

Hanoi, 28 February 2006

**DECREE
ON
ORGANIZATION AND OPERATION OF
FOREIGN BANK BRANCHES, JOINT VENTURE BANKS,
BANKS WITH ONE HUNDRED (100) PER CENT FOREIGN OWNED CAPITAL
AND REPRESENTATIVE OFFICES OF FOREIGN CREDIT INSTITUTIONS
IN VIETNAM**

The Government

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

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;

On the proposal of the Governor of the State Bank;

Decrees:

**CHAPTER I
General Provisions**

Article 1 *Governing scope*

This Decree regulates the organization and operation of foreign bank branches, joint venture banks, banks with one hundred (100) per cent foreign owned capital and representative offices of foreign credit institutions in Vietnam.

Article 2 *Applicable laws*

The organization and operation of foreign bank branches, joint venture banks, banks with one hundred (100) per cent foreign owned capital and representative offices of foreign credit institutions in Vietnam must comply with the *Law on Credit Institutions*, the provisions of this Decree and other relevant laws of Vietnam. If an international treaty of which Vietnam is a member contains provisions different from the abovementioned provisions then such international treaty shall apply.

Article 3 *Organizational forms*

1. Foreign banks shall be permitted to operate in Vietnam in the following forms:

- (a) Foreign bank branches;
- (b) Joint venture banks;
- (c) Banks with one hundred (100) per cent foreign owned capital.

2. Foreign credit institutions shall be permitted to contribute capital to and to purchase shareholding in credit institutions operating in Vietnam in accordance with regulations of the Government and guidelines of the State Bank of Vietnam (hereinafter referred to as the *State Bank*).

3. Foreign credit institutions shall be permitted to establish representative offices in Vietnam.

Article 4 *Rights and obligations*

The legal rights and interests of foreign bank branches, of joint venture banks, banks with one hundred (100) per cent foreign owned capital, representative offices of foreign credit institutions and of staff working in these institutions shall be protected, and all the aforementioned entities shall be obliged to comply with the law of Vietnam.

Article 5 *Authority to issue licences*

1. The State Bank shall be the body authorized to issue licences for the establishment and operation of joint venture banks and banks with one hundred (100) per cent foreign owned capital, and licences for the opening of foreign bank branches and of representative offices of foreign credit institutions in Vietnam.

2. The State Bank shall conduct the issuance of licences in accordance with the provisions of this Decree and other relevant laws of Vietnam.

Article 6 *State administration, inspection and supervision*

1. The State Bank shall be the body exercising the function of State administration, inspection and supervision of the organization and operation of foreign bank branches, of joint venture banks, banks with one hundred (100) per cent foreign owned capital and representative offices of foreign credit institutions in Vietnam.

2. Ministries, ministerial equivalent bodies and people's committees at all levels shall, within the scope of their respective duties and powers, be responsible to exercise State administration in accordance with law of foreign bank branches, of joint venture banks, banks with one hundred (100) per cent foreign owned capital and representative offices of foreign credit institutions in Vietnam.

Article 7 *Interpretation of terms*

In this Decree, the following terms shall be construed as follows:

1. *Foreign bank* means an institution established under the laws of a foreign country and whose main and usual activities are banking operations.

2. *Parent bank* means the foreign bank owning more than fifty (50) per cent of the charter capital of a bank with one hundred (100) per cent foreign owned capital operating in Vietnam or means the bank which has a branch operating in Vietnam.

3. *Home country* of a foreign credit institution means the country where such foreign credit institution was established.

4. *Foreign bank branch* means a subsidiary of a parent bank, which does not have legal entity status pursuant to the law of Vietnam, and for which the parent bank has provided a

written guarantee that the parent bank will be responsible for all obligations and undertakings of the branch in Vietnam.

5. *Joint venture bank* means a bank established in Vietnam by capital contributed by a Vietnamese party (comprising one or more Vietnamese banks) and a foreign party (comprising one or more foreign banks) on the basis of a joint venture contract. A joint venture bank shall be established in the form of a limited liability company, shall be a legal entity, and shall have its head office located in Vietnam.

6. *Bank with one hundred (100) per cent foreign owned capital* means a bank established in Vietnam with one hundred (100) per cent of its charter capital being foreign owned, and with fifty (50) per cent of such charter capital being owned by a foreign bank (the parent bank). A bank with one hundred (100) per cent foreign owned capital shall be established in the form of a limited liability company, shall be a legal entity, and shall have its head office located in Vietnam.

7. *Representative office of a foreign credit institution* means a subsidiary of a foreign credit institution, established in Vietnam, and operating in accordance with its licence to open the representative office and the relevant laws of Vietnam. A representative office of a foreign credit institution shall not be permitted to conduct business activities in Vietnam.

8. *Licence* is used to describe generally the licences, or to describe all types of licences issued by the State Bank namely licences to open foreign bank branches, licences to establish and operate joint venture banks, licences to establish and operate banks with one hundred (100) per cent foreign owned capital and licences to open representative offices of foreign credit institutions in Vietnam.

9. *Issued capital* means the amount of capital which a parent bank issues to its foreign bank branch operating in Vietnam.

10. *Charter capital* means the amount of capital contribution set out in the charter of a joint venture bank or in the charter of a bank with one hundred (100) per cent foreign owned capital.

11. *Actual value of contributed capital or of charter capital* means the amount of issued capital or the amount of paid-up capital contribution less undistributed profits (losses not yet dealt with), and less funds [for reserves] deducted from after-tax profits.

12. *Transaction point* means a location set up outside the office of a foreign bank branch in order to conduct a limited number of transactions with clients in accordance with regulations of the State Bank.

Article 8 *Conditions for issuance of licences*

1. A foreign bank must satisfy all the following general conditions in order to be issued with a licence to open a foreign bank branch, a licence to establish and operate a joint venture bank, or a licence to establish and operate a bank with one hundred (100) per cent foreign owned capital:

(a) The foreign bank must not have committed a serious breach of the regulations on banking operations or of the other laws of its home country within the period of the last three consecutive years as from the date of the application for a licence;

(b) The foreign bank must have international operational experience, and must be classified by international credit rating institutions at the level of having the capability to implement financial undertakings and to continue normal operations even when the economic status and conditions change towards a non-profitable direction;

(c) The foreign bank must satisfy the requirements of international custom regarding minimum capital safety ratio and other prudential ratios;

(d) The competent regulatory and inspecting body of the home country must be able to supervise the entire operation of the foreign bank on an overall basis in accordance with international custom; and such body must provide an undertaking to co-operate with the State Bank in administering and supervising the operation [of the foreign bank in Vietnam] and on exchanging information.

2. In addition to satisfying all the general conditions stipulated in clause 1 of this article, a foreign bank must also satisfy all the following conditions in order to be granted a licence to open a branch:

(a) The conditions stipulated in article 106.2 of the *Law on Credit Institutions*;

(b) The foreign bank must have had total assets worth the equivalent of twenty (20) billion US dollars in the year prior to the year of application for the grant of a licence.

3. In addition to satisfying all the general conditions stipulated in clause 1 of this article, a foreign bank must also satisfy all the following conditions in order to be granted a licence to establish and operate a joint venture bank, or a licence to establish and operate a bank with one hundred (100) per cent foreign owned capital:

(a) The conditions stipulated in article 22.1 of the *Law on Credit Institutions*;

(b) The foreign bank must be permitted by the competent body of its home country to participate in the establishment of a joint venture bank or a bank with one hundred (100) per cent foreign owned capital in Vietnam;

(c) The foreign bank must have had total assets worth the equivalent of ten (10) billion US dollars in the year prior to the year of application for the grant of a licence;

(d) The foreign bank must provide a written undertaking to the State Bank regarding the foreign bank's readiness to provide assistance regarding finance, technology, management and executive operation to the joint venture bank or the bank with one hundred (100) per cent foreign owned capital; and must ensure that it will maintain the actual value of the charter capital at not less than the amount of legal capital, and will comply fully with all provisions on operational safety in accordance with regulations of the State Bank.

4. In order to be granted a licence to open a representative office, a foreign credit institution must satisfy all the conditions stipulated in article 106.3 of the *Law on Credit Institutions*.

Article 9 *Procedures and application files for the issuance of licences*

1. An application file from a foreign bank or a foreign credit institution for the grant of a licence shall be prepared in two sets, one of which shall be in Vietnamese and one of which shall be in a commonly used foreign language. The set in a commonly used foreign language must be consularized, and copies of Vietnamese documents and Vietnamese translations of documents in a foreign language must be notarized by a Vietnamese notary public in accordance with the law on notarization.

2. The State Bank shall provide specific guidelines on the procedures and application files for the issuance of licences based on article 108 and other relevant articles of the *Law on Credit Institutions* and based on the provisions regarding and conditions for the issuance of licences stipulated in article 8 of this Decree.

3. Within a time frame of ninety (90) days from the date of receipt of a complete application file for the issuance of a licence, the State Bank shall grant a licence or refuse to grant a licence. In a case of refusal, the State Bank shall provide written notification specifying the reasons therefor.

Article 10 *Contents of licences and amendments and additions to contents of licences*

1. The State Bank shall provide specific regulations on the contents of licences to be issued to foreign bank branches, joint venture banks, banks with one hundred (100) per cent foreign owned capital and representative offices of foreign credit institutions.

2. Any amendment or addition to the contents of a licence shall be subject to a written decision by the State Bank, and such decision shall form an inseparable part of the licence.

Article 11 *Duration of operation*

1. The duration of operation of a foreign bank branch, joint venture bank, bank with one hundred (100) per cent foreign owned capital or representative office of a foreign credit institution shall be specified in the licence and the commencement of operation shall be calculated from the date the licence is signed.

2. The maximum duration of operation of a foreign bank branch, joint venture bank or bank with one hundred (100) per cent foreign owned capital shall be ninety nine (99) years; the duration of operation of a foreign bank branch shall not exceed the duration of operation of the parent bank.

3. The duration of operation of a representative office of a foreign credit institution shall not exceed the duration of operation of the foreign credit institution.

Article 12 *Extension of duration of operation*

1. When there is a need to extend the duration of its operation, a foreign bank branch, a joint venture bank or a bank with one hundred (100) per cent foreign owned capital shall submit an application file for an extension of duration of operation at least one hundred and eighty (180) days in the case of a foreign bank branch, joint venture bank or bank with one hundred (100) per cent foreign owned capital, and sixty (60) days in the case of a

representative office of a foreign credit institution prior to the date of expiry of [the duration of] operation. Application files for extension of duration of operation shall be prepared in accordance with regulations of the State Bank.

2. The State Bank shall consider extension of duration of operation on a case-by-case basis. The maximum length of each extension shall be the previous duration stipulated in the licence.

3. Within a time frame of ninety (90) days from the date of receipt of a complete application file for extension of duration of operation, the State Bank shall provide written approval or shall refuse to extend duration of operation. In a case of refusal, the State Bank shall provide a written explanation of its reasons therefor.

Article 13 *Fees for issuance of licences and fees for extension of duration of operation*

1. Foreign bank branches, joint venture banks, banks with one hundred (100) per cent foreign owned capital and representative offices of foreign credit institutions shall pay fees for the issuance of licences and fees for the extension of duration of operation in accordance with regulations of the Ministry of Finance.

2. Procedures for payment of fees for issuance of licences and fees for extension of duration of operation shall be carried out in accordance with guidelines of the State Bank.

Article 14 *Publication of announcements*

At least thirty (30) days prior to the proposed date of commencement of operation, a foreign bank branch, joint venture bank or bank with one hundred (100) per cent foreign owned capital must have completed publication of an announcement in three consecutive issues of a central newspaper and of a local newspaper in the locality where the office will be located. The contents of the announcement shall be the main information stipulated in the licence and in the business registration certificate, and the proposed date of commencement of operation.

Article 15 *Conditions for commencement of operation*

In order to commence its operation, a foreign bank branch, joint venture bank or bank with one hundred (100) per cent foreign owned capital must satisfy all the conditions stipulated in article 28.1 of the *Law on Credit Institutions* and in regulations of the State Bank. Foreign bank branches shall not be required to satisfy the condition on charter approval stipulated in clause 1(a) of article 28 of the *Law on Credit Institutions*.

Article 16 *Commencement of operation*

1. Within a time frame of twelve (12) months from the date of issuance of its licence, a foreign bank branch, joint venture bank, bank with one hundred (100) per cent foreign owned capital or representative office of a foreign credit institution must commence operation.

2. In a case where the operation cannot be commenced within the time frame stipulated in clause 1 of this article, the representative of the foreign bank, the joint venture parties or the foreign credit institution must provide a written request for extension of the time frame for commencement of operation to the State Bank at least thirty (30) days prior to expiry of the stipulated time frame.

3. The State Bank may consider an extension of the time frame for commencement of operation but shall not grant an extension in excess of six (6) months, and in the case of a representative office of a foreign credit institution shall not grant an extension in excess of three months.

Article 17 *Charters*

1. The contents of charters of joint venture banks and of banks with one hundred (100) per cent foreign owned capital shall comply with article 30.1 of the *Law on Credit Institutions* and regulations of the State Bank.

2. The State Bank must ratify the charter of a joint venture bank and the charter of a bank with one hundred (100) per cent foreign owned capital, and any amendments or additions to such charters may only be implemented after the State Bank has ratified them.

Article 18 *Language of transactions*

The official documentation on any transaction between a foreign bank branch, joint venture bank, bank with one hundred (100) per cent foreign owned capital or representative office of a foreign credit institution [on the one hand] with a Vietnamese individual or organization [on the other hand] must be in Vietnamese, or in Vietnamese plus a commonly used foreign language.

Article 19 *Administration, management and control*

1. Foreign bank branches, joint venture banks and banks with one hundred (100) per cent foreign owned capital must conduct administration, management and control in accordance with the provisions in section 3 of Chapter II of the *Law on Credit Institutions*, the provisions of this Decree and guidelines of the State Bank.

2. Foreign bank branches shall not be required to implement the provisions in articles 37 and 38 of the *Law on Credit Institutions*. The provisions in articles 36 and 40 and in other articles of the *Law on Credit Institutions* relating to board of management and board of controllers shall not apply to foreign bank branches.

Article 20 *Internal inspection and control system*

Foreign bank branches, joint venture banks and banks with one hundred (100) per cent foreign owned capital shall establish an internal inspection and control system and shall conduct internal inspections and control in accordance with the provisions in section 4 of Chapter II of the *Law on Credit Institutions* and guidelines of the State Bank.

Article 21 *Provisions on operational safety*

1. During operation, foreign bank branches, joint venture banks and banks with one hundred (100) per cent foreign owned capital shall comply with the regulations on limits in order to ensure safety in the operation of the credit institution in accordance with the provisions in section 4 of Chapter III of the *Law on Credit Institutions*, specific provisions of this Decree and guidelines of the State Bank.

2. When a foreign bank fully complies with the provision stipulated in clause 1 above regarding limits in order to ensure safety of its operation, such foreign bank branch must also comply with the limits on lending and limits on guarantees stipulated in article 7 of the

Law on Credit Institutions based on the equity of its parent bank; and the parent bank must also satisfy prudential ratios required by international custom.

Article 22 *Actual value of contributed capital or charter capital*

1. Foreign banks, joint venture banks and banks with one hundred (100) per cent foreign owned capital must ensure that they maintain the actual value of contributed capital of the foreign bank branch or the actual value of the charter of the joint venture bank or bank with one hundred (100) per cent foreign owned capital at a minimum equal to the stipulated level of legal capital.

2. The State Bank shall provide specific regulations dealing with cases where the actual value of contributed capital of a foreign bank branch, or the actual value of charter capital of a joint venture bank or bank with one hundred (100) per cent foreign owned capital reduces to a level less than that of the legal capital.

Article 23 *Overseas remittance of profits and assets*

The remittance of profits and assets overseas by foreign bank branches, by banks with one hundred (100) per cent foreign owned capital and by the foreign party in a joint venture bank shall be implemented in accordance with article 112 of the *Law on Credit Institutions* and other relevant laws of Vietnam.

Article 24 *Financial, accounting and reporting regimes*

The financial, accounting and reporting regimes of foreign bank branches, of joint venture banks and banks with one hundred (100) per cent foreign owned capital shall be implemented in accordance with the provisions in Chapter IV and articles 110 and 111 of the *Law on Credit Institutions*, the specific provisions of this Decree and guidelines of the State Bank.

Article 25 *Matters which must be reported*

Foreign bank branches, joint venture banks and banks with one hundred (100) per cent foreign owned capital shall provide written reports to the State Bank on the following matters:

1. The annual financial and operational status of the parent bank and of the foreign bank in the joint venture.
2. Any demerger, merger, consolidation, acquisition, liquidation, bankruptcy or dissolution of the parent bank or of the foreign bank in the joint venture.
3. Any change of name or head office address of the parent bank or foreign bank in the joint venture.
4. Any change in major shareholders, the board of management or the executive board of the parent bank or of the foreign bank in the joint venture.
5. Any unusual change which may have a major effect on the organization and operation of the parent bank or of the foreign bank in the joint venture.

Article 26 *Inspection and supervision by foreign parties*

1. The competent regulatory body and inspectorate of the home country, a parent bank and a foreign bank shall be permitted to check and inspect the operation of the foreign bank branch, joint venture bank or bank with one hundred (100) per cent foreign owned capital which is operating in Vietnam. Prior to conducting any check or inspection, the regulatory body or inspectorate of the home country, the parent bank or the foreign bank must provide written notice to the State Bank regarding the contents of the check or inspection and the proposed dates of its commencement and completion.

2. Within a time frame of ninety (90) days from the date of completion of a check or inspection, the parent bank, foreign bank, foreign bank branch, joint venture bank [or] bank with one hundred (100) per cent foreign owned capital shall forward a report to the State Bank on the check or inspection and its result.

3. If during the process of a check or inspection any breaches are discovered or any unusual activities are discovered which could have a dangerous impact on the operation of the foreign bank branch, joint venture bank or bank with one hundred (100) per cent foreign owned capital in Vietnam, then the parent bank [or] the foreign bank must immediately provide written notice to the State Bank.

Article 27 *Special control, bankruptcy, dissolution and liquidation*

1. Special control, bankruptcy, dissolution and liquidation of foreign bank branches, joint venture banks and banks with one hundred (100) per cent foreign owned capital shall be implemented in accordance with Chapter V of the *Law on Credit Institutions*, the specific provisions of this Decree and guidelines of the State Bank.

2. Prior to bankruptcy, dissolution or termination of operation, a foreign bank branch, joint venture bank, bank with one hundred per cent foreign owned capital or representative office of a foreign credit institution must conduct procedures in accordance with regulations of the State Bank and other relevant laws of Vietnam.

Article 28 *Information and confidentiality*

Foreign bank branches, joint venture banks and banks with one hundred (100) per cent foreign owned capital shall exchange information and maintain confidentiality of information in accordance with the provisions in Chapter VI of the *Law on Credit Institutions*, other relevant laws and guidelines of the State Bank.

Article 29 *Independent auditing*

Foreign bank branches, joint venture banks and banks with one hundred (100) per cent foreign owned capital shall implement independent auditing in accordance with the provisions in Section 2 of Chapter IX of the *Law on Credit Institutions*, other relevant laws and guidelines of the State Bank.

Article 30 *Conversion of the form of an institution*

1. A joint venture bank may convert into a bank with one hundred (100) per cent foreign owned capital, and vice versa.

2. The State Bank shall provide regulations on the conditions, procedures and application files for conversion of the form of an institution as stipulated in clause 1 of this article.

Article 31 Restructure

1. The restructure of a foreign bank branch, joint venture bank or bank with one hundred (100) per cent foreign owned capital including division, demerger, merger, consolidation or acquisition shall be subject to written approval from the State Bank.

2. Application files and procedures requesting division, demerger, merger, consolidation or acquisition as stipulated in clause 1 of this article shall be implemented in accordance with regulations of the State Bank.

**CHAPTER II
Foreign Bank Branches**

Article 32 Operational networks

The opening of a transaction point outside the office of a foreign bank branch shall be implemented in accordance with regulations of the State Bank.

Article 33 Transfer of location of a foreign bank branch

1. A foreign bank branch shall be permitted to change the location of the branch within or outside the same province or city under central authority.

2. The State Bank shall provide regulations on the conditions, procedures and application files for change of location of a foreign bank branch.

Article 34 Conditions for opening additional branches

1. The following conditions shall apply in order for a foreign bank to open an additional branch:

(a) The conditions stipulated in clauses 1 and 2 of article 8 of this Decree;

(b) The branch or branches of the foreign bank in Vietnam must be operating effectively and not

be in breach of the provisions on operational safety during banking activities.

2. Application files and procedures for opening additional branches shall be implemented in accordance with regulations of the State Bank.

Article 35 Use of issued capital

The use of issued capital of a foreign bank branch shall be implemented in accordance with regulations of the State Bank.

Article 36 Capital contribution and purchase of shareholding

A foreign bank branch shall only be permitted to make a capital contribution to or purchase shareholding in an enterprise or another credit institution when the parent bank so authorizes and issues the capital in order to make such capital contribution or purchase of shareholding. The State Bank shall provide specific guidelines on capital contribution and purchase of shareholding by foreign bank branches.

Article 37 Consolidated finances, accounting and reporting

If a foreign bank has two or more branches operating in Vietnam, then the finances, accounting and reporting of all the foreign bank branches in Vietnam including declaration, payment and finalization of tax shall be implemented on the basis of their being consolidated at one branch selected by the foreign bank and registered with the State Bank.

Article 38 *Managers and executives*

1. The general director (director) of a foreign bank branch shall be the representative of the foreign bank branch before the law, and shall be the person responsible for all activities of the foreign bank branch and for the management of day-to-day operations in accordance with duties and powers which are consistent with the provisions of the *Law on Credit Institutions* and other relevant laws.
2. The general director (director) of a foreign bank branch shall not be permitted to be a manager or executive of any other credit institution or economic institution.
3. The general director (director) of a foreign bank branch must satisfy the standards stipulated in article 39.2 of the *Law on Credit Institutions*, must be appointed or dismissed by the authorized level of the foreign bank and such appointment or dismissal shall be subject to ratification by the Governor of the State Bank.
4. If a foreign bank has two or more branches operating in Vietnam and conducts consolidated finances, consolidated cost accounting and reporting, then the foreign bank shall appoint one general director (director) to be legally liable for all activities of all the foreign bank branches in Vietnam.

Article 39 *Operational contents*

1. Foreign bank branches shall be permitted to conduct all professional activities of the type conducted by commercial banks, development banks and investment banks or of the type conducted by other banks pursuant to the provisions of the *Law on Credit Institutions* and the provisions of law on such type of banking activities.
2. The State Bank shall include specific clauses on the type and contents of the operation of a foreign bank branch in the licence which the State Bank issues to the branch based on the provisions of the *Law on Credit Institutions* and consistent with the scale, type and operational sector of the parent bank. A foreign bank branch in Vietnam shall not be permitted to conduct professional activities which its parent bank is not permitted to conduct pursuant to the law of the home country.

Article 40 *Freezing capital and assets*

1. In necessary cases in order to protect the interests of depositors, the State Bank may require a foreign bank branch to lodge all or a part of its capital and assets with the State Bank or with another credit institution or other institution in Vietnam appointed by the State Bank to retain and manage such capital and assets.
2. The State Bank shall provide specific regulations on the circumstances in which the State Bank has the right to freeze the capital and assets of a foreign bank branch.

Article 41 *Dissolution and termination of operation*

A foreign bank branch in Vietnam shall be dissolved and its operation shall terminate in the following circumstances:

1. On expiry of the duration of its operation: If the parent bank fails to submit an application file for extension of the duration of operation at least one hundred and eighty (180) days prior to expiry of the duration of operation stipulated in the licence, or if the State Bank does not approve any such application which has been submitted.

2. Voluntary termination of operation: In this case, the parent bank must submit an application to the State Bank at least sixty (60) days prior to the proposed date of termination of the operation of the branch.

3. The licence of the foreign bank branch is revoked in the following circumstances:

(a) On the occurrence of any one of the events stipulated in sub-clauses (a), (b) and (dd) of clause 1 of article 29 of the *Law on Credit Institutions*;

(b) The foreign bank branch fails to satisfy the conditions stipulated in sub-clauses (b), (c) and (d) of clause 1 of article 28 of the *Law on Credit Institutions*;

(c) The foreign bank branch suspends its operation for twelve (12) consecutive months.

4. The parent bank is dissolved or declared bankrupt.

CHAPTER III Joint Venture Banks

Article 42 *Operational network*

Joint venture banks shall be permitted to open transaction offices located at their head offices, to open branches and representative offices and to establish subsidiary companies and professional units pursuant to articles 32 and 33 of the *Law on Credit Institutions* and regulations of the State Bank.

Article 43 *Board of management*

1. The board of management shall be the highest managing body of a joint venture bank. The board of management shall consist of a chairman, vice-chairman(men) and other members. The appointment of the chairman, vice-chairman(men) and other members of the board of management shall be subject to ratification by the Governor of the State Bank.

2. There shall be a minimum of three members of the board of management. The parties to the joint venture shall decide on the number of members of the board of management on the basis of the capital contribution of each of the foreign party and the Vietnamese party to the joint venture bank.

3. The members of the board of management must be reputable persons with professional ethics and extensive knowledge of banking operations in accordance with regulations of the State Bank, and must not be persons stipulated in article 40 of the *Law on Credit Institutions*.

4. The chairman and other members of the board of management shall not be permitted to authorize a person who is not a member of the board of management to fulfil their duties or exercise their powers. The chairman of the board of management shall not concurrently be the general director (director) or deputy general director (deputy director) of the joint venture bank, and shall not be permitted to be a manager or executive of any other credit institution unless the latter credit institution is a subsidiary of the joint venture bank.

5. The duties and powers of the board of management and of the members of the board of

management and the working rules of the board of management shall be specified in the charter of the joint venture bank.

6. The term of office of the members of the board of management shall be as agreed by the parties to the joint venture bank but shall not exceed five years.

Article 44 *Board of controllers*

1. The board of controllers of a joint venture bank shall have the task of inspecting financial activities, of supervising observance of the accounting regime and the safety of the operation of the joint venture bank, and of conducting periodical internal audits of the operation and of each sector in order to assess accurately the business operations and the actual financial status of the joint venture bank.

2. The board of controllers of a joint venture bank shall comprise at least three members, one of whom shall be the chief controller, and at least half the number of members shall be full-time members. If the board of controllers comprises only three members then at least one member must be a full-time member.

3. Members of the board of controllers must satisfy the requirements on professional qualifications and ethics as stipulated in regulations of the State Bank, they must not be persons stipulated in article 40 of the *Law on Credit Institutions*, and their appointment shall be subject to ratification by the Governor of the State Bank.

4. The board of controllers shall have a section assisting it and shall be entitled to use the internal inspection and control system of the joint venture bank in order to fulfil its duties.

5. The duties and powers of the chief controller and of the members of the board of controllers shall be specified in the charter of the joint venture bank.

Article 45 *General director (director)*

1. The general director (director) shall be the legal representative of the joint venture bank unless the charter of the joint venture bank provides otherwise, and shall be responsible to the board of management for the management of day-to-day operations in accordance with duties and powers which are consistent with the provisions of the *Law on Credit Institutions* and other relevant laws, and his or her appointment shall be subject to ratification by the Governor of the State Bank. The general director (director) of a joint venture bank shall not concurrently be the general director (director), deputy general director (deputy director) or chairman of the board of management of any other credit institution unless the latter is a subsidiary of the joint venture bank.

2. The general director (director) or deputy general director (deputy director) of a joint venture bank must satisfy the standards stipulated in article 39.2 of the *Law on Credit Institutions*, and must not be a person stipulated in article 40 of the *Law on Credit Institutions*.

3. The duties and powers of the general director (director) shall be specified in the charter of the joint venture bank.

Article 46 *Ratios and method of charter capital contribution*

The ratios and method of charter capital contribution of the foreign party and of the Vietnamese party to a joint venture bank shall be as agreed by the parties and shall be specified in the charter. The share of capital contribution of the foreign party shall not exceed fifty (50) per cent of the charter capital of the joint venture bank, except in special cases as decided by the Prime Minister of the Government.

Article 47 *Assignment of capital contribution*

1. The Vietnamese party and the foreign party to a joint venture bank shall be entitled to assign their respective capital contributions but they must give priority to assignment to the other parties to the joint venture bank.

2. An assignment of capital contribution must be approved by the State Bank before it is implemented. Application files and procedures for an application for approval of an assignment of capital contribution shall be implemented in accordance with regulations of the State Bank.

3. Where profits are derived from the assignment of capital, the assignor must pay tax in accordance with the law of Vietnam.

Article 48 *Distribution of profits and sharing of losses*

The parties to a joint venture bank shall distribute profits and bear losses in accordance with the ratio of capital contribution of each party, unless otherwise agreed by the parties in the joint venture contract.

Article 49 *Management role of parties to a joint venture*

1. Both parties to the joint venture shall be permitted to participate in management of the joint venture bank via their representative members on the board of management in accordance with the rules promulgated by the board of management of the joint venture bank, but must not directly interfere in the management and executive operation of the joint venture bank.

2. Both parties to the joint venture shall be permitted to conduct checks and inspections of the operation of the joint venture bank, and may require the joint venture bank to provide information and to report in accordance with the rules promulgated by the board of management of the joint venture bank consistent with law.

Article 50 *Operational contents*

1. Joint venture banks shall be permitted to conduct all professional activities of the type conducted by commercial banks, development banks and investment banks or of the type conducted by other banks pursuant to the provisions of the *Law on Credit Institutions* and the provisions of law on such type of banking activities.

2. The State Bank shall include specific clauses on the type and contents of the operation of a joint venture bank in the licence which the State Bank issues to such bank based on the provisions of the *Law on Credit Institutions* and relevant laws of Vietnam.

Article 51 *Dissolution and termination of operation*

A joint venture bank shall be dissolved and its operation shall terminate in the following circumstances:

1. On expiry of the duration of its operation: If the joint venture bank fails to submit an application file for extension of the duration of operation at least one hundred and eighty (180) days prior to expiry of the duration of operation stipulated in its licence, or if the State Bank does not approve any such application which has been submitted.

2. Voluntary application for dissolution if the bank is able to fully discharge all its debts and the State Bank provides approval: In this case, the joint venture bank must submit an application to the State Bank at least one hundred and eighty (180) days prior to the proposed date of termination of the operation of the joint venture bank.

3. The licence of the joint venture bank is revoked in the following circumstances:

(a) On the occurrence of any one of the events stipulated in sub-clauses (a), (b), (d) and (dd) of clause 1 of article 29 of the *Law on Credit Institutions*;

(b) The joint venture bank fails to satisfy the conditions stipulated in clause 1 of article 28 of the *Law on Credit Institutions*;

(c) The joint venture bank suspends its operation for twelve (12) consecutive months.

CHAPTER IV

Banks with One Hundred (100) Per Cent Foreign Owned Capital

Article 52 *Operational network*

Banks with one hundred (100) per cent foreign owned capital shall be permitted to open transaction offices located at their head offices, to open branches and representative offices and to establish subsidiary companies and professional units pursuant to articles 32 and 33 of the *Law on Credit Institutions* and regulations of the State Bank.

Article 53 *Assignment of capital*

1. Capital contributing members (including the parent bank) owning the charter capital of a bank with one hundred (100) per cent foreign owned capital shall be entitled to assign all or a part of their respective capital contributions owned by them to other capital contributing members or to other foreign institutions, provided that there is always one foreign bank owning more than fifty (50) per cent of the charter capital of the bank with one hundred (100) per cent foreign owned capital.

2. An assignment of capital must be approved by the State Bank before it is implemented. Application files and procedures for an application for approval of an assignment of capital shall be implemented in accordance with regulations of the State Bank.

3. Where profits are derived from the assignment of capital, the member assigning such capital must pay tax in accordance with the law of Vietnam.

Article 54 *Board of management*

1. The board of management shall be the highest managing body of a bank with one hundred (100) per cent foreign owned capital. The board of management shall consist of a chairman, vicechairman (men) and other members.

2. The board of management of a bank with one hundred (100) per cent foreign owned capital shall operate in accordance with article 37 of the *Law on Credit Institutions*.

3. The duties, powers and working rules of the chairman, vice-chairman(men) and other members of the board of management shall be specified in the charter of the bank with one hundred (100) per cent foreign owned capital, consistent with the provisions of the *Law on Credit Institutions* and other relevant laws.

4. The members of the board of management must be reputable persons with professional ethics and extensive knowledge of banking operations in accordance with regulations of the State Bank, and must not be persons stipulated in article 40 of the *Law on Credit Institutions*; and their appointment shall be subject to ratification by the Governor of the State Bank.

5. The chairman of the board of management shall not concurrently be the general director (director) or deputy general director (deputy director) of the bank with one hundred (100) per cent foreign owned capital and shall not be permitted to be a manager or executive of any other credit institution unless the latter credit institution is a subsidiary of the bank with one hundred (100) per cent foreign owned capital.

Article 55 *Board of controllers*

1. The board of controllers of a bank with one hundred (100) per cent foreign owned capital shall operate in accordance with article 38 of the *Law on Credit Institutions*.

2. The duties and powers of the board of controllers and the working rules of the board of controllers shall be specified in the charter of the bank with one hundred (100) per cent foreign owned capital, consistent with the provisions of the *Law on Credit Institutions* and other relevant laws.

3. The board of controllers of a bank with one hundred (100) per cent foreign owned capital shall comprise at least three members, one of whom shall be the chief controller, and at least half the number of members shall be full-time members. If the board of controllers comprises only three members then at least one member must be a full-time member.

4. The chief controller and members of the board of controllers must satisfy the requirements on professional qualifications and ethics as stipulated in regulations of the State Bank, and they must not be persons stipulated in article 40 of the *Law on Credit Institutions*.

5. The appointment or dismissal of the chief controller and members of the board of controllers shall be implemented in accordance with the charter of the bank with one hundred (100) per cent foreign owned capital and shall be subject to ratification by the Governor of the State Bank.

Article 56 *General director (director)*

1. The general director (director) shall be the legal representative of the bank with one hundred (100) per cent foreign owned capital unless the charter of such bank provides otherwise, and the general director (director) shall be responsible for the management of day-to-day operations of the bank with one hundred (100) per cent foreign owned capital.

2. The general director (director) of a bank with one hundred (100) per cent foreign owned capital shall not concurrently be the general director (director) or chairman of the board of management of any other credit institution unless the latter is a subsidiary of the bank with one hundred (100) per cent foreign owned capital.

3. The duties and powers of the general director (director) shall be specified in the charter of the bank with one hundred (100) per cent foreign owned capital, consistent with the provisions of the *Law on Credit Institutions* and other relevant laws of Vietnam.

4. The general director (director) of a bank with one hundred (100) per cent foreign owned capital must satisfy the standards stipulated in the *Law on Credit Institutions* and in regulations of the State Bank. The appointment or dismissal of the general director shall be implemented in accordance with the charter of the bank with one hundred (100) per cent foreign owned capital and shall be subject to ratification by the Governor of the State Bank.

Article 57 *Operational contents*

1. Banks with one hundred (100) per cent foreign owned capital shall be permitted to conduct all professional activities of the type conducted by commercial banks, development banks and investment banks or of the type conducted by other banks pursuant to the provisions of the *Law on Credit Institutions* and the provisions of law on such type of banking activities.

2. The State Bank shall include specific clauses on the type and contents of the operation of a bank with one hundred (100) per cent foreign owned capital in the licence which the State Bank issues to such bank, based on the provisions of the *Law on Credit Institutions* and other relevant laws.

Article 58 *Distribution of profits and sharing of losses*

The members who contributed capital to the establishment of a bank with one hundred (100) per cent foreign owned capital shall distribute profits and bear losses in accordance with the ratio of capital contribution to the charter of the bank by each member, unless otherwise agreed by such members.

Article 59 *Dissolution and termination of operation*

A bank with one hundred (100) per cent foreign owned capital shall be dissolved and its operation shall terminate in the following circumstances:

1. On expiry of duration of its operation: If the bank with one hundred (100) per cent foreign owned capital fails to submit an application file for extension of the duration of operation at least one hundred and eighty (180) days prior to expiry of duration of operation as stipulated in its licence, or if the State Bank does not approve any such application which has been submitted.

2. Voluntary application for dissolution: If the bank is able to fully discharge all its debts and the State Bank provides approval: In this case, the bank with one hundred (100) per cent foreign owned capital must submit an application to the State Bank at least one hundred and eighty (180) days prior to the proposed date of termination of its operation.

3. The licence of the bank with one hundred (100) per cent foreign owned capital is revoked in the following circumstances:

(a) On the occurrence of any one of the events stipulated in sub-clauses (a), (b), (d) and (dd) of clause 1 of article 29 of the *Law on Credit Institutions*;

(b) The bank with one hundred (100) per cent foreign owned capital fails to satisfy the conditions stipulated in clause 1 of article 28 of the *Law on Credit Institutions*;

(c) The bank with one hundred (100) per cent foreign owned capital suspends its operation for twelve (12) consecutive months.

CHAPTER V Representative Offices of Foreign Credit Institutions

Article 60 *Organizational structure*

Foreign credit institutions shall be permitted to establish representative offices in various provinces and cities under central authority in the territory of Vietnam, but a foreign credit institution shall only be permitted to establish one representative office in each province or city.

Article 61 *Changing location of the representative office of a foreign credit institution*

1. A foreign credit institution shall be permitted to change the location of its representative office either within or outside the scope of a province or city under central authority.

2. The State Bank shall provide regulations on the conditions, procedures and application files for change of location of representative office by a foreign credit institution.

Article 62 *Operational contents*

A representative office of a foreign credit institution shall be permitted to engage fully or partly in the following activities, depending on the contents specified in its licence:

1. Act as a liaison office.

2. Conduct market research.

3. Expedite formulation of investment projects of the foreign credit institution in Vietnam.

4. Expedite and supervise performance of contracts or agreements entered into between the foreign credit institution and any Vietnamese credit institution or Vietnamese enterprise, and of the implementation of projects in Vietnam financed by the foreign credit institution.

5. Conduct other activities in accordance with the law of Vietnam when the State Bank so permits.

Article 63 *Termination of operation*

The operation of a representative office of a foreign credit institution in Vietnam shall terminate in the following circumstances:

1. On expiry of the duration of its operation: If a foreign credit institution fails to submit an application file for extension of duration of operation at least sixty (60) days prior to expiry

of duration of operation as stipulated in its licence, or if the State Bank does not approve any such application which has been submitted.

2. Voluntary application for dissolution: In this case, the foreign credit institution must submit an application to the State Bank at least sixty (60) days prior to the proposed date of termination of the operation of the representative office.

3. The licence is revoked on the occurrence of any one of the events stipulated in sub-clauses (a), (b) or (dd) of clause 1 of article 29 of the *Law on Credit Institutions* or if the foreign credit institution is declared bankrupt or is dissolved.

CHAPTER VI Implementing Provisions

Article 64 *Effectiveness*

1. This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette.

2. The following instruments shall no longer be effective: Decree 13-1999-ND-CP of the Government dated 17 March 1999 on organization and operation of foreign credit institutions and representative offices of foreign credit institutions in Vietnam; Decree 189-HDPT of the Counsel of Ministers dated 15 June 1991 issuing regulations on foreign bank branches and joint venture banks operating in Vietnam, and any [other] provisions in previous legal instruments which are inconsistent with this Decree.

Article 65 *Amending organization and operation*

Within a time frame of one year from the date this Decree takes effect, foreign bank branches, joint venture banks, banks with one hundred (100) per cent foreign owned capital and representative offices of foreign credit institutions shall amend their organization and operation for compliance with this Decree and regulations of the State Bank.

Article 66 *Dealing with breaches*

Any foreign bank branch, joint venture bank, bank with one hundred (100) per cent foreign owned capital or representative office of a foreign credit institution in Vietnam which breaches the provisions of this Decree shall, depending on the nature and seriousness of the breach, be dealt with in accordance with the law of Vietnam.

Article 67 *Implementing guidelines*

1. The Governor of the State Bank shall be responsible for providing guidelines for implementation of this Decree.

2. Ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of people's committees of provinces and cities under central authority shall be responsible for implementation of this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI