

BANKING POSITION PAPER

Prepared by:
Banking Working Group

SECTION A – KEY AND EMERGING ISSUES

The Banking working group (BWG) hereby presents to the State Bank (SBV) the following key issues.

1. Circular 30¹

On March 12, 2015, SBV has sent an official Letter No. 1464/NHNN-TTGSNH regarding guiding implementation of Circular 30 (“OL 1464”) in response to BWG Letter No. VBF-BWG-2014004 dated January 05, 2015. But Official letter 1464 did not provide a specific guide for the Banking working group to actually start taking entrustment for lending from corporate clients.

On May 4, 2015, the Banking working group had an official letter sent to SBV, Ministry of Planning and Investment, Ministry of Finance and Ministry of Justice asking for your joint guidance (we attached the official letter with this document for your reference). In the letter, the Banking working group requested that SBV work with relevant agencies to provide specific guides on how to perform entrusted lending transactions between corporate clients and credit institutions/foreign bank branches as provided in Circular 30.

2. Circular 36/2014/TT-NHNN on safe operation limits and ratios of credit institutions and branches of foreign-owned banks (“Circular 36”)

The Banking Working Group appreciates the Official Letter 3110/NHNN-TTGSNH dated May 6, 2015 providing responses to address queries and questions of credit institutions and foreign bank branches regarding the implementation of Circular 36. Our bank members are studying the responses given in the official letter to implement Circular 36 in line with other banks in the market. If there are still any encountered issues, we very much hope that the SBV could facilitate further technical discussions with the working group in the coming time.

3. Specific issues pertaining to foreign exchange governance

We valued the opportunity to meet the Foreign Exchange Administration on Feb. 5, 2015, where numerous foreign exchange concerns were solved. We hope that more of such efficient meetings at the working level between SBV’s departments and the Banking working group will continue in the future.

Here are some emerging concerns that we are facing and also some other issues that await clarification. The Banking working group suggests that SBV walks us through this to make sure we remain in compliance with the law.

Transfer of equity of non-resident foreign investors in a foreign invested enterprise or foreign investment project to another non-resident foreign investor

Article 1.4, Ordinance 06/2013/PL-UBTVQH13, dated Mar. 18, 2013, revising the Foreign exchange Ordinance, specifies; *“Enterprises with foreign direct investment and foreign investors who are parties to business cooperation contracts shall set up a direct*

¹ Circular 30/2014/TT-NHNN dated November 06, 2014, providing on entrustment and fiduciary service delivery by credit institutions and foreign bank branches

investment capital account at an eligible credit institution. Equity financing and transfers of the principal investment capital, earnings and other legal revenues shall be made through this account ... Other legal transfer of funds related to investment activities shall be subject to relevant laws and guidelines of the State Bank of Vietnam”.

To guide the implementation of the above regulation, SBV released **Circular 19**². According to the report: Transfer of equity in a foreign invested enterprise and foreign investment projects of foreign investors shall comply with the provisions of the Investment Law, Enterprise Law, Personal income-tax Law, Corporate income-tax Law, while implementing the documents of these laws, existing regulations for foreign exchange control and other relevant laws and regulations (Article 4.4). Transfer of payments for the value of the transferred equity and investment projects shall be subject to existing rules for foreign exchange control and other relevant laws and regulations (Article 4.5).

Additionally, according to Article 7 on using foreign currency direct investment capital accounts; collection of, and payments for the value of transferred investment capital and investment projects may be executed through a foreign currency direct investment capital account of the company with direct foreign investment or foreign investor being a party to a business cooperation contract.

Our understanding is that according to the above rule, in case (1) a non-resident foreign investor transfers his/her equity in a foreign invested enterprise or foreign investment project to another non-resident foreign investor; (2) a resident Vietnamese investor having foreign investment and a foreign investment project transferring to a non-resident foreign investor. The value of transferred equity may be determined and paid in a foreign currency and must be made through a foreign currency direct investment capital account of the company with direct investment or foreign investor in a business cooperation contract maintained at an eligible bank. We need SBV's clarification on this.

- **Verification of supporting documents:** Between **Decree 70**³ (Article 16) and **Circular 16**⁴ (Article 9), there is one inconsistent part on the obligation of banks related to verification of supporting documents. We suggest that banks should only have the verifying obligation to meet their customers' practical needs (to avoid speculating acts) and make sure the bank's activities comply with the law. It is not advisable to rule that banks should assume the obligation to make sure that their customers' business activities comply with the law, because that should be the obligation of the customers and other regulatory agencies.
- **Circular 07/2012/TT-NHNN on the foreign exchange position of CIs and foreign bank branches.**
While banks may report foreign exchange positions that arise from monetary derivative transactions (e.g. cross currency swaps (CCS) – a useful instrument for customers to hedge against interest rate and foreign exchange rate risks under Circular 01/2015/TT-

² Circular 19/2014/TT-NHNN provides guidance on foreign exchange control for foreign direct investment in Vietnam.

³ Decree 70/2014/N -CP, July 17, 2014, providing details on several provisions of the amendments to the Foreign exchange Ordinance.

⁴ Circular 16/2014/TT-NHNN, Aug. 1, 2014, guiding use of foreign exchange accounts, VND accounts by resident and non-resident persons at eligible banks.

NHNN, Jan. 6, 2015), these positions are not included in the gross foreign exchange position used to rate compliance with the foreign exchange position limit at day end.

Under-reporting of the gross foreign exchange position may lead to high risks for banks. An example is when the positions generated from CCS deals are squared through spot foreign exchange deals. Since the gross foreign exchange position only includes positions generated from spot foreign exchange deals, and not those generated from CCS deals, the total foreign exchange position reported under the current scheme will be much greater than the real balance, and may even result in banks being in breach of the foreign exchange position limit while in fact their real foreign exchange position is much lower.

Calculation of foreign exchange positions generated from monetary derivatives will also follow international practices because it reflects accurately and truthfully the actual foreign exchange position of the banks. Moreover, reporting accurately and truthfully the foreign exchange position by banks will also help the State Bank to have accurate and reliable data for its decision making and introduce accurate and reasonable policies relating to foreign exchange control.

We hope that SBV considers allowing foreign bank branches and wholly foreign-owned banks to report their foreign exchange positions generated from monetary derivatives by including them to the end-of-day total foreign exchange position, which will be used to rate their foreign exchange position limit specified in Circular 07. Reporting this way is also consistent with recent guidance in Official letter 7221/NHNN-TCKT, dated Oct. 1, 2014, which allows wholly foreign-owned banks to adopt international accounting standards for foreign exchange transactions and derivative contracts related to financial instruments until the Ministry of Finance has in place official financial standards.

- **Compliance with regulation on deposit**

Art. 13.2 of Decree 70 (2014) states: only "resident individuals; being Vietnamese citizens are allowed to place saving deposits in foreign currency at authorized credit institution, and to withdraw the principal and interest amounts in the same currency". As per Art. 4.13 of the LCI 2010, taking deposit by a credit institution does stand for the receipt of funds deposited by customers; being organizations or individuals in form of demand deposit, time deposit or saving deposit etc.

As such, and further to much clarification with the SBV, we clearly noted that:

- + A customer being an organization (domestic or overseas) or foreign individual person (resident or non-resident in Vietnam) ("Customer") is not allowed to place a saving deposit in foreign currency. In fact, an organization is not subject of saving deposits despite clear guidance or regulation. By the way, there is no restriction applicable to any time deposit in both foreign currency and VND placed by the said Customer.
- + Circular 06/2014/TT-NHNN, Circular 07/2014/TT-NHNN and Decisions 2172 (2014), and 2173 (2014) of the SBV providing guidance on time deposit of customers including both individual and organizations do not distinguish the resident and non-resident. Needless to say, the interest rate cap for deposit in VND and foreign currency only apply to time deposits, and no limit applied to savings deposits.

- + Therefore, almost all CIs/FBBs to continue receiving time deposit in VND and foreign currency from individual and organization (customer) being resident and non-resident in-line with the above regulation. Please correct us in writing if our understanding and practice elaborate herein above is not accurate.

SBV has recently issued the draft regulation on deposits and requested credit institutions and foreign bank branches to issue comments and recommendations. In response to SBV's request, BWG has submitted a consolidated comment paper on the draft regulation. We very much hope that SBV will consider our feedback and make necessary changes in the regulation once it is issued.

- **Circular 16/2014/ TT-NHNN guiding uses of foreign currency and Vietnamese dong accounts by resident and non-resident persons with eligible banks ("Circular 16")**

Article 3, Circular 16, provides on use of foreign exchange accounts by resident institutional persons in fund transfers or cash withdrawals in foreign currencies to pay salary, bonuses, and allowances for non-resident and resident foreign persons. And cash withdrawals in foreign currencies to pay individuals working for the organization when they are sent overseas for business purposes.

In practice, resident corporate persons often send their staff on business trips to work on the company's projects or on study tours overseas. As such business trips or study visits are often long-term (several months), taking cash with them (maximum USD5,000) is unreasonable, and both the company and employee may wish to have the employee's salary transferred to the employee's account opened overseas to use for personal finance needs. Such salary transfers overseas will end once the employee comes back home.

We suggest that SBV includes and provides guidance on the transfer of funds in foreign currencies overseas for personal use by individuals working for their organization, when they are sent abroad on long-term business or study visits.

- **We need SBV to clarify the criteria determining the form of foreign direct investment:** (i) the foreign investors making capital contributions and getting involved in running the business, or (ii) the company awarded an (foreign direct) investment certificate, or (iii) both. In practice, many Vietnamese companies may also receive an Investment certificate while a company may have foreign investors involved in governance but does not have an Investment certificate. Also, please make clear how this should be done in case of foreign banks in Vietnam?

4. **BWG's recommendations on disclosing inspectors' verdicts**

Under the government's Decree 26/N -CP, dated Apr. 7, 2014 on the organization and operation of banking inspectors and supervisors, and Circular 03/TT-NHNN, Mar. 20, 2015, guiding the implementation of specific provision of Decree 26; inspectors' verdicts may be disclosed, excluding its sensitive parts. Disclosure of inspectors' verdicts, however, may result in adverse consequences:

- Creating a negative, knock-on effect to other credit institutions;
- Disclosing only parts of the inspectors' verdicts will lead to the fact that the public, customers or other credit institutions and foreign bank branches cannot get the whole picture of the inspection, which may hurt the reputation of the inspected entity.

- Customers dealing with an audited entity may not have a thorough understanding of the inspectors' verdicts, so they may have a negative view of the credit institution or foreign bank branch.

For these reasons, we suggest that the State Bank considers a ruling that the entire inspectors' verdict is government classified information and no part of it must/to be disclosed.

5. **Circular 23/2014/TT-NHNN, guiding setting up and using transactional accounts at a payment service provider**

- **Translation to Vietnamese with notarization or consular certification of incorporation decision or personal identity paper when setting up an account (Article 12.3, Circular 23⁵)**

We understand that this is a matter of national sovereignty when these documentations are submitted to a government agency, but at the same time also realize that this ruling will lead to a major procedural burden for commercial banks and foreign investors, especially at a time when Vietnam is looking for serious international integration, whereas commercial banks can read and understand well/completely comprehend, documents in foreign languages. We recommend removal of this rule.

- **Item 2 Article 12 and Item 2 Article 13, Circular 23:**

In the technical meeting with regard to the Foreign exchange management and payment accounts between SBV and BWG – VN Enterprise Forum (VEF), dated 5/2/2015; SBV did make clear that (1) payment account is a general term, being deposit accounts without tenor serving for payment purposes, hence indirect investment accounts should be a particular type; (2) Circular 23 guides organizations operating in Vietnam territory, hence foreign investors opening indirect investment accounts won't be subjects governed by Circular 23; (3) indirect investment accounts should not be listed in payment accounts.

In addition, regulations guiding Laws on Security, such as Circular 213/2012/TT-BTC dated 6/12/2012 of Ministry of Finance ("MOF") guiding activities of foreign investors in Vietnam's securities market ("Circular 213") and Circular 05/2014/TT-BTC dated 15/1/2015 of MOF guiding the securities depository, registration, clearing and settlement ("Circular 05 BTC"), allow foreign investors, global custodians to use SWIFT message to send instructions/orders to their local custodian in Vietnam. And are not required to send manual instruction or provide IDs or signature specimens of authorized signers, of chief accountant or accountant director.

Also, we would like to emphasize that, in the past, the State Securities Commission ("SSC") and Vietnam Securities Depository ("VSD") required foreign investors to submit an (1) Appointment Letter of representation for foreign investors and (2) Information slip of appointed representative of foreign investors in the Securities Trading Code Application package. However, later on, based on the feedback from foreign investors, custodian banks and other market participants, MOF and SSC did consider and remove such requests, reflected in the Circular 121/2008/QD-BTC dated 24/12/2008 of MOF. This is absolutely in line with the Governments attempt to reform administrative procedures to encourage foreign institutional investors in Vietnam's securities market.

⁵ Circular 23/2014/TT-NHNN, guiding opening and use of transactional accounts at payment service providing institutions.

6. Recommendation for addition of banking products in SBV's upcoming normative regulation amendment and enactment

· **New draft Circulars**

Lending rules: Lending for restructuring loans with other credit institutions

In international banking practice, credit institutions issuing loans to restructure their debts with other credit institutions do not alter the nature of the loan or mask bad debts, and is a normal and common practice in the lending operation of credit institutions.

Lending rule 1627 and the draft Circular replacing Decision 1627 are not specific enough on debt restructuring lending. But in the lending practices of CIs and FBBs, there have been a number of procedures to restructure loans without altering the nature of the loans on the side of the borrower, and not to mask bad debts, such as; mid-term and long-term lending to restructuring short-term loans, lending in foreign currencies to restructure loans in VND, lending in VND to restructure foreign exchange loans, granting new loans to repay existing loans with other CIs. Also, in the recent harsh times of business practices, the government and State Bank even advised CIs to do this, considering it as a way to bail businesses and the market out of trouble.

Allowing CIs and FBBs to use lending for restructuring of debts is a necessary regulation to give the borrower an opportunity to maintain and stabilize their business operation, and generate income to repay their debts to the banks; which is consistent with current international practices in bank lending.

As such, we suggest that the State Bank considers additional rulings on debt restructuring lending in the draft Circular guiding credit institutions' lending activities which is being discussed as a replacement of the lending rules annexed to Decision 1267 to ease bottlenecks for customers. Including mid-term and long-term lending for restructuring of short-term loans, lending in foreign currencies to restructure loans in VND, lending in VND to restructure loans in foreign exchange, granting new loans to repay existing debts at other CIs, providing that CIs and FBBs must make sure that the (tenor?) of the loans match the customer's business cycle and debt servicing ability, and not for purposes of masking bad debt by CIs and FBBs, and hiding facts about the customer's unhealthy business and financial conditions, or distorting the customer's credit quality. We also hope that SBV considers and accepts allowing loan renewal/rotation (under 01 year) and particularly, not equaling revolving credit as debt rescheduling or a malpractice under rulings on reserve creation.

· **Agent banking**

Article 106, CI Law, specifies that commercial banks may entrust, take entrustment and act as agents in areas related to banking activities, insurance brokerage and wealth management in line with the State Bank's rulings. But SBV has not released an implementing Circular addressing agent for banking activities. The Banking working group is ready to share information on international practices and work with SBV in pushing out early these rules to facilitate and meet real users' needs for agent banking offerings and developments of this field of expertise.

· **Cash Management product**

Cash management activity offered by banks will provide clients with effective solutions in the management of clients' cash flow and liquidity. In Vietnam, the Law on Credit Institutions classifies cash management as one of the banking activities which commercial banks and foreign bank branches in Vietnam can provide to clients.

However, in an absence of a specific legal framework and/or guidance from SBV on cash management, banks could not be able to provide cash management service to clients. This would cause clients; particularly multi-national companies with many subsidiaries and affiliates to lack access to effective liquidity management tools such as cash management offered by local banks and foreign banks in Vietnam. This could potentially have an adverse impact on the competitiveness of Vietnam's banking system as well as the attraction of foreign investment into Vietnam. We recommend that SBV be able to lay out the legal groundwork for cash management so that local banks and foreign bank branches in Vietnam could be able to offer this service to clients.

· **Non- recourse discounting and factoring**

Laws on Credit Institutions and Circular 04/2013/TT-NHNN dated 1/3/2013 only recognize discounting and factoring activities on a with recourse basis to the seller. This is not in line with international practices, for products/ solutions such as factoring, bill discounting and any other product where the bank has enforceable recourse to the buyer or the buyer's bank.

The recourse imposed on the exporters restricts them from accessing good quality funding to finance their working capital and reduce the payment risks from the buyer. Aligning Vietnam with the international trade finance standards would help protect exporters in Vietnam against buyers' default and delays of payment, ensuring a steady source of funding. As these products offer risk protections against buyers and buyer's country risks, Vietnamese exporters would be more comfortable developing commercial relationships with new markets or counterparties to grow their exports. We recommend that SBV issue the regulations allowing discounting and factoring activities on a with recourse basis to both the seller and the buyer.

Notwithstanding the above, we would like the SBV to consider issuing a new or supplementing regulation on business of discounting bills, notes and other valuable papers without recourse and/or bill of exchange. By nature, it is a transaction under which the bank extends credit to the buyer for yearly payments to the seller for purchase of goods/services. Provided that the seller transfers its whole rights relating to the sale contract/invoice executed with the buyer, and the buyer accepts to pay the whole contract price/invoice amount to the bank by the original due date. The discounting charge shall be the difference between the invoice amount and the one duly paid early to the seller, converted into a percentage. The terms and conditions of this type of credit extension are quite similar to lending to the borrower and disbursing funds to the supplier of the borrower. The current guideline given by the SBV under OL 3212 of 08/05/2013 and OL 7294 of 05/10/2013 said that the above transaction scheme (i.e. discounting bills, notes and other valuable papers without recourse and/or bill of exchange) is not for credit businesses but would be regarded as international payment services. Kindly be advised that under the (international) payment service, (i) the bank only collect remittance fees (not the discounting charge) and (ii) the bank shall take the fund of the buyer and transfer it to the seller, but not by using its own fund to pay to the seller first, then collecting it from the buyer afterward.

- **Decree 96⁶**

Decree 96 is clearly intended to strongly enhance the effectiveness of bank enforcement and oversight in Vietnam. In this regard, we applaud the Government for such a comprehensive and detailed approach.

The Decree 96 does not provide for the mechanism of applying the (lightened or bleached?) sanctions based on circumstances stated in Articles 3 and 8 of the Ordinance on Administrative Sanctions (2002) duly amended (2008). We understood these circumstances shall be applied in any cases. However, Decree 96 provides for mainly financial oriented sanctions, because when a violation may have been detected, stopped, prevented in the future and its consequent has been recovered, the violating entity still has to pay penalty with the lowest fine. This manner seems to not encourage the mind of self-improvement of the internal control system of CI/FBB. If the revision of Decree 96 is time consuming, we would recommend the SBV to consider a Circular implementation of such Decree with circumstances stated in Articles 3 and 8 of the Ordinance be taken into account. For example, the sanction will be decided based on the nature of violation and its consequence/impact, the actual status of remedy, preventive measures taken etc. when it is known by the SBV. As such the reminder in writing can be applied or all sanctions may be exempted.

- **Offshore Counter Guarantees**

In the calculation of single credit limit in banking activities, local regulations on banking guarantees and credit activities only exclude guarantee balance in case the guarantee issuance is on the basis of the counter guarantee issued by local credit institutions or foreign bank branches in Vietnam. In case the guarantee is issued on the basis of the counter guarantee that is issued by a foreign bank overseas, for example, the foreign branches of the foreign bank branches in Vietnam or the mother bank of the guarantee issuing bank, such a guarantee is still subject to single credit limit calculations. In fact, in both cases, the credit risk for the guarantee issuing bank associated with this guarantee is almost the same since it already rests with the counter guarantee issuing bank. This is also, not in line with international practices. The non-recognition of the counter guarantee issued by a foreign bank as an exclusion in the single credit limit calculation would potentially restrict the capacity of foreign bank branches in Vietnam to issue large-amount guarantees to support large FDI projects in Vietnam. If however, foreign bank branches in Vietnam could only rely on local banks as a counter guarantee issuer with more limited capacity in terms of capital and credit worthiness in comparison with foreign banks.

We recommend that SBV would allow the exclusion of the guarantees which are issued on the basis of a counter guarantee issued by foreign banks overseas out of the single credit limit calculation.

- **Close Out Netting and Set-Off**

Currently, there is no regulation that addresses netting of market transactions. While trading partners within Vietnam may agree to offset their positions or obligations, it is unclear whether these agreements are permissible or enforceable under current local laws. Besides reducing transaction costs, netting is a critical tool for efficient markets as it reduces credit and liquidity risks, as well as ultimately, systemic risk. Additionally, given that netting results in more favorable capital treatment for credit risks; netting arrangements are crucial for Vietnamese-domiciled banks as it may help to improve

⁶ Decree 96/2014/ND-CP on Civil penalization in relation to monetary and banking practices

their credit ratings when they participate in the international markets in order to hedge their positions. We recommend SBV to propose to the Government and work with relevant authorities; industry and external experts to develop regulation on close out netting and set-off in line with international best practice.

SECTION B – REVIEW OF PENDING AND LONG OUTSTANDING ISSUES

The working group respectfully recommends that SBV reviews and provides its guidance on the following matters raised previously.

1. Licensing

· New licenses for existing activities under old regulations/licenses

Recently SBV issued several regulations which require credit institutions (CIs)/foreign bank branches (FBBs) to have such businesses stated in their specific license for doing so while the relevant old regulations did not require a license (Circular 01/2015 on Interest Rate Derivatives transactions) or the license shall be invalid upon the effectiveness of the new regulation (Circular 21/2014 on FX licenses which covers factoring business), ...).(??)

The Circular 01 became effective since March 2nd, 2015. The CIs and FBBs submitted applications to SBV for a while but the licensing departments were overloaded and could not grant the license on time. Circular 21 provides the deadline for obtaining FX license from SBV is 14 Oct 2015. We assume the situation shall be similar and this will take the CIs/FBBs into an uncertain position and to be challenged by SBV's inspectors.

We would ask for SBV's comprehensive consent permitting CIs/FBBs to continue with those activities under the old regulations waiting for new licenses from SBV.

· FX license

We recommend that banks should be allowed to carry out "basic" FX activities in both domestic and international markets so as to meet client's needs, properly hedge associated risks, and ensure liquidity. Importantly, there should be no limitations on basic FX activities in the international market performed by foreign bank branches in term of client categories. Basic FX activities in the international market should be licensed on an umbrella basis, to reduce the unnecessary and heavy administrative workload for both banks and the SBV.

· Update of general banking license

We understand that SBV has put a lot of efforts to work out an approach to sort out the existing licensing risks faced by all banks in the market. This approach is applauded and appreciated by all banks across BWG. However, the latest updates from SBV, shows that all license updates are put on hold until the new regulation on license re-issuance is issued. This exposes many legal risks to banks (or interruption of financial services to clients) and we are looking forward to the guidelines to be issued soon by SBV on this matter.

During the interval period, we highly appreciate if the SBV can confirm in writing that CIs/FBBs; being applicants who were conducting the businesses (i) mentioned in all current licenses and (ii) as stated in specific regulations at the moment of submitting the application for a comprehensive license, can continue such business pursuant to technical regulations applicable to each type of product.

Regarding Circular 01, the BWG has made a written request to SBV asking for a grace period in applying for an interest rate derivative license. Meanwhile, several banks have submitted an application but are still awaiting approval. The BWG is in a view that while waiting for the approval, banks may still engage in interest rate derivative activities.

Regarding Circular 21, most foreign banks have not applied for renewal of a banking eligible certificate as most of them are still preparing their dossier.

Pending of approval for organizational structure of FBBs

Article 89.1 of the Law on Credit Institutions requests FBBs to obtain SBV's written approval of organizational structures before the implementation. However, all the applications to the Licensing Department - SBV for organizational structure of FBBs was kept pending and no approval has been granted so far, with the reason being that there is no guideline for such an approval process. This takes the FBBs into a risky situation since we could not wait and had to implement the organizational structure without approval from SBV.

We would suggest SBV to push this process and, during the interim period, to allow FBBs to implement their organizational structure without SBV's approval in order to meet their business requirements.

Update of commodity product license

Currently SBV only allows credit institutions and foreign bank branches to offer commodity derivatives on a pilot basis which is normally for one (01) year and subject to SBV approval for any extension. Uncertainty in licensing could result in disruption to banking services to clients, and also to banks risking legal breaches with existing transactions committed to them. We request that the SBV re-evaluate the "pilot" license framework for commodity derivatives as a more permanent approach. The BWG will continue to work with SBV to develop the regulation on commodity derivatives to facilitate this process.

2. Reimbursement of interest subsidy

Over the last years, banks have been waiting for the reimbursement of 20% of due interest subsidies under the interest rate support initiative that ended in 2009. Following our previous meetings with SBV in late 2012, we note that the figures have been checked and finalized for a number of BWG members. We also understand that this is a complicated matter that may have bearings on the public funding balance sheet and nation's financial health. However since the unpaid accumulated reimbursements are presenting themselves as a problem with the banks in relation to their internal accounting systems and audited financial statements, the working group would appreciate if SBV wraps this up and starts releasing this interest rate refund as soon as possible.

3. Anti Money Laundering (AML)

The working group is delighted that Circular 31/2014/TT-NHNN, revising Circular 35/2014/TT-NHNN on anti-money laundering was released on Nov. 11, 2014, in which many BWG's recommendations have been accepted. There are, however, several points in the new Circular 31 revising Circular 35, and Decree 116 that are in fact very hard or impossible to implement. So the BWG would hereby update SBV of the following information:

- Obtaining information of personal residential address, of the representative person of the parent company, subsidiary, representative office for foreign customers and information of beneficiary individuals, entities (ID, passport, tax code, etc.)
It is difficult to obtain such information for foreign/non-resident customers. The verification of the foreign beneficial owner is impractical to perform in case there is data privacy law in their country that prohibits the information sharing with the bank

in Vietnam as in many cases, even the branch or affiliate under the same bank in that country is not permitted to collect the information pursuant due to the countries regulations.

- **Meeting customers at first establishment of relationship**

This is impractical for foreign investors. Moreover, in accordance with Article 14.3.b of Circular 23/2014/TT-NHNN guiding the opening and usage of payment account at the institutions providing payment service, the bank is not required to meet in person when opening the payment account for entity clients. We recommend SBV to acknowledge that this point is the further guidance for the similar requirement in AML regulations.

- **Information sharing in anti-money laundering between the headquarters, branches and subsidiaries.**

The draft Circular revising, Circular 35/2013/TT-NHNN addresses information sharing in anti-money laundering between the headquarters, branches and subsidiaries in a same institution, which is a must. And for information treated as confidential in banking business, reporting entities may only provide it to offshore financial institutions which they have an agent banking relationship with for the purposes of anti-money laundering efforts if they are accepted by the SBV Governor. This rule however is not included in Circular 31 revising Circular 35. We hope SBV clarifies this.

CONCLUSION

Many of the issues and comments mentioned in this paper come from a clear and urgent drive by the State Bank of Vietnam to create a better governed more transparent banking system. We are moving steadily and progressively to this aim and there is increasing confidence that we are moving in the right direction. As noted in the beginning, we believe that Vietnam can shortly begin work on other aspects of developing the financial markets, so that Vietnam has a solid and robust financial sector for future growth.

The BWG remains committed to help in any way possible in furthering Vietnam's financial market development to serve the needs of our customers and the nation.