with the strong development of digital banking. Digital banking is not only a trend but also plays a crucial role as a foundation bringing significant conveniences and benefits to both consumers and the financial system in particular, as well as to the economy in general. By utilizing technologies such as artificial intelligence and big data, digital banks can easily expand their operations to international markets without the need to establish physical infrastructure as required by traditional banks. However, the development of digital banking also poses several challenges such as issues of personal information security, the still-limited stability of the system, as well as threats from cyberattacks. Therefore, perfecting the legal framework for digital banking is an indispensable factor in building and developing a modern, safe, and sustainable financial system in the era of the 4.0 technological revolution. This is also a necessary foundation

to ensure the transparency, safety, and reliability of digital banking

REFERENCES

1. Christ Skinner, 2014, *Digital Bank: Strategies to Launch or Become a Digital Bank*, Publisher: Marshall Cavendish Business.
2. Gaurav Sharma, 2017. *What is Digital Banking?* Retrieved April 20, 2024, from <https://www.ventureskies.com/blog/digital-banking>.
3. World Bank, 2017. *Good practices for financial consumer protection. 2017 Edition*.
4. State Bank of Vietnam, 2018. *Circular No. 21/VBHN-NHNN Regulating the safety and security for the provision of internet banking services*.
5. State Bank of Vietnam, 2020. *Circular No. 16/2020/TT-NHNN Amending and supplementing a number of articles of Circular No. 23/2014/TT-NHNN dated August 19, 2014, of the Governor of the State Bank of Vietnam guiding the opening and use of payment accounts at payment service providers*.
6. National Assembly, 2017. *Law on Credit Institutions 2010, amended and supplemented in 2017*.