

Hanoi, 9 January 2008

**DECISION
ISSUING
REGULATIONS ON OPENING AND TERMINATING OPERATION OF
BRANCHES AND REPRESENTATIVE OFFICES OF NON-BANKING
CREDIT INSTITUTIONS**

The Governor of the State Bank of Vietnam

Pursuant to the *Law on the State Bank of Vietnam* 01-1997-QH10 dated 12 December 1997 as amended by Law 10-2003-QH11 dated 17 June 2003;

Pursuant to the *Law on Credit Institutions* 02-1997-QH10 dated 12 December 1997 as amended by Law 20-2004-QH11 dated 15 June 2004;

Pursuant to the *Law on Enterprises* of 2005;

Pursuant to Decree 52-2003-ND-CP of the Government dated 19 May 2003 on functions, duties, powers and organizational structure of the State Bank of Vietnam;

Pursuant to Decree No. 16-2001-ND-CP of the Government dated 2 May 2001 on organization and operation of finance leasing companies, as amended by Decree No. 65-2005-ND-CP of the Government dated 19 May 2005;

Pursuant to Decree No. 79-2002-ND-CP of the Government dated 4 October 2002 on organization and operation of finance companies;

On the proposal of the Director of the Department for Banks and Non-Banking Credit Institutions;

Decides:

Article 1

To issue with this Decision *Regulations on Opening and Terminating Operation of Branches and Representative Offices of Non-Banking Credit Institutions*.

Article 2

This Decision shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette, and shall replace Decision 24-2003-QD-NHNN of the Governor of the State Bank dated 7 January 2003.

Article 3

The Head of the office, the Director of the Department for Banks and Non-Banking Credit Institutions, Heads of State Bank entities, Directors of State Bank branches in cities and provinces under central

authority, and Chairmen of Boards of Management and General Directors (Directors) of non-banking credit institutions shall be responsible for implementation of this Decision.

For the Governor of the State Bank
Deputy Governor
TRAN MINH TUAN

**REGULATIONS
ON
OPENING AND TERMINATING OPERATION OF BRANCHES AND
REPRESENTATIVE OFFICES OF NON-BANKING CREDIT
INSTITUTIONS**

(Issued with Decision 01-2008-QD-NHNN of the Governor of the State Bank dated 9 January 2008)

CHAPTER 1

General Provisions

Article 1 *Applicable entities and governing scope*

These Regulations govern the opening of, and termination of operation of branches and representative offices of non-banking credit institutions ["NBCI"]¹ operating in Vietnam.

Article 2

In these Regulations, the following terms shall be construed as follows:

1. *Non-banking credit institution* ["NBCI"] means a finance company, a finance leasing company or any other NBCI as stipulated in regulations of the State Bank of Vietnam
2. *Branch of a non-banking credit institution* means a subsidiary unit with its own seal and which implements a number of the functions and duties of the NBCI as authorized by such NBCI.
3. *Representative office of a non-banking credit institution* means a subsidiary unit with its own seal and which implements a number of the functions and duties of the NBCI as authorized by such NBCI. A representative office may not conduct business operations.
4. *Transaction room* means a unit which is a subsidiary of the head office of the NBCI or of a branch of such NBCI, which conducts accounting book reporting and which has its own seal.
5. *Information network management system* means a system connecting the information system of the head office of a NBCI with that of its branches, in order to continually² update information and reports about the operational status of the branches at the head office of the NBCI.

Article 3 *Managerial and operational requirements*

1. A NBCI must issue internal rules on management of the operation of its branches, to comprise:
 - (a) Rules on an information network management system as between branches and the head office;
 - (b) Rules applicable to the branches on ensuring safety during trading and during remittance of money, on cashboxes, on management and archiving of source documents, and on the requirements pursuant to current regulations for fire and explosion fighting and prevention;
 - (c) Rules on internal checks and control by branches;

¹ Allens Arthur Robinson footnote: For ease of reference, "non-banking credit institution" has been abbreviated to NBCI throughout this translation.

² Allens Arthur Robinson footnote: The literal translation is "throughout the day".

- (d) Rules on risk management during activities at branches;
 - (dd) Rules on the regime for management of assets and liabilities at branches;
 - (e) Rules on the organizational scale, functions, duties and operational scope of branches, and on the conditions and standards [or criteria] applicable to the general director, deputy general directors and leaders of offices and of sections conducting internal checks and control at branches;
 - (g) Other rules depending on the managerial and regulatory requirements of each particular NBCI.
2. A NBCI must issue rules on internal management of the operation of its representative offices, to comprise:
- (a) Rules on the functions, duties, operational contents and financial regime applicable to representative offices; on the authority of and standards [or criteria] applicable to the head of a representative office and to executive staff of a representative office;
 - (b) Other rules depending on the requirements for managing the operation of representative offices.

CHAPTER 2

Specific Provisions

Section 1

Opening a Branch or Representative Office within Vietnam

Article 4 *Conditions for a NBCI to open a branch or representative office*

1. Conditions for opening a branch:

- 1.1 After a NBCI has operated for one (1) year, it shall be permitted to open a branch if it satisfies all the following conditions:
- (a) The NBCI has the requisite amount of paid-up charter capital in order to open a branch as stipulated in regulations;
 - (b) The NBCI has satisfied the prudential ratios during its operation and at the time of the request to open the branch, and it so satisfied the prudential ratios during each month of the year of such request;
 - (c) The NBCI has issued all the rules on internal management of the operation of the branch as stipulated in article 3.1 of these Regulations;
 - (d) There was a pre-tax profit on the business operation in the year prior to the year in which the NBCI proposes to open its branch, of not less than twenty (20) per cent over average equity;
 - (dd) The managerial and executive apparatus, the internal checks and control system and the internal auditing system of the NBCI comply with State Bank regulations and there is no breach of the current regulations on operation;
 - (e) The number of branches permitted to be opened shall be determined in accordance with the following formula

$$n = \frac{C - C_0}{50 \text{ billion dong}}$$

In which:

n is the number of branches permitted to be opened (including the number of branches already opened), which must be an integral number;

C is the current amount of charter capital (unit of calculation being one billion dong);

C₀ is the minimum amount of legal capital which such type of NBCI must have as stipulated by the regulations, as at the time of the request to open the branch, calculated in billion dong.

(g) The geographical area in which it is proposed to open the branch must be appropriate for the operational requirements of the NBCI which must be able to prove that its branch will be economically efficient after it is opened;

(h) Bad debts ratio up until the time of opening the branch:

- In the case of a finance leasing company, the ratio must be less than three (3) per cent of the total outstanding debt balance;
- In the case of a finance company, the ratio must be less than two (2) per cent of the total outstanding debt balance.

1.2 A NBCI operating in the consumer credit sector and not mobilizing individual savings deposits shall not be restricted in terms of operational duration when opening a branch if it satisfies all the conditions stipulated in sub-clauses (a), (b), (c), (dd), (e), (g) and (h) of clause 1.1 above.

2. Conditions for opening a representative office:

(a) The NBCI has operated for at least one (1) year;

(b) The NBCI has a need to open a representative office in order to advertise its operation, to seek out clients and to manage clients;

(c) The NBCI is in a healthy financial condition, and satisfies the regulations on ensuring safety [prudential ratios] during operation;

(d) The managerial and executive apparatus, the internal checks and control system and the internal auditing system of the NBCI comply with State Bank Regulations and there is no breach of the current regulations on operation;

(dd) The NBCI has issued all the rules on internal management of the operation of the representative office as stipulated in article 3.2 of these Regulations.

Article 5 *Application file for opening a branch or representative office*

A NBCI shall send two (2) sets of its application file for opening a branch or representative office to the State Bank of Vietnam, such file to contain:

1. Letter from the chairman of the board of management or his or her proxy requesting the opening of the branch or representative office, with a summary of the need for such operation, the name and

address of the proposed branch or representative office, and the proposed operational contents and scope.

2. Power of attorney from the chairman of the board of management (in the case of a letter from a proxy).
3. Resolution and minutes of meeting of the board of management on opening the branch or representative office.
4. Plan on opening the branch or representative office, specifying the need for its operation, the proposed organizational apparatus, the proposed operational contents and scope, and an operational plan for the first three years.
5. Documents relevant to the provisions in article 3, and documents proving satisfaction of the conditions stipulated in article 4 of these Regulations.
6. Approval of the proposed location of the branch or representative office provided by the local people's committee of the province or city to the NBCI.
7. Letter from the director of the State Bank branch in the province or city where the branch or representative office is proposed to be located, on the necessity for such branch or representative office, on its operational requirements and on the operational [geographical] area of the branch or representative office of the NBCI.
8. Letter confirming ownership or right to use the location of the proposed branch or representative office.

Article 6 *Commencement of operation*

1. The NBCI must commence the operation of its branch or representative office within a time-limit of six (6) months from the date the State Bank provides written approval to the opening of such branch or representative office.
2. A branch or representative office must, in order to commence operation, complete all procedures for business registration and must publish an announcement in three (3) consecutive additions of a central and local newspaper; must comply with all State Bank regulations on commencement of operation; and must forward to the State Bank (Department for Banks and Non-Banking Credit Institutions):
 - (a) The central and local newspapers in which the announcement of commencement of operation was published;
 - (b) Notarized copy of the business registration certificate;
 - (c) Written report on completion of all procedures in order to commence operation.
3. The State Bank shall revoke its written approval for opening of a branch or representative office if at the expiry of the stipulated time-limit the NBCI has not ensured commencement of operation by the branch or representative office. If the NBCI wishes to re-open such branch or representative office, it must conduct all the procedures and lodge an application file as stipulated in these Regulations.

Article 7 *Transaction rooms*

The opening of a transaction room by a NBCI must comply with the following provisions:

1. A transaction room may only be opened in a province or city in which the NBCI already has its head office or a branch.
2. There must be clear rules on the operational contents, functions and duties of, and delegation of authority to the transaction room.
3. It shall be within the authority of the board of management [and /or] the general director (director) of a NBCI to make a decision permitting a transaction room to maintain a cash balance and the level of such cash balance, ensuring compliance with the regulations on safety during trading, on remittance of money, on cashboxes, and on the requirements for fire and explosion fighting and prevention.
4. The maximum level of lending or leasing to any one client shall be three hundred million (300,000,000) dong.
5. The general director (director) of the NBCI or the director of a branch of such NBCI shall be responsible for the activities of any transaction room which is subsidiary to such head office or branch, and shall be responsible to register the transaction room with the State Bank branch of the province or city where it is opened, and shall be responsible to report to the State Bank (on the standard form in the Appendix attached to this Decision) prior to commencement of the official operation of the transaction room.
6. In the case of termination of the operation of a transaction room, there must be a written notice about such termination sent to the State Bank branch in the province where such transaction room is located; there must be a public announcement within the locality about such termination; and there must also be a notice published in the local press fifteen (15) days prior to the proposed termination date, including [notice of] transfer of discharge of obligations and of exercise of rights of the transaction room and of related subjects.

Section 2

Terminating Operation of a Branch or Representative Office within Vietnam

Article 8 *Circumstances in which the operation of a branch or representative office will be terminated*

[The operation of a branch or representative office shall be terminated in the following circumstances:]

1. The State Bank revokes its written approval for the NBCI to open such branch or representative office due to failure to satisfy the conditions on commencement of operation within the stipulated time-limit, or due to the operation [of the branch or representative office] committing a serious breach of law.
2. Voluntary request to close the branch or representative office where there is no longer an operational need.
3. The NBCI having such branch or representative office is declared bankrupt or dissolves in accordance with law.

Article 9 *Terminating operation of a branch or representative office*

1. In a case where the State Bank revokes its written approval as stipulated in article 8.1 of these Regulations, the State Bank shall announce its reasons and stipulate the order and procedures for termination of operation of the branch or representative office and the responsibilities of the related entities.

2. In a case of a voluntary request to close a branch or representative office as stipulated in article 8.2, the NBCI shall send two (2) sets of an application file to the State Bank comprising:
 - (a) Letter from the chairman of the board of management or his or her proxy requesting termination of the operation and specifying the name and address of, operational status and reason for request to close the branch or representative office, and the responsibilities and order for terminating the operation;
 - (b) Power of attorney from the chairman of the board of management (in the case of a request made by a proxy);
 - (c) Resolution and minutes of meeting of the board of management regarding termination of operation of the branch or representative office;
 - (d) Opinion from the director of the State Bank branch of the province or city regarding the request to terminate the operation of the branch or representative office within its locality;
 - (dd) Plan for dealing with issues on termination, specifying the financial status of the branch or representative office and the proposals for dealing with all existing issues of such branch or representative office.
3. In a case in which the NBCI was declared bankrupt or dissolved as situated in article 8.3, the State Bank shall regulate termination of the operation of the branch or representative office in the decision revoking the licence for establishment and operation of such NBCI.

Article 10 *Order and procedures for voluntarily terminating operation of a branch or representative office*

1. The chairman of the board of management of the NBCI shall issue a decision on termination of operation of the branch or representative office within a time-limit of thirty (30) business days from the date of receipt of written approval [to termination] from the State Bank.
2. The decision on termination shall contain the following basic particulars:
 - (a) Name and address of the branch or representative office;
 - (b) Reason for termination of operation;
 - (c) Date on which the operation will be terminated;
 - (d) Responsibilities of the NBCI to its creditors.
3. The decision made by the NBCI on termination of the operation of its branch or representative office must be sent to the State Bank of Vietnam, and to the State Bank branch in the province or city where the head office of the NBCI is situated, and to the State Bank branch in the province or city where such branch or representative office is located. The decision must also be publicly listed at the branch or representative office, and must be published in three (3) consecutive issues of a central or local newspaper fifteen (15) days prior to the date on which the operation will be terminated.
4. A NBCI having a branch or representative office whose operation is terminated shall be responsible to discharge all obligations to creditors and to resolve other relevant issues in accordance with law.

Section 3

Opening an Offshore Branch or Representative Office of a Non-Banking Credit Institution

Article 11 *Conditions for opening an offshore branch or representative office*

A NBCI must, in addition to satisfying the conditions stipulated in article 4 of these Regulations, also satisfy the following conditions in order to open an offshore branch or representative office:

1. The NBCI has operated for at least three (3) years.
2. The NBCI has a plan on the offshore operation which is feasible, and which proves the necessity for opening the offshore branch or representative office.
3. A NBCI may only open an offshore branch or representative office in countries or territories which have already signed an agreement with Vietnam on inspection and supervision of operations.
4. The NBCI provides an undertaking to complete the procedures relating to opening of the branch or representative office as stipulated by the law of the host country or territory.

Article 12 *Application file for opening an offshore branch or representative office*

1. A NBCI shall prepare two (2) sets of an application file containing the following items, and send the file to the State Bank:
 - (a) Letter from the chairman of the board of management or his or her proxy requesting the opening of the offshore branch or representative office, with a summary of the need for such operation, the name and address of the proposed branch or representative office, and the proposed operational contents;
 - (b) Power of attorney from the chairman of the board of management (in the case of a letter from a proxy);
 - (c) Resolution and minutes of meeting of the board of management (or of the general meeting of shareholders in the case of a shareholding NBCI) on opening the offshore branch or representative office;
 - (d) Documents proving that the conditions stipulated in article 11 of these Regulations have been satisfied;
 - (dd) Letter from the authority responsible for inspection and supervision of operations [in the host country] requesting an opinion from the State Bank of Vietnam on opening a branch or representative office, if required by the law of the host country;
 - (e) Data on opening the offshore branch or representative office as required by the law of the host country.
2. A letter of permission from the State Bank of Vietnam agreeing to the opening of an offshore branch or representative office shall be valid for twenty-four (24) months, and if at the expiry of that period the foreign party has not yet agreed to such opening and there is still a need to open the branch or representative office, then the NBCI shall forward a report and request for an extension to the State Bank of Vietnam.

Article 13 *Reporting*

1. Within a time-limit of thirty (30) days from the date on which the foreign country or territory permits opening of the branch or representative office, the NBCI must send a written report thereon to the State Bank of Vietnam (Department for Banks and Non-Banking Credit Institutions) and to the State Bank Inspectorate, enclosing a copy of such permit.

2. A NBCI must report to the State Bank of Vietnam on the operational and organizational status of its offshore branch or representative office on a six monthly and annual basis, throughout the entire operational process.

Article 14 *Terminating operation of an offshore branch or representative office*

Termination of operation of an offshore branch or representative office of a NBCI must comply with the law of the host country, and there must be a report made thereon to the State Bank of Vietnam.

Section 4

Responsibilities of the State Bank of Vietnam

Article 15 *Responsibilities of the Department for Banks and Non-Banking Credit Institutions:*

1. To receive application files from NBCIs for the opening of branches and representative offices, including requests for approval to voluntary closure of such branches and representative offices.
2. To send a letter requesting an opinion from the State Bank branch in the province or city where a branch or representative office is proposed to be situated or where it is already situated, within a maximum time-limit of ten (10) business days from the date of receipt of a complete application file from a NBCI for the opening or termination of operation of a branch or representative office.
3. Within a maximum time-limit of fifteen (15) business days from the date of receipt of complete opinions from the relevant entities, to collate such opinions and submit them to the Governor of the State Bank to provide a letter of approval or non-approval to the request of a non-banking credit institution:
 - (a) To open, or terminate operation of, a branch or representative office in Vietnam;
 - (b) To open an offshore branch or representative office.

Article 16 *Responsibilities of the State Bank Inspectorate:*

1. To provide its opinion assessing the operational status and satisfaction of conditions by a NBCI as stipulated in sub-clauses (d), (c) and (h) of article 4.1.1 regarding opening of a branch, or the provisions in sub-clauses (c), (d) and (dd) of article 4.2 regarding opening of a representative office, within a maximum time-limit of seven (7) business days from the date of receipt of a request from the Department of Banks and Non-Banking Credit Institutions.
2. The State Bank Inspectorate for branches in cities and provinces under central authority shall, within a time-limit of thirty (30) days from the date of commencement of an operation, undertake a check of the domestic branch or representative office of a NBCI regarding compliance with these Regulations, other current regulations, and internal rules on management of the operation of such branch or representative office.

Article 17 *Responsibilities of State Bank branches in cities and provinces under central authority*

1. A State Bank branch in the city or province where a non-banking credit institution has opened a branch or representative office shall be responsible:
 - (a) To supervise commencement of operation and management of operation of a branch or representative office within its locality, and to notify the State Bank of Vietnam of any abnormal

fluctuations in the organization and operation of any branch or representative office within the locality in order for the State Bank to deal with same;

- (b) To conduct checks and inspections of the operations of branches and representative offices within its locality;
 - (c) Within a maximum time-limit of seven (7) business days from the date of receipt of a request from a NBCI to open a branch or representative office within its locality, to provide its written opinion on the banking operational need within the locality, and to approve or not approve the opening of the branch or representative office and in a case of non-approval to specify its reasons.
2. A State Bank branch in the city or province where a NBCI has its head office shall, within a maximum time-limit of seven (7) business days from the date of receipt of a request via the State Bank for such NBCI to open a branch or representative office, provide its written assessment of satisfaction of the conditions stipulated in article 4 of these Regulations and in a case of non-approval to specify its reasons.

Chapter 3

Implementing Provisions

Article 18

- 1. Within a time-limit of one (1) year from the date on which these Regulations take effect, NBCIs must check the whole of their systems of branches, representative offices and transaction rooms ["subsidiary offices"], and must themselves amend the numbers of such subsidiary offices; and they must issue rules on internal management of the operation of such subsidiary offices, ensuring they operate correctly in accordance with the provisions in these Regulations.
- 2. Any NBCI which has a number of branches greater than the number permitted by sub-clause (e) of article 4.1.1 of these Regulations must provide a plan on rearranging or terminating the operation of its branches and transaction rooms and shall not be permitted to open additional branches.

Article 19

Any NBCI which breaches a provision in these Regulations shall, depending on the nature and seriousness of the breach, be dealt with in accordance with law.

For the Governor of the State Bank
Deputy Governor
TRAN MINH TUAN