

Personal privacy of digital wallet tool-based payment under Vietnam law perspectives

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Abstract

Cashless payment via digital wallet tools is recognized as an increasingly developed and popular trend in Vietnam. As a result, a series of social relationships which are developed and modified should be governed by a more comprehensive legal framework, especially privacy protection of individuals involving in such legal relationships. The article focuses on assessment and analysis of following contents: Clarification of concept, connotation and characteristics of privacy in the legal relationship of digital wallet-based payment; analysis and assessment of the existing conditions of personal privacy protection regulations under the applicable Laws of Vietnam; last but not least, recommendations on perfecting the personal privacy protection laws.

Key words: Personal privacy, Laws of Vietnam, digital wallet, digital payment, private life secret, private information, private data.

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1. Introduction

In the context that the digital economy design and development is encouraged and facilitated with three critical pillars by the Vietnamese Government, namely: Digital Government, digital economics and society, proportion of Internet users in Vietnam in general and e-payment in Vietnam in particular is increasingly grown, a relatively good sign for the national digital transformation e-payment selected by the local residents and enterprises, especially cashless payment market through digital wallet tools which have been recently expanded, has offered a series of benefits to the economy. However, digital wallet tool-based payment is still recognized as a relatively new concept in Vietnam. It means that, regulations of the applicable laws are put under myriad of pressure on perfection, anticipation and forecast to the legal relationships arisen in this field. Among objectives and duties governing the regulatory regulation system's social relationships associated to such new field in Vietnam, user privacy (digital wallet tool users) security is known as an available challenge and difficulty.

2. Privacy in legal relationship concerning digital wallet tool-based payment

2.1. Concept of privacy

Privacy is a concept that is widely accepted by most of advanced legislations (Hong et al., 2021), it has been early become one of personal rights with generality value and one of basic features of human rights. The privacy concept definition varies by the legal system of various countries, industries, cultures and even periods. It is relatively difficult to release a complete and accurate privacy definition. However, under the most common sense, privacy is construed as a legally protected personal right for body, accommodation, personal information and data, mails, telephone, telegraphs, other communications, events, transactions and private circumstances avoid illegal access, intrusion, theft, use and disclosure risks or behaviors committed by other entities (Citron, 2010; Kuner, 2010).

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Regarding the privacy, Vietnam Constitution have recognized and protected three key groups: Privacy of accommodation, privacy of communication information and data, inalienable right to privacy and private life secrecy (Constitution of the Socialist Republic of Vietnam, 2013). Unfortunately, a separate act has not been established in Vietnamese legal system to govern the privacy-regulatory relationship. By concreting the aforesaid regulations of the 2013 Constitution, Civil Code of Vietnam assumes that this right is interpreted as the legal protection for three “imprescriptible” subjects, i.e., private life, personal secrete and family secrete (Constitution of the Socialist Republic of Vietnam, 2013)

However, it should be noted that privacy is a concept wider than concepts of “rights of personal information protection”, “protection rights for personal data”, “private life secrete rights”, “private life”, “personal secrete”, “family secrete”, etc., both in terms of its connotation and content scope (Kokott & Sobotta, 2013).

Accordingly, the privacy in digital wallet tool-based transactions is construed as the individual’s legally protected rights for personal body, accommodation, information and data (images, biometric data such as fingerprint, face, etc.), information and data about private assets, mails, telephone, telegraph and other communication details, events, transactions and circumstances against illegal access, intrusion, control, theft, use, transfer, trading or disclosure risks or behaviors committed by other entities in the legal relations of digital wallet tool-based payment (Zwitter et al., 2020).

Narrow approach perspective is currently applied to the privacy by the laws of Vietnam. Accordingly, privacy is construed as a right to personal information, data, private life secrete, and private life, personal and family secrete, etc., specified in myriad of various legal documents, instead of being codified by a specific privacy law.



2.2 Subject of privacy in digital wallet tool-based payment

In order to protect the privacy in legal relationship of digital wallet tool-based payment, approach is varied by each country. Generally, rights of service users - the center subject of privacy protection activity- are focused in this legal relationship (Sarikakis & Winter, 2017). Privacy subject, by nature, includes: Access rights; Right to edit; Right to delete; Limited powers; Right to object; Right to transfer data; Rights are not subject to automatic decisions.

2.3 Characteristics of privacy in legal relationship concerning digital wallet tool-based payment

The general privacy of individual refers to a right characterized by connotation pivoted by protected privacy subject. For the legal relationship of digital wallet tool-based payments, privacy should be construed as the personal privacy related to digital wallet tool-based payment, rights and obligations of other subjects related to protection of such individual's privacy (Wang et al., 2021). It means that the privacy protection subject must be always centered of protection measures (Sweeney, 2002).

The privacy must be approached in a wider perspective against "rights to protect personal information", "rights to protect personal data", "private life rights", etc (Lee et al., 2015). In addition to aforesaid rights, privacy also comprises of rights of legally protected individuals for their accommodation, body, private space, and even rights to forget.

Privacy of legal relationship on digital wallet tool-based payment is close, direct and mainly pivoted with individual's digital wallet registration and use, user data registration receipt, identification, collection, access, management, use, operation, sharing, trading and disclosure (identifier, contact details, signature, biometric information or data such as face, fingerprint, etc.), personal data (consumption habits, trading history, trading partners, turnover, financial capacity, etc.) of the digital wallet payment service providers, third party rights and obligations (Banks, Market Researcher,

User Information Advertisement Unit, Trader and data access units associated to the user information as customers or prospects, etc.); the State competent authorities (Investigation Agency, Court, etc.) when this legal relationship is involved.

2.4 Privacy law-related contents, i.e., rights and obligations of subject groups involving in the legal relationship of digital wallet tool-based payment

The first group, User (digital wallet tool service user): To ensure the user privacy in the legal relationship for digital wallet tool-based payment, the user is enabled to: request the organizations/individuals who access, collect, process, manage, use, store, disclose (hereinafter referred to as privacy data/information accessor and collector) the personal information/data and data on assets, mails, telephone, telegraph, other contact details, events, transactions, private circumstances (hereinafter referred to as privacy data) to provide their personal information that is owned by such privacy accessor; to request the privacy accessor to process the personal information, data, information and data on such assets, transactions to be updated, revised and suspended with privacy data access, processing or cancellation; to have rights to request the privacy data/information accessor and collector not to allow or stop sharing their privacy information/data to any third parties.

The second group, Digital Wallet Tool-Based Payment Service Provider: In addition to subjects with privacy protection, i.e., users in the legal relationship of digital wallet tool-based payment, there is also a subject playing a critical role, i.e., Digital Wallet Payment Provider Subject. Although regulation on rights and obligations of such subject group differently varies by country and legal system, the legal regulations are substantially pivoted by aspects: Such group's conditions to access to user privacy data access and collection: conditions of legal status, infrastructure system to secure their collected, managed, processed and used information/data (this also ensures the transparent access, collection, management, storage, use and disclosure procedure, etc.); User consent before collection and collection; the digital wallet service provider's rights

and obligations for digital wallet user identifier; privacy data access and collection must be used for reasonable and transparent purposes prior to data access and collection time with user consent; such subject's rights and obligations during user's privacy data access, use, management, processing, storage, security and safety. Please remember that the scope and extent to access user privacy data of digital wallet service provider subject must be well matched with the legal framework, complied with the extent and scope of access, management, processing, use and disclosure approved by the user. Moreover, this subject must also comply with the user privacy data disclosure obligations to other subjects (users themselves, the State competent authority, courts, investigation agency, etc.) as necessary prescribed by the laws. In addition, the laws of some countries, particularly EU states, strictly specify the cross-border user privacy data transfer as a condition for cross-border transfer of user data/information (cross-border transfer purposes, user consents, qualified infrastructure of recipient, commitments and controls to ensure safety of cross-border transferred data/information, cooperation of cross-border data/information control between countries, etc.).

In order to successfully secure the privacy data access, collection, management, storage, use and disclosure of such group to better protect the personal privacy, a national standard development and granting the safety certificate to such subject group are urgently required and regarded as an effective measure. Accordingly, only subjects (organizations, enterprises, agencies, units, etc.) issued with this safety certificate may access, collect, manage, store, use and disclose the personal privacy data and take responsibilities to the laws for legality of their activities.

Third group, the State: This is a general concept which refers to a group of subjects to be empowered to manage, regulate and enforce the legislation in the legal relationship of digital wallet tool-based payment to successfully protect the individual's privacy and other subjects' legitimate benefits as prescribed by the laws. In order to improve such subject's performance and limit the overuse situation, laws of most of countries specify which agencies are allowed to operate to which extent and circumstances to access,



process, store, use and disclose the user privacy data and information, reliability extent and by which regulatory measures.

The fourth group, the third parties who access, process, use and manage the user privacy data and information (such as banks, market analysts, marketing and advertisement agencies, etc.): In the current digital economic environment, information and data is recognized as an asset, event extremely valuable asset for enterprises to exploit and use. Therefore, the subject's digital wallet service supply to third parties to access, process, store and use the user privacy data/information must be complied with the legal regulations and approved in advance by the user; during the user privacy data/information is accessed, processed, stored and used by such subject group, such privacy data/information must be secured; Such subject must be also qualified with a certain conditions of technical infrastructure, transparent purposes of user privacy data/information access, processing, management, storage and use. Such subject is also obligated to satisfy the user's legitimate requirements for their privacy data/information. It is also obligated to provide the user privacy data/information which has been being accessed, processed, managed, stored and used or disclosed to the State competent authority in certain circumstances as prescribed by the laws.

3. Existing conditions of privacy protection in digital wallet tool-based payment in Vietnam

3.1 Increasingly growing digital wallet tool-based payment market

The "Analysis Report on Digital Payment Market" released by Grand Viet Research - a long-standing market consultancy and survey company, having registered office in India & USA, unveiled that the global digital payment market scale was valued at US\$ 58.30 billion in 2020. It is expected to expand with CAGR of 19.4% from 2021 to 2028. The market is forecast to be benefited from high trending rate of smart phone, growing e-commerce sales and improvement of the global Internet penetration capacity. A series of

initiatives are globally launched to digitalize the payment cycle by the Governments. This significantly promotes the economic growth and offers end user benefits in many global countries. For example, in February 2019, smart phone-based payment system, so-called as CoDi, was introduced in February 2019 by Mexico central bank to reduce the cash transaction percent (%) in the country (Grand View Research, 2021)

In Vietnam, disclosure quoted from the report of Vietnam E-commerce and Digital Economy Agency - the Ministry of Industry and Trade- revealed that in 2020 alone Internet and mobile phone-based transactions grow up to 238%. This report also specified that the significant development of new e-payment applications with 45 payment service providers is sketched as a busy and highly potential market.

According to Datareportal (2020) in the Digital 2020: Vietnam, there were 68.17 million Vietnamese Internet users in January 2020. Number of Vietnamese Internet users climbed up to 6.2 million persons (making up 10%) in the period of 2019 - 2020. Vietnam-domiciled Internet coverage was recorded with 70% in January 2020.

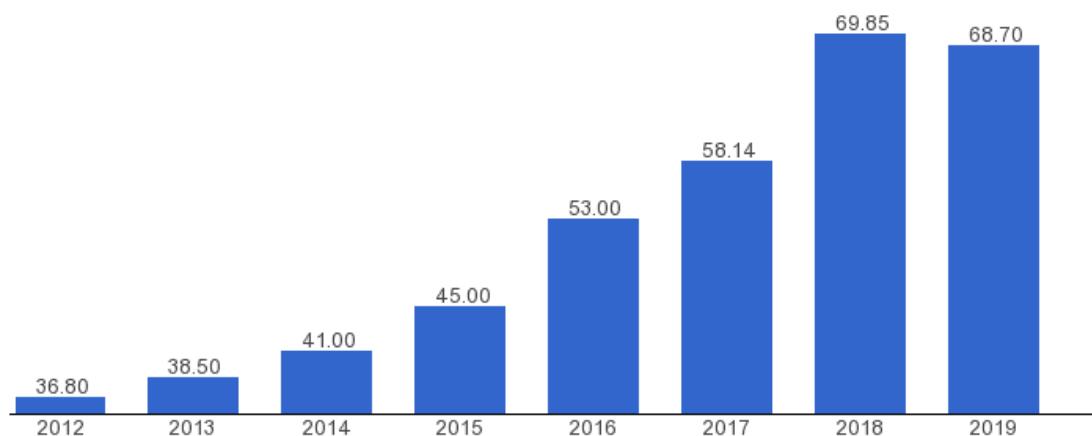


Figure 1. Chart of Vietnamese Internet users in the period of 2012 - 2019
(Sources: The Global Economy.com)

Meanwhile, the 2020 Vietnam E-commerce Payments Trends Report released by JPMorgan Chase (NYSE: JPM) - one of the most long-standing financial service Corporations in the world unveiled that Vietnam e-commerce market value climbed at



least 25% per quarter since 2017. In the future, such growth is expected to continue with CAGR of 15.1 % by 2023 (JPMorgan Chase, 2021).

The statistics released by the International Finance (2020) highlighted that Vietnam online payment increased 76% from 25 January to the mid of March 2020 in the context that the world was pushed into blockage by Coronavirus pandemics .

In Vietnam, digital wallet tool-based payment is recognized as an irreversible development trend by its advantages: Independence, high security, usability, convenience, traceability and controllability, low-cost trading expenses. A bank card for connection is known as e-wallet use prerequisites. Some e-wallets prevail a large market share in Vietnam include Momo, ViettelPay, Timo, Moca, ZaloPay, Vi Viet, Ngan Luong, VTCPay, Smartpay, Payoo, Airpay, etc.

Privacy may be known as one of substantial rights, playing a very important role in protecting the individual's legitimate rights and benefits, especially in this current digital era. Myriad of efforts have been made to secure the privacy in general and personal privacy in digital wallet tool-based payment in particular by the laws of Vietnam. However, the applicable legal regulation system is not performed as expected and found with a series of backwards for various objective and subjective reasons.

3.2 Not-really comprehensive thinking and approach to privacy

Currently, privacy is still approached with narrow sense in Vietnam, with various name not “privacy” as what referred to in its inherit connotation and wide nature. It means that the privacy is approached and regulated by some critical connotations such as “inalienable right to accommodation”, “rights to personal information protection”, “rights of data subject”, etc., rather than privacy approach with wide enough manner and sense like some developed legislation countries in the world.

The non-comprehensive privacy thinking and approach mention above result in the fact that governance and protection methods of legal relationship related to privacy are characterized by scattered, incomplete and inconsistency sketches, various

overlapping and conflicting regulations, remarkably obstructing the application. Even, an official concept on “privacy” is unavailable on the applicable legal document system. The law on privacy protection in the legal relationship concerning digital wallet tool-based payment is taken as a typical example, concretely:

Currently, the regulations on individuals’ privacy protection in digital wallet tool-based payment are scattered in various Legal Documents and by-laws such as: the 2013 Constitution Law, the 2015 Civil Code, the 2005 E-Transaction Law, the 2006 Information and Technology Law, the 2015 Cyberspace Information Security Law, the 2019 Telecommunication Law, the 2018 Cyber Security Law, the 2006 Tax Management Law, the 2010 Law on Credit Institutions, the 2015 Law on Administrative Sanctions, the 2015 Criminal Procedure Code, the Decree No. 64/2007 on IT application to operations of the State agencies, the Decree No. 25/2014 on prescribing the prevention and combat of crimes and other law violations involving high technology, the Decree No. 101/2021/NDCP on non-cash payments, the Decree No. 58/2016 on the sale and provision of civil cryptography products and services and the exportation or importation of civil cryptography, the Circular No. 39/2014/TT-NHNN guiding on payment intermediary service, the Circular No. 23/2019/TT-NHNN on amending and supplementing the Circular No. 39/2014/TT-NHNN of the State Bank of Vietnam.

3.3 Unavailability of a focal agency in-charge of management and enforcement of privacy protection.

The international experience unveiled that a focal responsible agency must be appointed to successfully law application and coordination of activity of the State competent authorities in this field. For example, it is German Federal Commissioner for Data Protection and Freedom of Information – BfDI in Germany, the National Commission for Freedom of Information – CNIL in France and the Information Commissioner - ICO in UK (Nguyen Huong, 2020).

4. Some policy implications to Vietnam

In the history of legislation operation and legal corridor development to satisfy the socio-economic development demand, the Vietnamese Government always focuses on recognition and protection: of human rights in general and citizen privacy in particular. However, the incompleteness of current personal privacy protection regulation system is found from the applicable legal corridor. That is why the privacy framework must be continued to be further studied and perfected. Concretely:

4.1 Enhance the scientific research on privacy legislation

It is required to enhance the study and clarify the concept, connotation and legal nature of the privacy. Scope of privacy must be also united as this is known as a critical basis to identify the entities, scope and method for governing the legal relationships of privacy. Among which, privacy in digital wallet tool-based payment is recognized as an increasingly important field.

4.2 Need to change the privacy thinking and approach

Privacy is characterized by a generality value right as it is. Therefore, recognition and codifying it by an act is extremely essential, especially in the context that the Government is making great endeavor to boost up the digital economics and society, the privacy is likely to be vulnerable and penetrated if powerful commitment with an act is not made.

- Approach with a wider sense: As analyzed above, the privacy nature, connotation and scope are wider in fact than that is being approached and governed by the Vietnam legislation system. Therefore, the citizen privacy must be approached and governed in a wider sense to be well matched with its inheritable legal nature, connotation and scope.



- Is personal privacy data/information an asset? In the context of increasingly developed digital society and economics, subjects which own more data and information shall have competitive advantages and freely capitalize it. The problem is that: Personal privacy in digital wallet tool-based transactions (personal information and data such as images, biometric information or data such as face, fingerprint, etc., information and data on assets, mails, telephone, telegraph and other communications, events, personal transactions, etc.) may be regarded as asset and the laws should regard it as an asset (non-traditional asset) or not. The Article 105 of the 2015 Civil Code specifies that: “Assets refer to items, banknote, valuable instruments and asset rights; assets include real estate and movable assets. Real estate and movable assets may be available and future-formed assets” (Civil code, 2015). Personal privacy data/information is not regarded as an asset type by the Vietnam laws.

However, the argument that personal privacy data/information is an asset type and should be early codified to better manage and secure the privacy subject benefits is increasingly advocated by many scholars. The asset type awareness has been changed by the fourth industrial revolution with digital economics. Various “virtual assets” may be capitalized as actual cashes and assets. In such trend, various data, including personal data, become valuable and may be recognized as a non-traditional asset type (Le son, 2021). User information (either individuals or organization) in the current digital era is categorized as personal data. And such data becomes the local leading “financial resource” or “asset” of the digital economics or digital technology database-operated economy(Thuy Van, 2020).

4.3 Require to promulgate the Privacy Law



As analyzed above, the privacy is currently governed by at least 20 (twenty) Legal Documents and by-laws in Vietnam. That is to say, each legal document shall govern a small part of privacy, rather than a separate act. As a result, privacy is scatteringly governed by various legislation branches with different interpretation and governing manners. The Privacy concept has not been even codified and consistently and fully used as analyzed above in the laws of Vietnam.

Meanwhile, privacy is governed by a separate act in the laws of developed countries. Privacy Protection Law (or similar name with privacy as governing entity) has been already issued by European Union and 13 countries, such as Brazil, USA, Australia, New Zealand, Japan, Korea, China, Canada, and Thailand (Dan Simmons, 2021), etc. Understanding the scope and method of governing the privacy's legal relationship in such countries unveiled that privacy is governed with following scopes: (i) Concept and definition on privacy; (ii) Conditions for other entities to access, collect and process privacy of another person; (iii) Subject rights and some right restrictions; (iv) Responsibilities and obligations of personal privacy data/information accessor and collector; (v) the State authority's institutions of monitoring legal compliance with privacy for other subject groups; (vi) Cross-border transfer of personal privacy data/information; (vii) Violations and sanctions.

Conclusions

Privacy in general and privacy in digital wallet tool-based payment in particular is known as a very important right of individuals to be respected and protected by laws, especially in the context that in-progress industrialization and modernization is being initiated by Vietnam like today. With booming development and remarkable application of science and technology, and increasingly digital wallet payment application platforms, personal privacy is likely to be vulnerable and penetrated if it is not protected by more substantial, powerful and comprehensive legal measures. As a result, an incentive policy must be taken to comprehensively study and perfect the legislation system to successfully

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govern group of relationships arisen in this field. Among which, studying and promulgation of Privacy Protection Law are inevitable and urgent demand.



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