

DECREE No. 101/2012/ND-CP DATED NOVEMBER 22, 2012: On non-cash payment

THE GOVERNMENT

Decree No. 101/2012/ND-CP of November 22, 2012, on non-cash payment

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to June 16, 2010 Law No. 46/2010/QH12 on the State Bank of Vietnam;

Pursuant to June 16, 2010 Law No. 47/2010/QH12 on Credit Institutions;

At the proposal of the Governor of the State Bank of Vietnam,

The Government promulgates the Decree on non-cash payment.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree provides non-cash payment activities, including opening and use of payment accounts; non-cash payment services; payment intermediary services; and organization, management and supervision of payment systems.

Article 2. Subjects of application

1. Non-cash payment service providers.
2. Payment intermediary service providers.
3. Users of non-cash payment services or payment intermediary services (below collectively referred to as service users).

Article 3. Payment in foreign currencies and international payment

1. Payment in foreign currencies and international payment must comply with the law on foreign exchange management or international agreements on payment to which Vietnam is a contracting party.
2. In international payment, any matters not yet governed by Vietnamese law may be settled according to international practices, provided they are not contrary to basic principles of Vietnamese law.

Article 4. Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Non-cash payment services (below referred to as payment services) include the service of payment via payment accounts and a number of services of payment not via payment accounts of clients.
2. International payment means a payment made by parties at least one of which is an organization or individual having a payment account outside the Vietnamese territory.

3. Non-cash payment service providers (below referred to as payment service providers) include the State Bank of Vietnam (below referred to as the State Bank), banks, foreign bank branches, people's credit funds, micro-finance institutions and some other organizations.

4. Payment intermediary service provider means a non-bank organization licensed by the State Bank to provide payment intermediary services.

5. Payment account holder (below referred to as account holder) means a person under whose name an account is opened. For accounts of individuals, account holders are individuals under whose names these accounts are opened. For accounts of organizations, account holders are at-law or authorized representatives of such organizations.

Article 5. State management responsibilities of the State Bank for non-cash payment activities

1. To promulgate or submit to competent agencies for promulgation legal documents on non-cash payment.

2. To organize, manage, operate and supervise the national payment system; to participate in organizing and supervising the operation of payment systems in the economy.

3. To grant and revoke licenses for and supervise the provision of payment intermediary payment services.

4. To examine, inspect, supervise, and handle according to its competence violations of organizations and individuals involved in non-cash payment.

5. To manage and supervise international cooperation in the field of payment.

Article 6. Prohibited acts

1. Counterfeiting, modifying, erasing or replacing payment instruments and documents; storing, circulating, transferring or using counterfeit payment instruments.

2. Illegally intruding or attempting to intrude, sabotaging or altering software programs or electronic databases used in payment; taking advantage of computer network errors for self-seeking purpose.

3. Providing untruthful information in the course of provision and use of payment and payment intermediary services.

4. Illegally disclosing or providing information on deposits of account holders at payment service providers.

5. Opening or maintaining an anonymous or impersonated payment account.

Chapter II

OPENING AND USE OF PAYMENT ACCOUNTS

Article 7. Opening and use of payment accounts

Payment accounts must be opened and used under contracts between involved parties, clearly indicating the rights and responsibilities of these parties in accordance with law.

Article 8. Opening and use of payment accounts of the State Bank

1. The State Bank shall open payment accounts for the State Treasury, credit institutions and foreign bank branches in accordance with Clauses 2 and 3, Article 27 of the Law on the State Bank of Vietnam, and Articles 101, 109, 114, Clause 4d of Article 118, and Article 121, of the Law on Credit Institutions.

2. The State Bank shall open payment accounts for central banks of foreign countries, foreign banks, international monetary institutions and international banks under treaties to which Vietnam is a contracting party. For a treaty to which Vietnam is not yet a contracting party, payment accounts must be opened under decisions of the Prime Minister.

3. The State Bank shall open payment accounts at central banks of foreign countries and open payment accounts and conduct payment transactions overseas under treaties to which Vietnam is a contracting party.

Article 9. Opening and use of accounts for payment between credit institutions

1. Accounts for payment between credit institutions must be opened and used in accordance with the Law on Credit Institutions. Payment accounts opened by credit institutions at others must be used only for the payment purpose, not for other purposes.

2. The State Bank allows banks and foreign bank branches engaged in foreign exchange to open foreign-currency payment accounts. Foreign-currency payment accounts must be opened and used in accordance with the law on foreign exchange.

Article 10. Opening of payment accounts for individuals and organizations other than credit institutions

1. Banks and foreign bank branches shall guide the opening of payment accounts for their clients in accordance with regulations of the State Bank and other relevant regulations.

2. Individuals opening payment accounts must have the civil law capacity and civil act capacity or may be between full 15 to under 18 years old but have own assets. Minors who wish to open payment accounts must have guardians as prescribed by law.

3. A common payment account is a payment account opened under the names of at least two persons. Holders of common payment accounts may be organizations or individuals. The use purposes of common payment accounts, rights and obligations of common payment account holders and regulations the use of common accounts must be specified in writing.

Article 11. Use and authorized use of payment accounts

1. Account holders may use their payment accounts to deposit and withdraw cash and request payment service providers to conduct valid payment transactions. Account holders may request payment service providers to provide information on transactions and balances on their payment accounts.

2. Account holders may authorize in writing other persons for a definite time to use their payment accounts in accordance with law.

3. Account holders are obliged to comply with payment service providers' regulations on opening and use of payment accounts and assure sufficient money amounts on their accounts for executing payment orders, unless otherwise agreed with payment service providers.

4. Payment service providers are obliged to fully and promptly execute valid payment orders of account holders.

5. Payment service providers may refuse to execute invalid payment orders of account holders, or when money amounts on payment accounts are not enough for doing so, unless otherwise agreed. In case of refusal, payment service providers shall promptly notify the reason(s) therefor to account holders.

Article 12. Temporary locking and freezing of payment accounts

1. A payment account may have part or the whole of its money amount locked (suspended from transaction) when so requested by its holder or under prior agreement between its holder and the payment service provider.

2. A payment account has part or the whole of its money amount frozen in any of the following cases:

- a/ There is a written decision or request of a competent agency as prescribed by law;
- b/ The payment service provider detects a mistake or error during the money transfer;
- c/ The payment service provider detects a sign of fraud or violation related to payment activities;
- d/ A dispute arises between common payment account holders.

3. The freezing of a payment account is terminated upon decision of a competent agency in accordance with law or when the dispute specified in Clause 2 of this Article is settled.

4. If the payment account is unlawfully frozen, causing losses to the account holder, the issuer of the freezing order shall pay compensations for such losses in accordance with law.

Article 13. Closure of payment accounts

1. A payment account must be closed when:

- a/ Its holder so requests and has fulfilled all obligations related to the payment account;
- b/ Its holder being an individual dies, is missing or has lost his/her civil act capacity;
- c/ The organization having such payment account terminates its operation in accordance with law;
- d/ Its holder breaches the payment account opening and use contract with the payment service provider;
- e/ Its holder or the payment service provider violates Article 6 of this Decree and other regulations on payment activities;
- f/ Other cases specified by law.

2. Handling of the balance upon the closure of a payment account:

- a/ Making payments at the request of the account holder or his/her heirs or lawful inheritance representatives in case the account holder being an individual dies or is missing, or at the request of the lawful guardian in case the account holder is an individual who has lost his/her civil act capacity;
- b/ Making payments under court rulings;
- c/ Handling in accordance with law in case the lawful beneficiary of the account balance fails to come to receive the balance after being notified.

Chapter III

PAYMENT SERVICES AND PAYMENT INTERMEDIARY SERVICES

Article 14. Payment services

1. Services of payment via clients' payment accounts include:

a/ Supply of payment instruments;

b/ Provision of services of check payment, payment order, direct debit, collection, authorized collection, bank card, letter of credit, money transfer, collection and payment on clients' behalf;

c/ Other payment services.

2. Services of payment via clients' payment accounts are provided by:

a/ The State Bank, which may provide payment services for clients opening payment accounts at the State Bank;

b/ Commercial banks, foreign bank branches and policy banks, which may provide all payment services specified in Clause 1 of this Article;

c/ Cooperative banks, which may provide some payment services specified in Clause 1 of this Article after obtaining approval of the State Bank.

3. Services of payment not via clients' payment accounts include services of money wire transfer, collection and payment on clients' behalf and some other payment services.

4. Services of payment not via clients' payment accounts are provided by:

a/ Banks specified in Clause 2 of this Article, which may provide services of payment not via payment accounts for their clients;

b/ People's credit funds, which may provide money transfer services and perform the operations of collection and payment on behalf of their members;

c/ Micro-finance institutions, which may provide services of collection and payment on behalf of and money transfer for their clients;

d/ Other institutions, which may provide services of payment not via payment accounts under regulations of the State Bank.

Article 15. Payment intermediary services and conditions for provisions thereof

1. Payment intermediary services include:

a/ Supplying electronic payment infrastructure;

b/ Assisting payment services;

c/ Other payment intermediary services prescribed by the State Bank.

2. Conditions for provision of payment intermediary services

A non-bank institution that wishes to provide payment intermediary services must fully satisfy the following conditions:

- a/ Having an establishment license or business registration certificate granted by a competent state agency, indicating the provision of payment intermediary services as one of its main business operations;
- b/ Having a plan on provision of payment intermediary services approved strictly according to its operation charter's provisions on investment competence;
- c/ Having a charter capital of at least VND 50 billion;
- d/ Personnel conditions:

Its at-law representative and general director (director) must have professional qualifications or practical experience in business administration or the fields they are in charge of.

Staff members performing payment intermediary services must be professionally qualified for their operations;

- e/ Having technical and professional conditions, including physical foundation and technical infrastructure facilities meeting the requirements of provision of payment intermediary services and the State Bank's regulations; a backup technical system independent from the main system to assure the safe and uninterrupted provision of services when the main system breaks down; technical and professional processes in the provision of payment intermediary services to assure safety and confidentiality and compliance with the law on e-transactions; internal examination and control processes for payment intermediary services in e-transactions in accordance with current law.

Article 16. Process, procedures and dossiers for grant, revocation or re-grant of licenses for provision of payment intermediary services

1. The process and procedures for granting licenses

- a/ An institutional applicant for a license shall send 5 sets of dossier of application as specified in Clause 2 of this Article by post or directly to the State Bank. It shall take full responsibility before law for the accuracy and truthfulness of provided information;
- b/ The State Bank shall examine the dossier of application against the conditions specified in Clause 2, Article 15 of this Decree;
- c/ Within 60 days after receiving a complete and valid dossier, the State Bank shall examine such dossier and grant a license or issue a written reply to refuse to grant a license, clearly stating the reason;
- d/ The organization that is granted a license for provision of payment intermediary services shall pay a fee as prescribed by law.

2. A dossier of application for a license for provision of payment intermediary services comprises:

- a/ An application for a license, made according to a form set by the State Bank;
- b/ A minutes or resolution of the Members' Council and Board of Directors (or Shareholders' General Meeting as provided in the operation charter of the organization) adopting the plan on provision of payment intermediary services;
- c/ A plan on provision of payment intermediary services;

d/ A written explanation of technical solutions and a written record of technical tests for takeover performed by a cooperating organization;

e/ Personnel files: curricula vitae and certified copies of diplomas and certificates evidencing the capacity and professional qualifications of the at-law representative, general director (director), deputy general directors (deputy directors) and other key officers to implement the plan on provision of payment intermediary services;

f/ The establishment license or business registration certificate granted by a competent state agency, and the organization and operation charter of the organization (certified copy).

3. License validity

A license is valid for 10 years from the date it is granted by the State Bank to an organization.

4. Revocation of licenses

a/ A license must be revoked and the licensed organization shall terminate its provision of payment intermediary services in any of the following cases:

The organization fails to commence the licensed provision of payment intermediary services within 6 months after being granted the license without a plausible reason; or it fails to remedy its violations within 3 months after the State Bank notifies in writing its violation of the conditions specified in Clause 2, Article 15 of this Decree and its obligation to take remedies; or the organization is dissolved or falls bankrupt in accordance with relevant laws.

b/ The process and procedures for revoking licenses:

When a licensed organization commits one of the violations specified at Point a, Clause 4 of this Article, the State Bank shall notify in writing the licensed organization of license revocation and the reason therefor. The State Bank shall publicly announce on its website the revocation of the license of such organization.

Upon receiving a written notice of the State Bank of the revocation of its license for provision of payment intermediary services, the organization having its license revoked shall immediately stop providing the services.

Within 30 days after receiving a written notice of the State Bank, the organization having its license revoked shall send a written notice to related organizations and individuals for liquidation of their contracts and fulfillment of the obligations and responsibilities between them.

5. Re-grant of licenses

Within 30 days after receiving an organization's application for re-grant of a license, the State Bank shall consider and re-grant the license or notify in writing its refusal to re-grant the license, clearly stating the reason in the following cases:

a/ Expiration of licenses

At least 60 days before the expiration of its license, the organization shall send an application for re-grant of a license and a copy of its valid license to the State Bank.

b/ Revocation of licenses

Within 6 months after fully remedying the reason for its license revocation, the organization that has its license revoked shall send written explanations and an application for re-grant of the license to the State Bank.

c/ Modification and supplementation of licenses

When wishing to modify the contents of its license, the licensed organization shall send an application specifying the changes to be made and the reason therefor, together with a copy of its valid license to the State Bank.

d/ If its license is lost or damaged, the organization shall send an application for re-grant of the license, clearly stating the reason, to the State Bank.

Article 17. Service charges

1. Payment service providers and payment intermediary service providers shall set and publicly post up their service provision charge rates.
2. In case banking activities undergo abnormal developments, to assure the safety for the system of credit institutions, the State Bank shall prescribe a mechanism for determining charges for payment services and payment intermediary services.

Article 18. Compensations for damage

Payment service providers, payment intermediary service providers and service users shall pay compensations for damage caused by their breaches of agreements to other related parties in accordance with law.

Article 19. Settlement of disputes

In case a contract contains no agreement on dispute settlement, disputes must be settled in accordance with law.

Article 20. Assurance of safe payment

Payment service providers and payment intermediary service providers shall apply measures to assure safe payment as prescribed by law. Service users shall take these measures as prescribed and guided by service providers.

Chapter IV

INFORMATION, REPORTING AND INFORMATION CONFIDENTIALITY

Article 21. Right to request provision of reports and information

1. The State Bank has the right to request payment service providers and payment intermediary service providers to regularly or extraordinarily provide payment-related information.
2. Payment service providers and payment intermediary service providers may request service users to provide relevant information when using their services.

Article 22. Obligation to provide information and reports

1. Payment service providers and payment intermediary service providers are obliged to report and provide information to competent state agencies as prescribed by law.
2. Payment service providers and payment intermediary service providers are obliged to provide information on transactions and balances on payment accounts to account holders as agreed.

Article 23. Confidentiality

1. The right to refuse to provide information

Payment service providers and payment intermediary service providers may reject requests of organizations and individuals for information on account holders, transactions and balances on payment accounts of their clients, except requests of competent state agencies as prescribed by law or requests with consent of account holders.

2. The obligation to keep confidential information

Payment service providers and payment intermediary service providers shall keep confidential information relating to account holders, transactions and balances on payment accounts of their service users, unless otherwise prescribed by law.

Chapter V

ORGANIZATION, MANAGEMENT, OPERATION AND SUPERVISION OF PAYMENT SYSTEMS

Article 24. Organization, management, operation and supervision of the national payment system

1. The State Bank shall organize, manage, operate and supervise the national payment system to assure uninterrupted, safe and effective payment activities within the banking system, contributing to maintaining the stable development and safety of the national financial system.
2. The State Bank shall specify the conditions, process and procedures for participation in the national payment system and measures to assure its safe operation.

Article 25. Organization, operation and supervision of internal payment systems

1. Payment service providers shall organize, operate and supervise their internal payment systems in order to assure the provision of safe and quality services of payment via clients' accounts and effective regulation of capital within their systems.
2. Payment service providers shall set out procedures and measures for assuring the safe operation of their internal payment systems.

Article 26. Supervision of payment systems in the economy

1. The State Bank shall formulate strategies, policies and regulations on the supervision of payment systems in order to assure stable, safe and effective operations of payment systems in the economy.
2. The State Bank shall set criteria for identifying important payment systems subject to its supervision.
3. The State Bank shall supervise payment systems with measures of off-site supervision, on-site inspection and other measures when necessary.

4. Organizations operating payment systems shall comply with the State Bank's supervision regulations and recommendations; and issue internal regulations on risk control and assurance of uninterrupted operation of their systems.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 27. Effect

1. This Decree takes effect on March 26, 2013.
2. This Decree replaces Decree No. 64/2001/ND-CP of September 20, 2001, on payment through payment service providers.

Article 28. Implementation responsibility

1. The State Bank Governor shall guide the implementation of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.-

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG