Financial Services & Regulatory

Asia Pacific

Welcome to the eleventh edition of Baker & McKenzie's Asia Pacific Financial Services and Regulatory Newsletter. This edition highlights some of the key regulatory developments in Australia, Hong Kong/China, Singapore, Thailand and Vietnam.

The Asia Pacific Financial Services & Regulatory Newsletter is designed to give you a snapshot of the updates and changes in local laws and practices throughout the Asia Pacific, which will be contributed from time to time by our offices across the region.

We hope you find this newsletter informative. For inquiries, suggestions, or subscribe/unsubscribe requests, please e-mail the Asia Pacific Publications Coordinator, Karla Maquiling.

Newsbites

Australia

New grandfathering regulations coinciding with the commencement of FOFA

By Astrid Raetze and Bill Fuggle
July 2013

The bans on conflicted remuneration, volume-based shelf space fees and asset-based fees on borrowed amounts took effect as of 1 July 2013, together with the statutory duties for financial advisers and rules for new ongoing advice fee.

In relation to the ban, the Government has amended the regulations to grandfather some existing arrangements from the application of Future of Financial Advice (FOFA) rules until 2014.

New grandfathering regulations for platform operators and non-platform providers

On 28 June 2013, the Government passed the *Corporations Amendment Regulation 2013 (No. 5)* (the Regulation), which amends the *Corporations Regulations 2001*. The regulations took effect on 1 July 2013, along with the FOFA provisions.

Specifically, the regulations place a ban on conflicted remuneration. For benefits paid by platform operators, the ban will apply to new clients from 1 July 2014; and for non-platform providers, the ban will apply to new clients and investments in new products by existing clients from 1 July 2014.

The effect of these new regulations is to grandfather benefits given by platform operators and persons other than platform operators under a consistent approach. In both cases, benefits given in relation to new clients from 1 July 2014 are not grandfathered, even if the benefit is given under a pre-application-day arrangement.

These regulations also include a new provision in response to comments on the draft version suggesting that where a party to an arrangement changes, the arrangement is taken to have
continued in effect for the purposes of grandfathering arrangements. However, restructuring simply in order to continue or increase grandfathered payments may attract the operation of the relevant anti-avoidance provision of the act.

Grandfathered employment arrangements

Grandfathering is also provided for a benefit paid under a remuneration arrangement between an employer and an employee. The regulations limit the application of the ban on conflicted remuneration in the following circumstances:

- for benefits paid to employees under an enterprise agreement in force immediately prior to 1 July 2013, the ban will apply from six months after the nominal expiry date (NED) of the agreement (or 1 July 2014 for those agreements which passed their NED before 1 July 2013); and

- for benefits paid to employees under non-enterprise agreements, the ban will apply from 1 July 2014.

Additional benefits excluded from the ban on conflicted remuneration

In addition, the regulation excludes the following benefits from the ban on conflicted remuneration:

- benefits made in relation to the purchase or sale of a financial advice business and the payment of these benefits to third parties on or after the commencement of the ban that result from an arrangement entered into before 1 July 2013; and

- grandfathered benefits that are passed onto other parties that were not subject to the agreement which gave rise to the grandfathered benefit (but which the passed-on benefit is given under a pre-application day arrangement), for example, an authorised representative or a financial adviser.

ASIC increases NTA requirements for custodians

By Bill Fuggle, Astrid Raetze, Lewis Apostolou and Sam Appleton
July 2013

The Australian Securities and Investments Commission (ASIC) has introduced new regulations increasing the amount custodians are required to hold in net tangible assets (NTA). The new rules also apply to asset holders for registered schemes or investor-directed portfolio services (IDPS).

If you are a custodian or provide a custodial service, you may be subject to the new financial requirements. Changes will apply from 1 July 2013 for new licensees and 1 July 2014 for existing licensees.

Background

The requirements form part of ASIC's wider review of the financial requirements applicable to Australian financial services (AFS) licensees, and follow ASIC's report on the custody industry. ASIC consulted on the requirements in November 2012.

The corporate regulator considers the increased financial requirements will address the risks associated with holding assets and give investors increased confidence in the safekeeping of their assets.

ASIC has also said the new requirements reflect the rapidly increasing amount of assets in custody resulting from the huge growth in superannuation.

New NTA requirements for custodians

Under the new regulations, custodians must hold NTA of 10% of average annual revenue or AU$10 million, whichever is greater. Previous regulations stipulated custodians put aside a flat AU$5 million in NTA.

New NTA requirements for incidental providers

In addition, "incidental providers" will require NTA amounting to the greater of AU$150,000, or 10% of annual revenue. ASIC admitted there is "significant uncertainty" around the definition of "incidental providers," which it loosely defined as providers for whom the custodial service is incidental to the operators' main service. The custodial or depository services revenue of an incidental provider must be less than 10% of its financial services business revenue.

Commencement

For new licensees, the regulations will apply from 1 July 2013. For existing licensees, there will be a one-year transition period and compliance will be required from 1 July 2014.

New Basel III disclosure requirements

By Bill Fuggle, Astrid Raetze, Lewis Apostolou and Sam Appleton
August 2013

The Australian Prudential Regulation Authority (APRA) recently released the new Prudential Standard APS 330 Public Disclosure (the Standards), which require locally incorporated authorised deposit-taking institutions (ADIs) to publicly disclose information on their risk profile, risk management, capital adequacy, capital instruments and remuneration practices.

Background

Following the global financial crisis, concerns were raised regarding the transparency of regulatory capital (i.e., the capital an ADI is required to hold) and market discipline. The following factors were identified as contributing to market uncertainty during the crisis and exacerbating a loss of market confidence in authorised deposit-taking institutions operating overseas:

- insufficient disclosure requirements and the absence of a standard approach for reporting regulatory capital, making it difficult to evaluate an authorised deposit-taking institution's capital position; and
- remuneration practices which may have encouraged unsound risk seeking behaviour.

In response to these issues, the Basel Committee on Banking Supervision published *Composition of capital disclosure requirements* (June 2012) and *Pillar 3 disclosure requirements for remuneration* (July 2011).

APRA is proposing to incorporate the Basel Committee's Pillar 3 measures relating to the composition of capital and remuneration into APRA's prudential framework.

What must ADIs disclose?

The standards include an obligation on ADIs to disclose:

- the composition of its regulatory capital in a standard form;
- a reconciliation between the composition of its regulatory capital and its published financial statements;
- the full terms and conditions of its regulatory capital instruments and the main features of these instruments in a standard form;
- quantitative and qualitative information about its capital adequacy; and
- quantitative and qualitative information on its approach to remuneration, including aggregate information on its remuneration of senior managers and material risk-takers.

Other measures include a requirement for an ADI to have a disclosure policy approved by the Board of Directors and a separate "Regulatory Disclosures" section on its website.

ADIs must also disclose information about their remuneration policies and procedures and aggregated data about the remuneration of its senior managers and material risk-takers.

"Best endeavours" for 2013

The Basel III disclosure requirements are to be implemented in a revised version of APS 330 that will take effect on 30 June 2013 and apply to locally incorporated ADIs in Australia.

When APRA released a consultation package outlining its detailed proposals to implement the Basel III capital and remuneration disclosure requirements in April 2013, APRA received submissions concerned that the 30 June deadline was too soon.

APRA has decided to continue with the 30 June start date rather than delay its commencement. However, to address concerns

around the timing, APRA has announced that it will accept entities reporting the new Pillar 3 disclosures on capital and remuneration on a “best endeavours” basis for the June 2013 reporting period.

Disclosures in subsequent reporting periods must fully comply with the new APS 330.

Hong Kong and China

New CEPA supplement X: Opportunities for funds

By Jason Ng and Martin Tam
September 2013

The Hong Kong Special Administrative Region Government and the Central People’s Government signed last August 2013 a new Supplement X to the Closer Economic Partnership Arrangement (CEPA) to further enhance their cooperation.

One of the highlights for the funds and securities services industry is that the Mainland has agreed to actively study mutual recognition of fund products between the Mainland and Hong Kong. The proposed mutual recognition arrangement intends to offer streamlined authorization process for the recognized funds to be sold directly in Hong Kong and the Mainland. According to the latest annual report released by the Securities and Futures Commission (SFC), the current proposal recommends that SFC-authorized funds domiciled in and operating from Hong Kong would be “recognized Hong Kong funds” and qualified Mainland funds would be “recognized Mainland funds.”

The other highlight is that qualified Hong Kong-funded financial institutions are allowed to set up joint-venture fund-management companies in the Mainland in accordance with local requirements. The shareholding of these Hong Kong-funded institutions could exceed 50%. This marks new opportunities for Hong Kong financial institutions to expand their fund business in the Mainland.

The fact that the Mainland has agreed to actively study fund products mutual recognition is another step forward. Mutual recognition of fund products will no doubt change the dynamics of the fund and securities services industries in Hong Kong and the Mainland.

New Bank Card Acquiring Regulation

By Harvey Lau

The People’s Bank of China (PBOC) published last June 2013 the Administrative Measures on Bank Card Acquiring Business (Draft for Consultation) for public consultation comments.

Simultaneously, the PBOC formally promulgated the Administrative Measures on Bank Card Acquiring Business. The administrative measures contain the operational rules applicable to both financial and non-financial institutions that are approved to engage in bank-card-acquiring business in China.

The following highlights the major differences between the Administrative Measures and the Consultation Paper:

- “Acquiring” under the administrative measures covers both online and offline acquiring. This deviates from the previous market understanding based on the consultation paper, as the bank-card-acquiring rules promulgated by PBOC were expected to apply to acquiring activities involving physical terminals (such as POS or ATM) only. This development means that any non-financial institution (CGI) that has the business scope of “Internet payment” may also conduct online-acquiring business and such CGI should also comply with administrative measures.

- The administrative measures clarify that acquirers may engage in cross-border acquiring business if they have completed a recordal with PBOC. Separate approval as previously contained in the consultation paper has been removed under the administrative measures.

These differences should be welcomed by the market players. One issue that remains hanging under the administrative measures is that "bank-card-processing institution" is defined as "an institution approved by PBOC to process bank card transactions in China." While China Baking Regulatory Commission (CBRC) is drafting the new processing law, which we understand would require a card scheme to obtain CBRC approval before it may conduct bank-card-processing business in China, the administrative measures seemed to suggest that in addition to the CBRC approval, a separate PBOC approval is required. Such additional approval, no doubt, poses uncertainties to any potential bank-card-processing institution applicants, as PBOC's requirements for such approval are yet to be seen.

China UnionPay rules repealed

On 28 June 2013, PBOC published a notice to repeal a number of regulations that seemed to have created a monopoly position for China UnionPay in relation to bank card issuance and processing in China. For example, a PBOC notice which required all bank cards issued by Chinese banks to bear the CUP logo has been repealed.

New cross-border RMB business rules

On 5 July 2013, PBOC issued a notice on Process Simplification and Policy Improvement of Cross-border RMB Businesses (the PBOC Notice), which contains a section specifically related to cross-border clearing of bank card transactions that are to be paid by the cardholders with their RMB funds.

According to section 2 of the PBOC notice, two types of bank card transactions should channel through a licensed RMB bank-card-clearing institution in China (Licensed Clearing Institution):

- Offshore transactions denominated in RMB or foreign currencies, which are entered into with bank cards issued by Chinese banks and are to be paid by the cardholders with their RMB funds. The Chinese issuing banks should clear the transactions with the licensed clearing institution in RMB, and the licensed clearing institution should clear the transactions with overseas acquirers in RMB or foreign currencies, depending on the currency denomination of the underlying transactions.

- Onshore transactions denominated in RMB, which are entered into with bank cards issued by overseas banks and are to be paid by the cardholders with RMB funds. The onshore acquirers should clear these transactions with the licensed clearing institution in RMB, and the licensed clearing institution should, in turn, clear these transactions with overseas issuing banks in RMB.

Hong Kong and China

Securities and Futures (Amendment) Bill 2013 Marks Regulation of New Framework for OTC Derivatives

By Karen Man

The Securities and Futures (Amendment) Bill 2013 (Bill) was gazetted on 28 June 2013 following a joint consultation conducted by the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC).

The Bill provides for a broad regulatory framework for the over-the-counter (OTC) derivative market in Hong Kong and incorporates other technical improvements to the regulation of the financial market. Details for implementation will be set out in subsidiary legislation which is expected to be proposed for public consultation later in the year.

The Bill comprises the following three key aspects: (a) the introduction of mandatory reporting, clearing and trading obligations in line with Hong Kong's G20 commitments; (b) provision for the establishment and regulation of the necessary infrastructure through which the mandatory obligations will be fulfilled; and (c) the regulation and oversight of key players in the OTC derivative market. Under the new regime, the HKMA will oversee and regulate the OTC derivative activities of Authorised Institutions (AIs) and Approved Money Brokers (AMBs), while the SFC will continue to regulate the activities of licensed corporations.

The HKMA and the SFC also published their joint supplemental consultation conclusions in September 2013 on the proposed scope of certain new and existing regulated activities (RAs) as well as their regulation of Systemically Important Participants (SIPs), both of which are covered in considerable detail in the Bill.

The modifications to the existing licensing regime include expanding Type 9 RA (asset management) to cover OTC derivative portfolios; and Type 7 RA (provision of automated trading services) to cover OTC transactions. Two new RAs will be introduced in relation to OTC derivatives, namely, a new Type 11 RA to cover the activities of dealers and advisers and a

new Type 12 RA to cover the activities of clearing agents.

The regulatory oversight of SIPs in the Bill is intended to capture those persons in Hong Kong who are not otherwise regulated by the SFC or HKMA but whose positions or activities raise concerns of potential systemic risk. Among other things, they will be required to notify the SFC and have their names entered on a public SIP register if their derivatives positions exceed certain specified thresholds.

Singapore

Proposed Regulatory Framework for Financial Benchmarks

June 2013
By Stephanie Magnus

The Monetary Authority of Singapore (MAS) announced in June 2013 its intent to introduce a regulatory framework for financial benchmarks, via amendments to the Securities and Futures Act.

This follows the international developments surrounding Inter-Bank Offered Rates, and the recent proposal of the International Organisation of Securities Commissions' on Principles for Financial Benchmarks in April 2013.

MAS recently released a Consultation Paper on the Proposed Regulatory Framework for Financial Benchmarks. It also invited interested parties to submit their views and comments on the proposals by 15 July 2013.

Key elements of the proposed framework

The Consultation Paper sets out the Authority's proposed regulatory approach to:

- Introduce criminal and civil sanctions to deter and penalise manipulation of financial benchmarks; and
- Regulate benchmark setting activities for key benchmarks administered in Singaporevia amendments to the Act.

Defining financial benchmarks and prohibiting manipulation

MAS seeks to add a new division to the Act, prohibiting manipulation of any financial benchmark by imposing criminal or civil penalty sanctions on offenders. Corporate entities will be subject to criminal liability if the manipulation was committed with their consent or connivance, and to civil liability if they were negligent in failing to prevent or detect the misconduct.

MAS proposes to define ***financial benchmark*** in the Act as any price, estimate, rate, index or value that is calculated periodically using a formula for determining interest payable/sums due on deposits or loan agreements; and price, value or performance of capital markets products under the Securities and Futures Act, an investment product under the Financial Advisers Act, or any product offered by MAS-regulated entities.

Powers to designate benchmarks for MAS' regulatory oversight

MAS proposes to introduce powers under the Act to designate financial benchmarks for which setting activities will be regulated. Relevant considerations include the systemic importance and susceptibility to manipulation of the benchmarks.

In addition, MAS proposes to designate the following as financial benchmarks administered by the Association of Banks in

Singapore:

- SIBOR and SOR
- FX Benchmarks used in the Non-Deliverable Foreign Exchange Forwards market

MAS also proposes to issue best practice guidance to regulated financial institutions on using benchmarks administrated in line with IOSCO Principles.

Regulatory regimes for administrators and submitters of designated benchmarks

MAS proposes to introduce a new licensing regulatory regime for both administrators and submitters of designated benchmarks, as well as certain ongoing conduct-of-business rules for such persons.

Thailand

Foreign Commercial Banks Can Now Establish Subsidiaries in Thailand

By Komkrit Kietduriyakul, Benja Supannakul and Bhalarp Vallayapet
August 2013

Thailand's Ministry of Finance is offering up to five foreign commercial banks the opportunity to establish a local subsidiary until 30 December 2013.[1]

In this client alert, we summarise and clarify the requirements that foreign applicants need to establish a subsidiary in Thailand.

What is a subsidiary?

A foreign commercial bank's subsidiary is defined as a commercial bank where at least 95% of its total shares sold are, directly or indirectly, held by a foreign commercial bank. Additionally, a subsidiary must have paid-up registered capital of at least THB20 billion. A subsidiary may apply to open as many as 20 branches and 20 off-premise ATMs in Thailand.

Who is an eligible applicant?

An eligible applicant for applying to establish a subsidiary must fulfill the following qualifications:

(1) Must be a reputable foreign commercial bank with expertise, strong performance and financial standing, sound risk management system, as well as good governance;

(2) Must be a locally established foreign commercial bank whose country of origin has significant business relations with Thailand in the areas of finance, trade and investment, or whose country of origin has a free trade agreement with Thailand;

(3) Must be a foreign commercial bank whose country of origin allows Thai commercial banks to operate at a similar level as commercial banks of that country are allowed to operate in Thailand (i.e., reciprocity);

(4) Must be a foreign commercial bank whose supervisory authorities maintain sound banking supervision standards; and

(5) Must be a foreign commercial bank whose supervisory authorities give consent to provide information on the foreign commercial bank to the Bank of Thailand upon request, to the extent that this information enables the Bank of Thailand to

supervise the subsidiary operating locally.

What should the applicant do next?

The applicant must submit an original copy of the application and supporting documents as indicated in the list below, along with two additional copies each, to the Bank of Thailand by 30 December 2013:

(1) A consent letter from the applicant's supervisory authority, allowing the applicant to establish a subsidiary in Thailand;

(2) A confirmation letter from the applicant or parent company stating that it will:

- oversee and ensure compliance of its subsidiary with the laws, regulations and policies of Thailand currently in effect, as well as those that will come into force in the future;
- provide liquidity and capital support to its subsidiary, immediately, should the subsidiary's capital fund exhibit the potential to fall, or potentially falls, below the level required by law; and
- provide information to the Bank of Thailand upon request.

(3) A business plan comprising the following details:

- business strategy, including all aspects of the subsidiary's business operations;
- projected financial statements of at least three years, including details on the assumptions made in preparing such financial statements; and
- a plan for the establishment of the subsidiary's head office, branch and financial business group;

(4) A subsidiary management and administration structure, comprising details of the organizational structure, including (i) job descriptions of the Chairman of the Board of Directors, the Chairman of the Executive Board and/or the Chief Executive Officer, manager or other equivalent positions, whatever their title; and (ii) names, qualifications and experience of such persons, provided that these persons have the required qualifications and do not possess prohibited characteristics as specified by the law[2]; and

(5) A working plan to support the subsidiary's banking business in Thailand, with evidence demonstrating that the subsidiary will have a risk management system in line with its business operations, particularly for risks arising from significant activities, including credit risk and market risk. This plan must also specify the appropriate information technology and management systems, which must be located in Thailand.

How long will the process take?

The Bank of Thailand will submit a short list of no more than five qualified applicants to the Minister of Finance for approval within three months after the application deadline. The Minister will then grant approval within three months after receiving the short list, after which the subsidiary will have one year to begin operations.

This opportunity is in accordance with the second phase of the Financial Sector Master Plan of the Bank of Thailand, which encourages international trade and investment through further regional liberalization.

Baker & McKenzie will continue to provide updates as further developments occur.

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[1] Notification of Ministry of Finance Re: Rules, Procedures, and Conditions for the Establishment of New Foreign Commercial Bank's Subsidiary.

[2] Section 24 of the Financial Institution Business Act B.E. 2551, as amended, and the Bank of Thailand Notification on the Approval of the Appointment of Directors, Managers, Persons with Power of Management or Advisors of Financial Institution.

Vietnam

Draft Decree on the Purchase of Shares in Vietnamese Credit Institutions by Foreign Investors Open to Feedback

By Frederick Burke, Oanh H. K. Nguyen, Simon Taylor and Linh Chi Dang

In order to collect feedback from the private sector, the State Bank of Vietnam (SBV) has posted a draft decree on the purchase of shares in Vietnamese credit institutions by foreign investors (the Draft Decree) on its website, as well as a draft circular implementing the Draft Decree (the Draft Circular).

The Draft Decree will replace Decree No. 69/2007/ND-CP on the purchase of shares in Vietnamese commercial banks by foreign investors (Decree No. 69).

Below, we've listed key changes that the Draft Decree introduces to the current regulations under to Decree No. 69 and the Draft Circular.

Limits to the ratio of share ownership in local credit institutions by foreign investors

According to the Draft Decree, the SBV will allow a foreign strategic investor to hold a maximum stake of 20% of a local credit institution's charter capital (without requiring approval from the Prime Minister).

More specifically, the Draft Decree sets out that:

- A foreign individual's shares may not exceed 5% of a Vietnamese credit institution's charter capital (this is undefined in Decree No. 69, which only contained provisions for affiliated persons; see the fourth bullet point below);

- A foreign organization's shares may not exceed 15% of a Vietnamese credit institution's charter capital (this is also unregulated in Decree No. 69);

- A foreign strategic investor's shares may not exceed 20% of a Vietnamese credit institution's charter capital (as opposed to 15% per SBV approval and 20% under PM approval under Decree No. 69);

- A foreign investor and his/her/its affiliated persons' shares may not exceed 20% of a Vietnamese credit institution's charter capital (under the Draft Decree, this has been increased from 5% for a foreign investor other than a foreign credit institution, and 10% for a foreign investor, which is a foreign credit institution under Decree No. 69);

- Foreign investors and their affiliated persons' shares may not exceed 30% of a Vietnamese credit institution's charter capital (this ratio remains unchanged in comparison to Decree No. 69); and

  In special cases, which may be needed in order to restructure the credit institution system in Vietnam, the Prime Minister may regulate an increase in shareholding percentage beyond the 30% currently allowed on a case-by-case basis, for foreign investors and their affiliates to purchase shares in weak credit institutions.

Conditions for ownership of shares for foreign investors

In comparison with Decree No. 69, the Draft Decree provides the following additional conditions for a foreign investor to purchase shares and become a foreign strategic investor in these credit institutions:

- Have enough financial resources to purchase shares based on its audited independent financial statements for the year prior to the year of application;
- Not cultivate a bad influence on the safety and stability of Vietnamese credit institutions and not form a monopoly or break any competition restrictions in the Vietnamese credit institution market;
- Not seriously violate the laws on currency, banking operations or the stock market of Vietnam as well as the laws in the country where the foreign investor has been established for a period of at least 12 months prior to the time of application for the purchase of shares;
- Be a foreign bank, foreign financial company or foreign financial leasing company that has been permitted to carry out banking activities under the law of the country where its head office is located;
- Not own 10% or more of any other credit institution's charter capital in Vietnam;
- Commit to own or have already owned 10% or more of a Vietnamese credit institution's charter capital;
- Have had international operational experience in the banking and finance sector for at least 5 years; and
- Be rated by international credit-rating organizations as "stable or better."

As is the case with Decree No. 69, the Draft Decree also requires that a foreign strategic investor must have minimum total assets equalling US$20 billion in the year prior to the year of application for purchase of shares.

For a foreign investor to purchase shares which equate to the ownership of 10% or more of a Vietnamese credit institution's charter capital, such foreign investor must also have minimum total assets equalling US$10 billion (if such foreign investor is a foreign bank, foreign financial company or foreign financial leasing company) or have a minimum charter capital equalling US$1 billion (if such foreign investor is another type of organization) in the year prior to the year of application for the purchase of shares.

In addition, under the Draft Decree, a foreign investor may participate or delegate the representatives of its shareholdings to participate on the Board of Management (BOM) of one Vietnamese credit institution only, an exception to this case being that the representative may also participate on the BOM of a subsidiary of the credit institution.

Amended Ordinance in Foreign Exchange Control

By Frederick Burke and Oanh H. K. Nguyen
August 2013

The Standing Committee of the National Assembly recently issued 06/2013/UBTVQH13 (Amended Ordinance), a new regulation to establish a more effective system of organisations and individuals engaging in foreign exchange activity in Vietnam.

This will amend some parts of the current ordinance No. 28/2005/PL-UBTVQH11 on foreign exchange control and will take effect on 1 January 2014.

This information is useful for foreign and local investors carrying out transactions in foreign currencies such as importing and exporting foreign currencies in or out of Vietnam, using capital overseas to invest in Vietnam, investing domestic capital overseas, or lending and borrowing foreign loans. The Amended Ordinance sets out clearer terms and legal formalities in relation to transferring foreign currency for these purposes. It also imposes greater restrictions on the use of foreign currency in Vietnam and increases the usage of Vietnam dong in commercial activities.

Here are the key changes that the Amended Ordinance introduces to the current legislation:

- Definition –"Residents" will now include foreign bank branches, Vietnamese branches of foreign economic institutions and operating offices of foreign contractors. These aforementioned organizations are not currently included in the definition of "residents" in the current ordinance. "Licensed credit institutions" will now include a foreign bank's branches.

  This Amended Ordinance will cover foreign economic institutions with branches currently in Vietnam, or those that are planning to open branches in Vietnam, as well as the operating offices of foreign contractors in Vietnam. These will now be classified as residents, and will therefore be bound by most provisions of this ordinance and have limited rights to use foreign currency.

- Use of foreign exchange within Vietnam – Within the territory of Vietnam, residents and non-residents must specify in Vietnam dong all transactions, payments, listings, advertisements, quotations, price settings and price recordings in contracts, agreements and other similar forms, unless stated otherwise by the State Bank, whereas, currently, only in transactions such as payments, price listings and advertising, must residents and non-residents specify in Vietnam Dong.

  The Amended Ordinance has imposed stricter regulations. All organisations or individual, residents and non-residents who would like to carry out transactions such as quotations, price settings and price recordings in the territory of Vietnam must now do so in Vietnam dong.

- Carrying foreign currency upon exit and entry – Residents which are credit institutions will be permitted to import and export foreign currency cash when they have written consent from the State Bank. However, the State Bank will need to issue regulations on the procedure of applying for such consent.

  The current ordinance only applies to individuals who carry foreign currency in or out of the country. With the amended ordinance, credit institutions will now have greater freedom to conduct the import and export of foreign currency cash. This will make much easier for credit institutions to carry out cash transactions. However, credit institutions still need to look out for any new regulations and restrictions issued by the State Bank in relation to filing consent.

- Foreign investment into Vietnam – Those who wish to conduct both foreign direct and indirect investments will be required to open an investment account at a licensed credit institution in order to conduct their investment in Vietnam.

  Foreign investors who would like to make indirect foreign investment into Vietnam will be subject to tighter regulations. In this regard, foreign investors will need to open an investment account in Vietnamese dong. Once this has been done, the foreign investor would be able conduct investment activities through this account.

  In general, foreign investors planning to invest in Vietnam should open an investment account at a licensed credit institution in Vietnam regardless of whether it constitutes direct or indirect investment. All investments must be carried out via this investment account.

- Overseas/Outbound investment from Vietnam – After being licensed to conduct outbound investment, a resident will be able to use foreign currency from any legal capital resources for its outbound investment. This provision used to be limited to only certain types of capital resources, such as foreign currency obtained by borrowing loans. In order to remit such capital abroad, residents still have to open a foreign currency account at a licensed credit institution and register for such remittance of foreign currency overseas for investment via this account with the State Bank of Vietnam.

  The Amended Ordinance provides a new article to make it clear that licensed credit institutions are permitted to conduct offshore indirect investment in accordance with the law on investment and State Bank regulations. Residents who are not credit institutions, when permitted to conduct offshore indirect investments, are required to open an account to transfer such capital abroad and then transfer capital, profit and other lawful venue back to Vietnam through this account.

  In brief, residents must open a foreign currency account at a licensed credit institution, regardless of whether it is direct or indirect outbound investment.

- Lending and recovery of foreign loans – Both credit institutions and economic institutions are permitted to lend and recover offshore loans and provide guarantees to non-residents (except for the export of goods and services on deferred payment for economic institutions). Credit institutions will be required to obtain an approval from the State Bank and the economic institutions will require approval from the Prime Minister. In the current ordinance, credit institutions and economic institutions are not permitted to provide guarantees to non-residents.

  The Amended Ordinance makes it easier for both credit institutions and economic institutions to borrow money from foreign

lenders. For security purposes, they will have the option to provide guarantees, apart from other types of security, for such foreign loans.

LawInContext

LawInContext's Financial Products Distribution Helpdesk

(www.lawincontext.com/financialproducts) is an online multi-country database covering the "do's" and "don'ts" in the cross-border retail marketing and distribution of financial products and services into 60 countries around the world. A key feature in the Financial Products Distribution Helpdesk is the practical Relationship Manager (or "RM Checklists"), which focus on a range of prospecting, acquisition and post-acquisition activities in respect of banking and securities financial products distribution. Asia Pacific jurisdictions included in the Helpdesk: Brunei, China, India, Indonesia, Korea (South), Malaysia and Taiwan, with Vietnam and other jurisdictions forthcoming soon!

LawInContext is also pleased to announce the launch of a new online global e-learning program on Cross-Border Conduct, which is designed to efficiently train and test client advisors and other financial institution personnel on key cross-border conduct issues from a global perspective. The e-learning program is seamlessly customizable for integration of an institution's cross-border conduct policy, including its core market specific guidance, with tracking and reporting of personnel completion and compliance certification.

For a complimentary demonstration or more details on LawInContext's Financial Products Distribution Helpdesk and/or Cross Border Conduct e-learning program, please contact info@lawincontext.com.

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