

Newsletter

June 2010

In This Issue

Special Control of Credit Institutions in Danger of Insolvency

New Decree on Credit Rating Activities

Increased Minimum Capital Prudential Ratio of Credit Institutions

Basic Interest Rate in Vietnamese Dong

No Cap on Lending Rates in Vietnamese Dong

Deadline for Closure of Offshore Gold Trading Accounts

Operating License for Joint-stock Commercial Banks

New Circular Guiding Decree No. 59 on Commercial Banks

Merger, Consolidation and Acquisition of Credit Institutions

Maximum Deposit Interest Rate in United States Dollars ("USD")

Temporary Regulations on Network Development of Commercial Banks in 2010

Amendment and Supplement to Regulations on Registration, Depository And Clearance of Securities

Circular on Financial Management of the Stock Exchanges and Securities Depository Centre

Fees Applicable at the Stock Exchanges and Securities Depository Centre

Draft Circular on Margin Trading

Baker & McKenzie (Vietnam) Ltd.
12th Floor, Saigon Tower
29 Le Duan Blvd
District 1
Ho Chi Minh City
Socialist Republic of Vietnam
Tel: +84 8 3829 5585

Baker & McKenzie (Vietnam) Ltd.
Hanoi Branch Office
13th Floor, Vietcombank Tower
198 Tran Quang Khai Street
Hoan Kiem District, Hanoi
Socialist Republic of Vietnam
Tel: +84 4 3825 1428

BANKING

SPECIAL CONTROL OF CREDIT INSTITUTIONS IN DANGER OF INSOLVENCY

On 22 March 2010, following the issuance of Decree No. 05/2010/NĐ-CP dated 18 January 2010 by the Government Regulating Application of Law on Bankruptcy to Credit Institutions ("Decree No. 05"), the State Bank of Vietnam (the "SBV") issued Circular No. 08/2010/TT-NHNN Regulating Special Control with Respect to Credit Institutions ("Circular No. 08"). Circular No. 08 applies to credit institutions established and operating pursuant to the Law on Credit Institutions (except for cooperative credit institutions), including State-owned credit institutions, joint-stock credit institutions, joint-venture credit institutions and 100% foreign-owned-capital credit institutions.

Circular No. 08 provides a framework for the credit institutions to be placed under special control by the SBV where the credit institutions are in danger of becoming insolvent or being unable to make payments. The Governor of the SBV is the competent person to issue decisions on special control, its duration, extension and/or termination and to appoint the special control board and its members.

A credit institution may be put under special control in any one of the following situations:

- a. It is in danger of becoming insolvent, where on 3 consecutive occasions it has failed to ensure a minimum ratio equal to 1 of total assets in credit which are capable of being paid out immediately within the next 7 days, to total assets in debit which are due to be paid out within the next 7 days with respect to each type of currency and gold;
- b. Irrecoverable debts which may result in the credit institution defaulting in payment, where bad debts account for 10% or more of the total lending balance of the credit institution, or account for 100% or more of the equity of the credit institution for 3 consecutive months; or
- c. The total amount of accumulated losses of the credit institution exceeds 50% of the total paid up charter capital and funds of the credit institution.

A credit institution under special control of the SBV may be eligible to receive a special loan granted on an urgent basis by the SBV, by another credit institution or by the Vietnam Deposit Insurance, subject

to a decision approving the special loan by the Governor of the SBV based on the recommendation of the special control board. Such a special loan will have priority of payment over all other debts of the credit institution.

During the period of special control, the credit institution is prohibited (unless with approval of the SBV) from:

- a. Permitting the chairman or members of the board of management, the head or members of the board of controllers, general director (director) to transfer shares (applicable to joint-stock credit institutions);
- b. Distributing dividends (if any);
- c. Concealing, disbursing, pledging, mortgaging, transferring or conducting any other transaction relating to the assets of the credit institution and related data and files.

The maximum duration of the special control period is 2 years from the effective date of the relevant decision of the Governor.

Termination of special control by the SBV will allow the credit institutions, by a Court decision, to be liquidated and declared bankrupt, without being subject to the business operation recovery procedures as stipulated in Decree No. 05 (Article 2.2).

Circular No. 08 took effect from 6 May 2010 and replaced Decision No. 215/1998/QD-NHNN dated 23 June 1998 of the SBV Promulgating Regulations on Special Control with Respect to Vietnam Joint Stock Credit Institutions ("Decision No. 215") and Decision No. 1071/2002/QD-NHNN dated 2 October 2002 and Decision No. 646/2002/QD-NHNN dated 21 June 2002 of the SBV amending Decision No. 215.

NEW DECREE ON CREDIT RATING ACTIVITIES

Decree No. 10/2010/NĐ-CP on Credit Information Activities was issued by the SBV on 12 February 2010 ("Decree No. 10"). Decree No. 10 regulates credit information activities by credit rating companies, credit providing institutions¹, their customers and the rights and obligations of related organizations and individuals. Decree No. 10 also provides a framework for a company who wishes to conduct credit rating activities (i.e. credit information activities) by applying to the SBV for the issuance of a certificate of eligibility for credit information activities.

1. I.e., lending institutions; however as in Decree No. 10, "credit providing institution" is used throughout.

In order to obtain a certificate of eligibility for credit information activities, a company must satisfy the following requirements:

- (i) Have adequate information technology infrastructure, ensuring operational requirements;
- (ii) Have a minimum charter capital of VND 30 billion;
- (iii) Have managerial staff with expertise in finance, banking and information technology;
- (iv) Have a feasible business plan and not be conducting business in any other industry or line of business outside the scope of credit information activities stipulated in Decree No. 10;
- (v) Have at least 20 commercial banks that undertake to provide credit information and that do not have undertakings with other credit information companies; and
- (vi) Have a written agreement on procedures for collecting, processing, storing and providing credit information between the credit rating company and the credit providing institutions with the undertakings.

Once the above conditions are met, the company must lodge an application dossier with the SBV requesting the issuance of a certificate of eligibility for credit information activities, and the SBV must make a decision within 30 working days from the date of receipt of a complete and valid application.

Failure to maintain the satisfaction of the above conditions or certain violations of Decree No. 10 may result in a temporary or permanent withdrawal of the certificate of eligibility of credit information activities.

Decree No. 10 took effect from 15 April 2010.

INCREASED MINIMUM CAPITAL PRUDENTIAL RATIO OF CREDIT INSTITUTIONS

On 20 May 2005, the SBV issued Circular No. 13/2010/TT-NHNN Regulating Prudential Ratios in Respect of the Operations of Credit Institutions ("Circular No. 13"). Circular No. 13 will be effective in 01 October 2010 and replace Decision No. 457/2005/QD-NHNN of the SBV dated 19 April 2005 Promulgating Regulations on Prudential Ratios with Respect to the Operations of Credit Institutions and its amendments ("Decision No. 457"), and Articles 4.1 and 4.2 of Decision No. 03/2008/QD-NHNN dated 1 February 2008 of the Governor of the SBV On Lending and Discounting of Valuable Papers for the Investment and Trading of Securities.

Under Circular No. 13, the minimum capital prudential ratio applicable to credit institutions, except for foreign bank branches, has been increased from 8%² to 9%. Credit institutions must produce consolidated financial reports in accordance with laws and must also maintain a minimum capital prudential ratio of 9% with respect to the capital and assets of the credit institutions and their affiliated companies on a consolidated basis.

For lending limits, Circular No. 13 adjusts the definition of the concept “group of related customers” by including the definition of parent companies and subsidiaries. Under Decision No. 457, this concept is quite broad and is determined based on ownership relationship, management/executive position relationship or relationship with another member. Credit institutions will have to develop an internal regulations on how to determine a single customer or a group of related customers and their applicable credit limits; Any changes in such internal regulations must be reported to the SBV (Inspectorate Unit).

Circular No. 13 provides that credit institutions must, at the end of each day, determine and take measures to ensure the payment ability ratios for the following day as follows:

- a. A minimum ratio of 15% of total assets in credit which are capable of being paid out immediately, to assets in debit which are recorded in the accounting books as total debts payable.
- b. A minimum ratio of 1 of total assets in credit which are due to be repaid within the next 7 days to assets in debit which are due to be paid out within the next 7 days.

Circular No. 13 also provides a more detailed description of assets in credit and assets in debit and requires credit institutions to set up and issue internal regulations on payment ability ratio in VND and foreign currencies converted to USD, which must include minimum requirements for liquidity management, cash flow projections, stress testing and liquidity contingency plan.

Circular No. 13 excludes a provision on the maximum ratio of short term capital fund permitted to be used to provide medium and long term loans, and instead provides for the ratio between loans granted by a bank to its customers and its mobilized capital, which must not exceed 80% for banks and 85% for non-banking credit institutions.

Circular No. 13 also introduces the maximum level of capital contribution and purchase of shareholding in an affiliated company of

2. As stipulated in Decision No. 457.

a credit institutions, which must not exceed 25% of the charter capital and reserve funds of such credit institutions.

Circular No. 13 is an attempt by the SBV to consolidate the previous legal documents on prudential ratios and to provide credit institutions with more up-to-date prudential requirements in line with international practice.

BASIC INTEREST RATE IN VIETNAMESE DONG

The SBV continues to keep the basic interest rate in Vietnamese Dong (“**VND**”) stable at the rate of 8% per year, according to its Decision No. 1311/QD-NHNN dated 31 May 2010.

This Decision took effect from 1 June 2010 and replaced Decision No. 1011/QD-NHNN dated 25 April 2010 of the Governor of the SBV.

NO CAP ON LENDING RATES IN VIETNAMESE DONG

The Government issued Resolution No. 18/NQ-CP on 6 April 2010 on the solutions to ensure the stability of the macro economy in 2010 to avoid high inflation and maintain economic growth of 6.5%. According to this Resolution, in relation to the financial and monetary issues, the Government requests SBV to keep managing the monetary policy to ensure credit growth of around 25% and to manage strictly the circulation of money in accordance with the development and the demand of the economy. In addition, to foster exports, limit import and improve the balance of payments, the SBV is also requested to manage foreign exchange rates and market flexibly and stably by guiding commercial banks in foreign currency loans for the import of the essential goods not yet produced domestically and supervising the cash flow of foreign currencies.

Accordingly, from 14 April 2010, pursuant to Circular No. 12/2010/TT-NHNN Guiding VND Lending by Credit Institutions at Interest Rates Negotiated with Customers (“**Circular No. 12**”) issued by the SBV on the same day, banks are allowed to make VND loans to customers “at interest rates negotiated with the customers in order to efficiently serve the capital requirements of projects, plans of production, business, services, development investment and [daily] living”³.

In the past, banks had to comply with a capped interest rate for VND loans (around 12% per annum). The capped interest rate was first removed by Circular No. 07/2010/TT-NHNN of the SBV dated 26

3. Article 1 of Circular No. 12

February 2010 Regulating VND Lending at Interest Rates Negotiated between Credit Institutions and Customers ("Circular No. 07"). However, Circular No. 07 only applied to medium and long term loans, as well as certain short term loans, and was eventually repealed by Circular No. 12.

Under Circular No. 12, credit institutions are responsible for:

- Publicly listing their lending interest rate at a reasonable rate based on the capital supply and demand relationship of the market, and the capital demand of the customers; and
- Adjusting the lending interest rate according to the fluctuation of the capital mobilization interest rate in VND and the objectives and currency policy management solutions of the SBV.

Credit institutions must also submit to the SBV the reports on the VND interest rate in the form attached to Circular No. 12.

DEADLINE FOR CLOSURE OF OFFSHORE GOLD TRADING ACCOUNTS

By the issuance of Circular No. 10/2010/TT-NHNN on 26 March 2010 ("Circular No. 10") Amending Circular No. 01/2010/TT-NHNN dated 6 January 2010 ("Circular No. 01") Regarding the Termination of Decision No. 03/2006/QD-NHNN dated 18 January 2006 on Gold Trading on Offshore Accounts ("Decision No. 03") and its amendment, Decision No. 11/2007/QD-NHNN ("Decision No. 11"), the SBV extends the deadline by which credit institutions and enterprises currently trading gold through offshore accounts are required to finalize payments and close their offshore gold trading accounts to 30 June 2010.⁴ In the same vein, licenses to trade gold on offshore accounts issued by the SBV to credit institutions and gold traders pursuant to Decision No. 03 and Decision No. 11 will become invalid as from 30 June 2010.

OPERATING LICENSE FOR JOINT-STOCK COMMERCIAL BANKS

On 26 March 2010, the SBV issued Circular No. 09/2010/TT-NHNN Regulating the Issuance of Licenses for Joint-Stock Commercial Banks ("Circular No. 09"). Circular No. 09 applies to joint stock commercial banks and provides that the Governor of the SBV is the competent person to make a decision on the issuance of licenses for the joint-stock commercial banks.

4. The old deadline was 30 March 2010 under Circular No. 01.

Capital requirements

A joint-stock commercial bank must have a charter capital of at least equivalent to the legal capital required by laws at the time of establishment.⁵ The charter capital must be contributed in VND and the source of charter capital contribution must satisfy certain conditions specified under Circular No. 09.

Shareholder requirements

There must be at least 100 shareholders participating in the charter capital contribution for the establishment of the joint-stock commercial bank, in which there must be at least three founding shareholders which are organizations. Shareholders of the joint-stock commercial bank must have financial capacity to contribute capital for the establishment of the bank, in particular:

- (a) Shareholders being organizations must:
 - Be established under laws of Vietnam;
 - Have financial capability;
 - Be entitled to contribute capital to one bank only;
 - Not be entitled to contribute capital for establishing the bank if this organization or this organization and its affiliated person hold more than 10% of the charter capital of another bank;
 - Have been operating for at least three (3) years and profitable in three (3) consecutive years prior to the year of the application for the establishment of the bank; and
 - Have written approval of the Prime Minister in case of State-owned enterprises.
- (b) Shareholders being individuals must:
 - Be of Vietnamese nationality;
 - Have financial capacity;
 - Be entitled to contribute capital to one bank only;
 - Not be entitled to contribute capital for establishing the bank if this individual or this individual and its affiliated person hold the significant shareholding in another bank.

Founding shareholders (whether organisations or individuals) must together own at least 50% of the charter capital of the bank at the time of its establishment and founding shareholders being organisations

5. Current legal capital requirement for a joint stock commercial bank is VND 3,000 billion (approximately USD158 million)

must, at the same time, together own at least 50% of all shares of the founding shareholders.

Conditions for the operations of the joint-stock commercial bank

The bank must commence operation within 12 months from the issuance date of the license or the SBV will withdraw the license. After being issued the license, the bank must fully meet the following conditions:

- (a) Have its charter certified by the SBV;
- (b) Have its business registration certificate;
- (c) Have the full amount of the required charter capital deposited in a non-interest bearing escrow account opened at a SBV branch in the province where the bank's head office is located after being issued its license and at least 30 days prior to the opening date of the bank. This amount will only be released after the bank has commenced operations;
- (d) Have the head office meet the required conditions;
- (e) Publish the announcement of the establishment of the bank in accordance with relevant regulations;
- (f) Ensure the satisfaction of at least the following conditions in accordance with the plans on establishment of the bank as submitted to the SBV:
 - Charter capital;
 - Key personnel; and
 - Information technology.

Circular No. 09 became effective from 11 May 2010 and replaced Decision No. 24/2007/QD-NHNN dated 07 June 2007 of the SBV Regulating the Issuance of Operation License for Joint Stock Commercial Banks ("**Decision No. 24**") and Decision No. 46/2007/QD-NHNN dated 25 December 2007 of the SBV amending Decision No. 24.

NEW CIRCULAR GUIDING DECREE NO. 59 ON COMMERCIAL BANKS

On 26 February 2010, the SBV issued Circular No. 06/2010/TT-NHNN Guiding the Organization, Management, Operation, Charter capital, Transfer of Shares, Amendment and Supplementation of License and Charter of Commercial Banks ("**Circular No. 06**").

Circular No. 06 provides detailed guidelines for Decree No. 59/2009/NĐ-CP issued by the Government on 16 July 2009 on the Organisation and Operation of Commercial Banks ("Decree No. 59"). Joint venture banks and 100% foreign-owned banks are subject to both Decree No. 59 and Circular No. 03/2007/TT-NHNN dated 5 June 2007 of the Government Guiding the Implementation of Decree No. 22/2006/NĐ-CP of the Government dated 28 February 2006 on Organisation and Operation of Foreign Bank Branches, Joint Venture Banks, 100% Foreign-Owned Banks and Representative Offices of Foreign Credit Institutions in Vietnam.

According to Circular No. 06, the head office of a bank must be located in Vietnam. If a bank wishes to transfer one or some of its non-trading sections under the head office to other locations outside the head office, the new location must be within the territory of Vietnam and satisfy other conditions set out in Circular No. 06. The bank must also notify the SBV branch where the head office is located as well as the SBV Banking Inspectorate and Supervisor regarding such transfer of location within 15 working days prior to the transfer.

Change of location of the head office of a bank is subject to the approval of the SBV.

Circular No. 06 regulates the ratification and appointment of key personnel, increase/decrease of the amount of charter capital, amendment/supplementation of license and charter, transfer of shares, redemption of capital contribution portions of members and reporting regimes. It also provides guidance with respect to the application dossiers for obtaining the SBV's approval regarding the aforementioned procedures.

Circular No. 06 became effective from 25 April 2010 and repealed the following regulations:

- Decision No. 1122/2001/QD-NHNN of the Governor of the SBV dated 04 September 2001 issuing regulation on shareholding, shareholders, share certificates and charter capital of State and people's joint stock commercial banks ("Decision No. 1122");
- Decision No. 797/2002/QD-NHNN of the Governor of the SBV dated 29 July 2002 amending Decision No. 1122;
- Decision No. 20/2008/QD-NHNN of the Governor of the SBV dated 04 July 2008 amending Decision No. 1122;
- Decision No. 1087/2001/QD-NHNN of the Governor of the SBV dated 27 August 2001 regulating the organisation and operation of the board of management, board of controllers and general director of State and people's joint stock commercial banks; and

- Decision No. 383/2002/QD-NHNN of the Governor of the SBV dated 24 April 2002 of the Governor of the SBV promulgating the standard charter for State and people's joint-stock commercial banks.

MERGER, CONSOLIDATION AND ACQUISITION OF CREDIT INSTITUTIONS

On 11 February 2010, the SBV issued Circular No. 04/2010/TT-NHNN Regulating the Merger, Consolidation and Acquisition of Credit Institutions (“**Circular No. 04**”). Circular No. 04 is applicable to commercial banks, finance companies, finance leasing companies, cooperative credit institutions, as well as organisations and individuals involved in the merger, consolidation or acquisition of credit institutions.

Forms of merger, consolidation and acquisition

A merger may have the following forms:

- (i) A bank, finance company or cooperative credit institution may merge with a bank.
- (ii) A finance company may merge with another finance company.
- (iii) A finance leasing company may merge with another finance leasing company.

A consolidation may have the following forms:

- (i) A bank may consolidate with a bank, finance company or cooperative credit institution to become a single bank.
- (ii) Finance companies may consolidate to become a single finance company.
- (iii) Finance leasing companies may consolidate to become a single finance leasing company.

An acquisition may have the following forms:

- (i) A bank may acquire a finance company or a finance leasing company.
- (ii) A finance company may acquire a finance lease company.

Of note, Circular No. 04 does not regulate acquisition of a bank by another bank.

Conditions for merger, consolidation and acquisition

A merger, consolidation or acquisition must not be within the cases of an economic concentration prohibited by the Vietnam Law on

Competition. There must be a plan containing at least the contents stipulated in Circular No. 04, which must not be contrary to the relevant merger, consolidation or acquisition agreement. In addition, the merged/consolidated credit institution, following the merger/consolidation, must have a minimum charter capital equal to the amount of legal capital required by the current laws. The acquiring credit institution, after the acquisition, must have a minimum charter capital equal to the amount of legal capital required by current law and ensure the prudential ratios for operation in accordance with current laws.

Procedures for merger, consolidation and acquisition

A merger, consolidation or acquisition must be conducted in two stages, including obtaining: (i) an approval in principle of the Governor of the SBV; and (ii) an official approval of the Governor of the SBV. In making a decision of whether to approve in principle of the merger, consolidation or acquisition of the credit institutions, the SBV will consult with its branches in the province or city where the participating credit institutions have their head offices, the provincial people's committee of such locality and the relevant SBV departments and divisions. Once the approval in principle is granted, the participating credit institutions must seek consent from their governing bodies with respect to any changes in the plan or relevant issues (if any) and resubmit it for the Governor's approval.

The relevant documents for such application dossier are provided in Circular No. 04.

Circular No. 04 took effect 45 days from the date of signing, i.e. 29 March 2010 and replaced Decision No. 241/1998/QD-NHNN5 of the Governor of the SBV dated 15 July 1998 Issuing Regulations on Merger, Consolidation and Acquisition of Vietnamese Joint-Stock Credit Institutions.

MAXIMUM DEPOSIT INTEREST RATE IN UNITED STATES DOLLARS ("USD")

Pursuant to Circular 03/2010/TT-NHNN dated 10 February 2010 of the SBV ("**Circular No. 03**"), from 11 February 2010, the maximum deposit interest rate applicable to economic organisations (except for credit institutions) with respect to their USD deposits at credit institutions is 1% per year.

Circular No. 03 replaced Decision No. 07/2007 of the Governor of the SBV dated 6 February 2007 Regarding USD Deposit Interest Rate Applicable to Legal Entities at Credit Institutions. Under this previous regulation, credit institutions were allowed to determine the USD deposit interest rate based on negotiation with customers, its

funding needs, domestic market demand and supply of capital and international market interest rate.

TEMPORARY REGULATIONS ON NETWORK DEVELOPMENT OF COMMERCIAL BANKS IN 2010

To ensure the effectiveness of network development of commercial banks while the SBV is preparing to amend and supplement Decision No. 13/2008/QD-NHNN dated 29 April 2008 Regulating the Operational Network of Commercial Banks, the Governor of SBV has issued Official Letter No. 918/NHNN-TTGSNH dated 02 February 2010 ("**Official Letter No. 918**") to provisionally guide commercial banks how to open their transaction offices, branches and banking centres in 2010.

Official Letter No. 918 regulates some additional conditions for opening transaction offices, branches and banking centres of commercial banks. Under Official Letter No. 918, commercial banks without branches or with one branch in the area of Hanoi and Ho Chi Minh city may open at a maximum two branches in each city. In other provinces, the SBV allows commercial banks to open at a maximum two branches at one time. One trading centre or branch of a commercial bank is allowed to open at a maximum one trading department at one time. The SBV will consider allowing the opening of more new departments only after the approved trading department has come into operation.

Securities

AMENDMENT AND SUPPLEMENT TO REGULATIONS ON REGISTRATION, DEPOSITORY AND CLEARANCE OF SECURITIES

On 25 March 2010, the Ministry of Finance (the "**MOF**") issued Circular No. 43/2010/TT-BTC Amending and Supplementing the Regulations on Registration, Depository, Settlement and Clearance of Securities Promulgated under Decision No. 87/2007/QD-BTC dated 22 October 2007 of the MOF ("**Circular No. 43**").

Under Circular No. 43, the MOF has decided to change the name of the Securities Depository Centre to the Vietnam Securities Depository Centre (VSD). A securities company or a commercial bank who would like to be a member of the VSD must not only meet the conditions provided under Decision No. 87 but also have a system connected

to the electronic communication port of the VSD and have the management software with respect to the registration, depository and clearance of securities satisfactory to the VSD.

Circular No. 43 broadens the scope for the transfer of ownership of securities registered at the VSD stipulated in Decision No. 87.

The deposit of securities is based on the principle that customers will deposit their securities through depository members and these members will re-deposit these securities at the VSD so that the balance of the accounts of the customers at the depository members must always be equal to the balance of the accounts of the members opened at the VSD. The depository members must report to the VSD the daily opening and closing of the depository accounts of their customers and compare the account balance of each customer with the data relating to the customer's securities ownership at the VSD based on the information supplied by the VSD regarding the respective customer. The depository members must adjust any errors relating to their accounts at the VSD or the accounts of their customers. The VSD also has an obligation to notify the depository members of any errors.

As previously stipulated under Decision No. 87, securities may not be traded if the VSD has not entered them in the accounts of the depository members. Circular No. 43 further stipulates that the State Securities Commission (the “**SSC**”) will issue detailed guidelines on this issue subject to the approval of the MOF.

To become a depository member, a commercial bank must have a minimum contributed capital of VND5,000 billion and there must be at least 10 members of the VSD committing to open payment accounts at the bank and use the payment services of the bank when requested by the VSD after the bank has been approved to be a depository member. The bank must have a system which is able to archive data of the payment transactions within at least 1 year and to report to the SSC or VSD immediately within 1 day if requested.

Circular No. 43 became effective 45 days from the date of signing (i.e., 10 May 2010).

CIRCULAR ON FINANCIAL MANAGEMENT OF THE STOCK EXCHANGES AND SECURITIES DEPOSITORY CENTRE⁶

Circular No. 29/2010/TT-BTC Guiding Financial Management of the Stock Exchanges and the Securities Depository Centre was issued

6. Now the Vietnam Securities Depository Centre (VSD).

by the MOF on 4 March 2010 ("Circular No. 29") to replace Decision No. 3686/2007/QD-BTC of the MOF dated 22 November 2007 Issuing Regulations on Financial Management of the Ho Chi Minh City Stock Exchange.

Under Circular No. 29, the Hanoi Stock Exchange, the Ho Chi Minh City Stock Exchange, and the VSD are legal entities organized in the form of one-member limited liability companies and operating in accordance with the Law on Securities, Law on Enterprises, their Charters and other applicable laws and regulations. The Stock Exchanges and the VSD are independent accounting units under the State's ownership, having their own corporate seals and are subject to the financial management of the MOF.

Circular No. 29 also regulates the following financial aspects of the Stock Exchanges and the VSD:

- (a) managing their capital and assets;
- (b) mobilizing capital and using their capital for investment;
- (c) leasing and mortgaging their assets;
- (d) liquidating and purchasing their assets;
- (e) managing their debts;
- (f) evaluating their assets;
- (g) resolving their asset damages;
- (h) managing their revenue, expenses and profit; and
- (i) system of accounting, auditing and financial plan.

FEES APPLICABLE AT THE STOCK EXCHANGES AND SECURITIES DEPOSITORY CENTRE

From 12 April 2010, the fees applicable to securities operations at the Stock Exchanges and the VSD are subject to the regulations under Circular No. 27/2010/TT-BTC issued by the MOF on 26 February 2010 Regulating the Rates, Collection and Payment Regime, Management and Use of Fees for Securities Operations Applicable at the Stock Exchanges and the VSD ("Circular No. 27").

The collection of fees stipulated under Circular No. 27 is not within the State budget; therefore, the collection bodies are liable to pay the relevant taxes with respect to the collected fees in accordance with laws and are entitled to manage and use the collection amount after having fulfilled all tax obligations.

Should you wish to obtain further information or want to discuss any issues raised in this alert with us, please contact:

Fred Burke
+ 84 8 3520 2628
fred.burke@bakernet.com

Oanh Hoang Kim Nguyen
+ 84 8 3520 2629
hoangkimoanh.nguyen@bakernet.com

The issuance of Circular No. 27 have made some relevant legal documents invalid, including: Circular No. 110/2002/TT-BTC dated 12 December 2002⁷, Circular No. 11/2006/TT-BTC dated 21 February 2006⁸, and some regulations of Decision No. 1351/QD-BTC dated 13 June 2008⁹ contrary to Circular No. 27.

DRAFT CIRCULAR ON MARGIN TRADING

The SSC has recently prepared the first draft circular on margin trading. This draft circular regulates the conditions for securities companies to conduct margin trading. The draft circular also provides for the conditions for customers of securities companies to open margin trading accounts and to borrow money from them for margin trading; mortgage rate and mortgaged assets; and resolutions for closing margin trading accounts.

According to this draft circular, securities companies will be able to loan money to their customers to buy securities, which securities will be mortgaged to the securities companies as security for the loans.

-
7. Circular No. 110/2002/TT-BTC dated 12 December 2002 guiding the system of collection, management and use of fees in banking, securities and insurance.
 8. Circular No. 11/2006/TT-BTC dated 21 February 2006 amending and supplementing Circular No. 110/2002/TT-BTC dated 12 December 2002.
 9. Decision No. 1351/QD-BTC dated 13 June 2008 referring to the decrease of fee rates of trading stocks, fund certificates and the guidance of the MOF in fees of issuing and trading Government bonds.

This client alert provided by Baker & McKenzie (Vietnam) Ltd. is intended to provide our clients, and other interested parties, with an overview of the recent legal changes in the relevant area for information purposes only. The information contained in this client alert does not constitute legal advice or legal opinion, and should not be regarded as a substitute for detailed advice in individual cases. The information, as referred to in this client alert, is based on the laws, regulations, notifications, practice and policy at the time of its production. The laws, regulations, notifications, practice and policy may change from time-to-time and, therefore, the use of this client alert must be taken with due care. You are strongly advised that no use should be made of the information in this client alert without prior consultation with Baker & McKenzie (Vietnam) Ltd.. No portion hereof may be reproduced or transmitted, by any means, without the prior written permission from Baker & McKenzie (Vietnam) Ltd.. All rights reserved.

Baker & McKenzie (Vietnam) Ltd. is a member of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

©2010 Baker & McKenzie (Vietnam) Ltd. All rights reserved.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.