

## **TENTATIVE AGENDA FOR THE MEETING BETWEEN THE STATE BANK OF VIETNAM AND BANKING WORKING GROUP - VIETNAM BUSINESS FORUM**

### **1. Circular 05/2014/TT-NHNN guiding the opening and use of foreign portfolio investment (FPI) accounts in conducting FPI activities in Vietnam**

Circular 05/2014/TT-NHNN was issued on 12 March 2014 and will become effective as from 28 April 2014. During the process of preparation for implementation, we face a number of difficulties as follows.

Article 5 provides for different types of indirect investment activities in Vietnam. Article 5.1 and 5.2 also imposes an additional condition that foreign investors, who are non residents and carry out foreign indirect investment activities in Vietnam (in short, foreign investors), must not directly participate in management and administration of enterprises. We, however, face a difficulty of how to determine whether or not such foreign investors directly participate in management and administration of the enterprises and would like to seek the SBV's guidance on this issue.

Article 7.1 of Circular 05 does not state that foreign indirect investment account ("FIIA") can receive wages, bonuses and lawful incomes of foreign investors while Art. 14.2(b) of Decree 160 states so. As Decree 160 is still in effect, we understand that these FIIA can receive the credits as above mentioned.

Article 9.2(a) of Circular 05 allows FIIA to be closed if the foreign investors discontinue their indirect investment activities in Vietnam and the balances of FIIA can be transferred to direct investment VND capital accounts to be opened (VND FDIA). However there are no provisions on the receipts and payments of this VND FDIA for the banks to follow. Also it is silent on whether or not the enterprises have to open capital account in FCY in accordance with Article 11 of Decree 160 and whether or not the foreign investors are allowed to sell VND in VND FDIA to buy FCY to make capital contribution to such capital account in FCY.

Article 9.2 (b) of Circular 05 provides that in addition to FIIA used for foreign indirect investment activities in Vietnam, foreign investors may open and use direct investment capital account for foreign direct investment activities in Vietnam in accordance with regulations on foreign exchange control for foreign direct investment in Vietnam and other relevant regulations. However, current regulations on foreign exchange control keep silent on this type of account (there are only provisions on capital accounts of foreign direct investment enterprise under Decree 160).

### **2. Publication of financial statements**

Under Article 14 of Decision 16/2007/QĐ-NHNN issued by the SBV on 18 April 2007 in respect of issuance of the regime of financial statements applicable to Credit Institutions ("Decision 16"), it is required that credit institution ("CI") must publish its financial report on its head office and operating venues; on a national or local newspapers; on its website; in press conference etc... It is, however, unclear whether this publication is required for all of the mentioned mass media or means above, or either of them would satisfy the requirement. As the publication of financial report sometimes is a sensible issue, in particular for non joint stock bank, we would require SBV to set some clarification on this matter for full compliance of our members.

Apart from listed banks who have to follow information publication requirement of stock exchange regulators, we recommend that submission of the financial reports to State SBV

and publish on newspapers should be sufficient to meet the purpose of publication for banks operating in the industry.

### **Specifically for foreign bank branches (FBB)**

BWG appreciated that the purpose of this requirement is to provide transparency to the public about financial positions of relevant CIs. However, BWG would like to propose to SBV that an exemption should be considered giving to FBBs for this requirement with the following reasons:

1. FBBs are not a legal entity which only represent an overseas branch of its Head Office Bank ("HOB");
2. FBBs are established with guarantee by their HOB undertaking to take full responsibility of all obligations and commitments of FBBs operating in Vietnam which do absolutely provide a high level of protection to their customers;
3. FBBs are required to submit quarterly and annual financial statements to SBV so their financial positions are transparent to regulator;
4. FBBs are operated differently with other CIs (e.g. local Vietnamese banks and local incorporated foreign banks) as FBBs are largely supported by their HOB in all aspects including financial so individual FBB's financial statements may not completely be reflected the full financial position which will mislead the public to certain extent.
5. FBBs are established and operated in various models such as two separate FBBs operated in two different cities under the same HOB or a local incorporated foreign bank operated in the country while its HOB maintains an operation of FBBs. As such, the disclosure of financial statements of individual FBBs will make confusion to the public.

#### *Recommendations:*

In order to maintain transparency and ensure a strong financial position of FBBs to operate in Vietnam, BWG recommends SBV to consider implementing the followings which replace the current requirement under Decision 16:

- Require FBBs to disclose their HOB's annual report or audited financial statements (i.e. Group consolidated financial reports which include FBBs') at the location where FBBs operate and/or on their websites (if applicable); and
- Require FBBs to submit their HOB's annual report or audited financial statements to SBV in order to ensure the financial position of their HOB remain strong as required by SBV to guarantee or support the operations of FBBs in Vietnam.

### **3. New Regulations on AML, Decree 116 and Circular 35**

Following the issuance of these pieces of legislation, meetings have been organized between BWG members and the SBV. A number of issues have been clarified and BWG members have been advised that a new circular addressing our concerns will be issued. However so far this new circular has not been issued and all banks are implementing based on Q&A and verbal clarification from SBV which are not a strong legal ground. We respectfully request SBV to soon issue this Circular to mitigate legal risk exposures to banks.

We would like to raise one particular and challenging issue regarding obtaining the personal information (i.e. government ID number/issuance date/expiry date/issuance authority, private address & tel number) for the purpose of verifying the identification of beneficial owners or incremental information for enhanced due diligence (i.e. financial

report). Since customers reject providing these personal or sensitive financial information while no public resource for this personal information or legal documentation is available, no third party can provide verification service in Vietnam at the moment as well as data privacy law prohibits data sharing outside the home country, it is quite challenging for banks to obtain such information requested by the law.

We understand that screening requirement is applicable for the identification information of our direct customers, thus the incremental information for enhanced due diligence purpose and not for the purpose of verifying customer identification are not subjected to screen.

We also respectfully recommend to self-identify the customers who are subjected to 6-month renewal cycle being Extremely High Risk customer due to negative news regarding significant breach of local regulations, abnormal financial capability or SAR, etc.

#### **4. Cross Border Fund Transfer (simplifying documentation):**

##### **Making payments after the goods arrive and CDs can be obtained**

Decree 160/ND-CP dated 28 Dec 2006 and Circular 01/1999/TT-NHNN dated 16 April 1999, stipulate requirements for banks to obtain supporting documents for cross-border foreign currency payments and buying foreign currencies against Vietnam Dong ("VND"). And the bank's individually assesses and decide on the supporting document requirement. SBV does not regulate specific document requirement.

Banks in Vietnam currently require below supporting documents from clients for cross border fund transfer related to imported goods: Custom Declaration, Sales contract/ Purchase order (or Master Agreement) and Invoice.

Clients using Electric Customs Declaration (ECD) already provide all information related to imported goods such as Purchase Order/ Sales contract/ Invoice, etc. via e-Custom system and this information is reviewed, verified and confirmed by Custom.

We, therefore, suggest to only obtain ECD which was signed & stamped with "custom clearance" by Custom Office with information on date, amount, CCY, Purchase Order number, Invoice number, Beneficiary name, etc... And the bank will check the payment amount is equal or less than the amount stated in the ECD. So, we will not require the submission Invoice/ Purchase Order/contracts on transactional basis.

##### **Making payments before the goods arrive for imports under LCs**

For imports under LCs, normally under UCP, banks commit to make payments upon the fulfillment of the LC conditions and must make payments even before the goods arrive. As such customers cannot collect Customs Declarations ("CDs") upon payment and banks can rely only on other trade documents such as contracts, invoices, bill of lading etc to make payments. Banks can collect CDs only after making payments. This causes a tremendous work for banks to follow up with the customers for CDs and in most cases customers are reluctant to provide as payments have been made. We therefore seek the guidance from the SBV not to collect CDs from the customers for imports under LCs for the above reasons with a condition that customers will undertake to provide CDs upon the receipt of the request from the bank or the relevant state authority.

#### **5. Entrustment Loans (Removing complexities in Liquidity Management)**

Many local corporates and MNCs operate with multiple subsidiaries or entities. In some setups, they would like to manage payments and collections from separate accounts but do

not have any issue with commingling of the funds residing in these accounts. This can be achieved through sweeping and pooling structures, where funds are swept from individual company account into one concentration account. The set up permits the most efficient use of working capital e.g reducing funding costs and maximize return on surplus funds, improve visibility, and manage their funding needs through intercompany borrowings.

In Vietnam this is governed by Circular 04, and there are many complexities and challenges in the implementation. This needs to be simplified in order to fund an alternate source of financing for companies.

## **6. Some unclear guidelines on the use of foreign exchange within Vietnam**

Relevant departments: FX Management Department, Legal Department

Under the Circular 32/2013/TT-NHNN on restriction of the use of foreign exchange within the territory of Vietnam, there are some unclear guidelines and requirements which cause difficulties for banks in terms of implementation, including:

- For payments relating to import, export entrustment contracts, actual amount or contract amount will be considered for payment given they are usually different (Article 4.6)
- What is the basis for banks to check payments relating to a tender package through international bidding are in conformity with provisions of the Law on tendering (Article 4.7). Furthermore, foreign contractors are deemed as residents as stated in the Article 4.7. It is, however, foreign contractors are not specifically incorporated in the categories of residents under the amended Ordinance on Foreign Exchange Control. This creates confusion and we are looking forward to SBV's clarification in this regards.
- How banks can verify eligible payment for buying goods, services at international sea ports (Article 4.11.b)
- Can export processing enterprises make payment in foreign currency remittances when purchasing both goods and services from domestic market for export purposes. Besides, are there any guidelines for banks to check if purchased goods from the domestic market by export processing enterprises will be used for production, processing, recycling or assembling export goods or for export? (Article 4.12.a)
- According to Article 14.4, residents and non-resident organizations are allowed to make agreement and pay salary, bonus, allowance in foreign currency by cash or bank transfer as agreed in labor contract with foreign employees who work for the organization. Under this provision, can wage payment service providers, on behalf of its clients being organizations, conduct salary payment to foreign employees who are working for the clients? We respectfully request SBV to elaborate this concern.

We would like SBV to provide clarifications on the above-mentioned points for implementation.