Chapter XX

VIETNAM

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I INTRODUCTION

Vietnam's current banking system can be traced back to 1988 when four state-owned banks – the Bank for Foreign Trade of Vietnam (Vietcombank), the Vietnam Bank for Industry and Trade (Vietinbank), the Bank for Investment and Development of Vietnam (BIDV) and the Bank for Agriculture and Rural Development of Vietnam (Agribank) – were separated from the State Bank of Vietnam (SBV) with a mandate for commercial banking activities.

The public banking sector, composed currently of five state-owned commercial banks (SOCBs),[2] still dominates the market.

Since Vietnam's accession to the World Trade Organization (WTO) effective 1 January 2007, the government has been pursuing a policy of partial privatisation (known in Vietnam as 'equitisation') of some of the state-owned banks with a view to opening up and attracting funds to the banking sector. To date, four out of five SOCBs have been equitised (Vietcombank in 2007, Vietinbank in 2008, BIDV in 2011 and Mekong Housing Bank in 2011) with the state retaining up to 90 per cent of shares in each bank following the initial public offering. Sales of significant shareholdings to strategic foreign investors occurred in 2011 and 2012.[3] Agribank, the largest of the five

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2 Commercial banks in which the state retains an interest greater than 50 per cent.

3 In January 2011, the International Finance Corporation (IFC) and its affiliate subscribed up to 10 per cent of the shares of Vietinbank. This was the first acquisition of a participation by a foreign investor in a SOCB. In December 2012, Bank of Tokyo-Mitsubishi UFJ (the core retail and commercial bank of Mitsubishi UFJ Financial Group Inc (MUFG)) agreed to purchase a further 20 per cent of the shares in Vietinbank. In September 2011, Mizuho Corporate Bank, a member

SOCBs by assets, given its broader social mission, was transformed into a one member limited liability company with the state being the sole member.

In 2009, following a change in legislation,[4] the SBV granted five licences permitting HSBC, Standard Chartered, ANZ Bank, Korea's Shinhan Bank and Malaysia's Hong Leong Bank to establish entirely foreign-owned subsidiary banks incorporated in Vietnam.

Foreign banks have also, sometimes in parallel with other forms of local presence, acquired minority 'strategic stakes' in most of the important Vietnamese banks.

The Vietnamese banking sector is highly administered. Although it initially seemed to have weathered the global financial crisis relatively well, the impact began to be felt in 2011. The downturn was exacerbated in 2012 with a large spike in non-performing loans (NPLs) caused, in large part by excessive credit growth focused in the real estate sector to 2009.

Since that time, the SBV has introduced a flurry of new regulations following the Law on Credit Institutions[5] to support the objective of macroeconomic stability and sustainable growth. This saw, in 2012, inflation return from a high of 23 per cent in August 2011 to single figures and remain under control throughout 2013 at 6.04 per cent.[6] The Vietnamese dong stabilised against the US dollar following a second consecutive year of trade surplus as Vietnam's exports outperformed other South-East Asian countries and grew 15.3 per cent in 2013.[7] These effective anti-inflation and stabilisation measures have, however, resulted in relatively low growth rates for Vietnam of 5.25 per cent in 2012 and 5.42 per cent in 2013.[8]

The very high level of NPLs, the weak capital base of most of the Vietnamese commercial banks and serious liquidity issues in the banking system prompted the government to focus on restructuring the country's banking system. An ambitious banking sector restructuring scheme for 2011–2015 was approved by the Prime Minister in early 2012[9] focusing initially on the restructuring of nine banks identified as 'weak', mainly through their mergers with stronger banks. The restructuring has taken longer than anticipated, but by early 2014 the SBV had managed to complete the restructuring process for eight of the nine banks.

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of Mizuho Financial Corporation (the third-largest financial group in Japan), acquired 15 per cent of the shares in Vietcombank. BIDV is still in the process of selecting a strategic investor.

4 Decree 22/2006/ND-CP dated 28 February 2006 issued by the government of Vietnam on organisation and operation of foreign bank branches, joint venture banks, banks with 100 per cent foreign-owned capital and representative offices of foreign credit institutions in Vietnam (Decree 22) as partially repealed by Decree 57/2012/ND-CP dated 20 July 2012 on the financial regime of credit institutions and foreign bank branches.

5 The SBV introduced 45 circulars in 2011, 38 in 2012 and 39 in 2013.

6 General Office of Statistics data on its official website, www.gso.gov.vn.

7 Announcement by Vu Huy Hoang, Minister of Industry and Trade, at Commercial Counselors Conference on 16 December 2013.

8 General Office of Statistics data on its official website, www.gso.gov.vn.

9 Prime Minister Decision 254/QĐ-TTg dated 1 March 2012.

The government also created a dedicated bank NPLs resolution structure, the Vietnam Asset Management Company (VAMC), to take the NPLs off the banks' balance sheets for five years during which the loans are either restructured or recovered. The initial results of these activities by VAMC are still modest.

Currently, Vietnamese banks are principally lenders to large corporations, including a high proportion of state-owned enterprises (SOEs). Consumer banking is still in its early stages and remains relatively undeveloped.[10] Low market penetration is viewed as providing potential for expansion into lending to smaller enterprises and consumer banking as income levels rise, with Vietnamese and foreign banks vying for market share.

Although the Vietnamese banking and finance sector is growing rapidly, there is still a significant lack of know-how, management experience and enforceable governance controls.

II THE REGULATORY REGIME APPLICABLE TO BANKS

Banking activity in Vietnam is governed by the Law on the State Bank of Vietnam (the SBV Law) and the Law on Credit Institutions (the LCI) both passed on 16 June 2010 and effective on 1 January 2011,[11] as well as a number of implementing decrees, circulars and decisions issued by the government, the SBV and the Ministry of Finance.

The cross-border supply of banking services into Vietnam is heavily restricted by Vietnamese law. Offshore banks may generally not provide services to Vietnamese entities, with the notable exception of hard currency loans (which are subject to strict exchange control regulations).

The SBV performs the traditional role of a central bank and regulates the banking system in Vietnam by working closely with the Ministry of Finance and the SBV's network of provincial branches. Through its Banking Inspection and Supervisory Agency, the SBV is the authority empowered to grant establishment and operating licences to banks in Vietnam.[12] The State Securities Commission (the SSC) regulates all securities activity in Vietnam, including securities activities carried out by commercial banks.

The scope of a credit institution's permitted activities is specified in its banking licence. Banks may only participate in the domestic and international foreign exchange

10 In 2012, according to Bui Quang Tien, head of the SBV Settlements Department, an estimated 20 per cent of Vietnam's population had bank accounts and around half of those with accounts actively used consumer banking services. The government targets to lift this number to 35 to 40 per cent by 2015 through the implementation of a government Development of Non-cash Settlements in Vietnam project (Press conference at 'Banking Việt Nam 2012') http://vietnamnet.vn/vn/cong-nghe-thong-tin-vien-thong/64786/20--nguoi-viet-co-tai-khoan-ngan-hang.html.

11 The two laws replace the Law on the State Bank of Vietnam and the Law on Credit Institutions adopted in 1997 and amended in 2004.

12 Decree No 156/2013/ND-CP dated 11 November 2013 (Decree 156).

markets, including in respect of international payment services, upon receiving specific permission from the SBV.

A commercial bank may undertake deposit taking activities, provided it opens its own deposit account at the SBV with the minimum compulsory reserve level.[13] After unsuccessful attempts to control escalating deposit interest rates fuelled by illiquidity through voluntary agreements between the SBV and the Vietnam Banking Association,[14] the SBV finally decided to use strong administrative measures to enforce its interest rates policy. In March 2011, the SBV imposed a cap of 14 per cent per annum on all Vietnamese dong deposits. The SBV continued pushing down the cap further to the current levels of 1 per cent on Vietnamese dong deposits under one month and of 6 per cent on deposits from one up to six months.[15] In parallel, interest rate caps were also imposed on US-dollar deposits, which now stand at 0.25 per cent per annum for companies (not including banks), and 1 per cent for individuals.[16]

Banks may also, of course, conduct lending activities and, with effect from April 2010, the statutory ceiling on the interest rate (fixed by the Civil Code at 150 per cent of the basis rate announced by the SBV, and lifted in 2009 with respect to consumer-lending activities only) was removed with respect to all forms of bank loans in local currency.[17] In the context of a slowing economy and low credit growth due to high negotiated lending interest rates, the SBV has set the target of significantly reducing lending interest rates to support growth. Unlike deposit interest rates, however, the SBV has made more limited use of administrative measures. Lending interest rate ceilings were reintroduced at the end of the second quarter 2012 only in respect of certain priority sectors of the economy (agriculture, production for exports, small and medium enterprises, support industries and high-technology industries). The current lending ceiling rate (as at March 2014) for those sectors for banks is 8 per cent *per annum*.[18] For loans to other sectors, the SBV has preferred to 'encourage' commercial banks to drastically reduce their portfolio of loans

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13 In an effort to support agriculture exports, on 2 February 2012, the SBV lowered the reserve requirements to 3 per cent for VND and 8 per cent for US$for less than one-year for five credit institutions (Central People's Credit Fund, Vietnam Bank for Agriculture and Rural Development, Mekong Joint-Stock Commercial Bank, Mekong Housing Joint Stock Commercial Bank (MHB), Lien Viet Post Joint Stock Commercial Bank), which have a high proportion of agricultural and rural loans on.

14 Official Letter of the Vietnam Banking Association number 250/HHNH dated 15 December 2010.

15 Decision 498/QD-NHNN dated 17 March 2014 on maximum VND deposit rates.

16 Decision 497/QD-NHNN of the SBV dated 17 March 2014 on maximum US$deposit rates.

17 Circular 12/2010/TT-NHNN of the SBV dated 14 April 2010 replaced Circular No. 07/2010/TT-NHNN dated 26 February 2010 which at the time only partially removed the cap on dong lending interest rate for commercial medium and long-term loans to borrowers operating in the areas of 'production, business, services and investment for development'.

18 Decision 499/QD-NHNN of the SBV dated 17 March 2014 on the maximum short-term VND interest rate of loans extended by credit institutions and foreign bank branches to clients for certain sectors pursuant to Circular 08/2014/TT-NHNN of the SBV dated 17 March 2014.

priced at over 15 per cent *per annum*. The SBV campaign seems to have produced good results. The share of loans with interest rate over 15 per cent *per annum* was reduced from 65.8 per cent before 15 July 2012 to 19.2 per cent by the end of 2012,[19] and 12.2 per cent by 23 May 2013.[20]

Lending by Vietnamese banks to off-shore entities is only permitted to off-shore affiliates and subsidiaries of Vietnamese companies subject to registration with the SBV, unless specifically authorised by the SBV.[21]

Banks are also not permitted to provide loans to enterprises that they control and that operate in the securities sector, nor are they permitted to provide unsecured loans for investment in any business in the securities sector.[22]

As well as the usual deposit-taking and lending activities, a commercial bank may also act as a custodian bank for securities following receipt of a registration certificate from the SSC with the function of providing depository services and supervising the management of public funds and securities investment companies.[23] The assets that the bank manages as custodian must be held separately from its other assets. The duties of a custodian bank can also include the certification of reports prepared by a fund management company or securities investment company (as applicable).

A commercial bank may operate as an agent to provide insurance products and services for Vietnamese customers through its banking channels with the approval from the SBV.[24]

Banks established in Vietnam must operate under one of the following permitted forms:

a a state-owned commercial bank established and organised in the form of a one member limited liability company where 100 per cent of the charter capital is owned by the state;[25]

b a joint stock commercial bank (i.e., a company limited by shares);

c a joint venture commercial bank established and organised in the form of a limited liability company;[26] and

19 SBV press release on banking operation results in 2012 and tasks for 2013.

20 SBV Governor Nguyen Van Binh's report to the National Assembly (www.nganhangonline.com/du-no-lai-suat-tren-15-chi-con-chiem-122-57643.html).

21 Article 8 of Circular 45/2011/TT-NHNN dated 30 December 2011 on the foreign exchange control applicable to lending and collection of loans outside Vietnam by credit institutions.

22 Article 126.4 of the LCI.

23 Article 98.2 and Article 6.14, Law on Securities.

24 Article 106 of the Law on Credit Institutions; as an example, Standard Chartered Bank was licensed in January 2010 to provide insurance agency services.

25 Once the equitisation of SOCBs is completed as currently envisaged by official decisions there will remain only one wholly state-owned commercial bank. SBV Decision 214/QD-NHNN dated 30 January 2011 approved the transformation of the Agribank into a one member limited liability company owned by the State and there are no plans currently for it to equitise.

26 There are currently only four joint venture banks in Vietnam: Indovina Bank Limited, Vietnam Russia JV Bank, VID Public Bank and Vinasiam Bank.

d an entirely foreign-owned commercial bank established and organised in the form of a limited liability company.[27]

Mutual structures are contemplated by law and exist most commonly in rural areas under the similar forms of cooperative banks and people's credit funds. Limited liability micro-finance institutions can also be established to provide credit services to individuals, households and micro-enterprises.

i Restrictions on foreign ownership in Vietnamese banks and foreign banks

Despite the liberalisation of the banking sector, the acquisition by foreign investors of a shareholding in a Vietnamese commercial joint stock bank is still subject to significant restrictions. The regime has recently been slightly amended to support the restructuring of the banking system.[28]

The total aggregate shareholding of foreign investors in a Vietnamese bank remains unchanged and may not exceed 30 per cent of its 'charter capital'.[29] Other ownership limits applicable to each type of foreign investor have been aligned with Article 55 of the LCI, which sets out ownership limits applicable to categories of investors, including Vietnamese investors as follows:

a individual investors: 5 per cent;
b organisations: 15 per cent; and
c strategic investors:[30] 20 per cent.[31]

27 Banks established off-shore may operate in Vietnam through a wholly owned subsidiary and/or branches or representative offices with a more limited scope of permitted activities. Unlike its predecessor, the LCI does not consider foreign bank branches as a form of credit institution. This has created a number of issues in relation to the interpretation of the scope of current banking regulations which referred to foreign bank branches as credit institutions authorised by the SBV to operate in Vietnam (Article 4.8 and 4.9 of the LCI)

28 On 3 January 2014, the government adopted Decree 01/2014/ND-CP on the purchase by foreign investors of shareholding in Vietnamese credit institutions (Decree 01) to replace Decree 69/2007/ND-CP dated 20 April 2007 (Decree 69). Decree 01 is broader in scope than Decree 69, as it applies to purchases of shares not only in Vietnamese joint-stock commercial banks, but also in Vietnamese finance companies and finance leasing companies. It does not apply to other types of credit institutions, such as joint venture banks or credit institutions established with sole shareholder ownership.

29 Article 7.5 of Decree 01.

30 A 'foreign strategic investor' is defined by Decree 01 as a foreign entity which has financial capacity and has provided a written undertaking from the competent person of the entity to ensure long term partnership with the Vietnamese credit institution and to assist the Vietnamese credit institution in modern technology transfer, developing banking products and services, raising financial, administration and management capacity.

31 Previously, only in special cases, the Prime Minister, based on the proposal of the governor of the SBV, could authorise a foreign strategic investor to purchase up to 20 per cent of the charter capital of a Vietnamese bank.

The shareholding of any single foreign investor and its affiliated persons may not exceed 20 per cent of the charter capital of a Vietnamese bank.[32]

Decree 01 has lifted the requirement for prior SBV approval in respect of acquisitions by foreign investors of less than 5 per cent of the charter capital of a bank. Most importantly, Decree 01 allows the Prime Minister to lift the limits on foreign shareholders' participation in a Vietnamese credit institution, but only for the purpose of restructuring weak credit institutions facing difficulties or ensuring the stability of the credit institutions system. The determination of institutions that would fall within this definition will, in practice, be at the discretion of the SBV or other competent authorities.

The lock-up periods applicable to a foreign investor holding significant stakes in a Vietnamese credit institution have also been maintained: three years if they own at least 10 per cent of charter capital of the credit institution, or five years in the case of a foreign strategic investor. Unlike under Decree 69, however, the above limitations do not apply to the investor's related persons.

A number of foreign banks and financial institutions have, in the past five years, acquired shares in Vietnamese banks under Decree 69,[33] but since the entry into effect of Decree 01, only one foreign bank is reported to have initiated discussions for the 100 per cent acquisition of a Vietnamese bank considered 'weak'.[34]

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32 Article 7.4 of Decree 01.

33 At the current time:

a Standard Chartered Bank: 15 per cent of Asia Commercial Bank (ACB);
b HSBC: 20 per cent of Vietnam Technological and Commercial Bank (Techcombank);
c United Overseas Bank: 20 per cent of Phuong Nam Bank (Southern Bank);
d Sumitomo Mitsui Financial Group: 15 per cent of Export Import Bank (Eximbank);
e Malayan Banking Berhad: 20 per cent of An Binh Bank (AB Bank);
f Société Générale Bank: 20 per cent of Dong Nam A Bank (SEA Bank);
g BNP Paribas: 20 per cent of Phuong Dong Bank (OCB);
h Deutsche Bank: 10 per cent of Hanoi Building Bank (Habubank). In August 2012 Habubank was merged with Saigon Hanoi Bank (SHB). It appears that following the merger Deutsche Bank did not inject any additional capital to maintain its ownership ratio in the merged entity and its shareholding in SHB has fallen below 5 per cent;
i Commonwealth Bank of Australia: 20 per cent of Vietnam International Bank (VIB);
j International Finance Corporation (IFC): 10 per cent of Vietinbank;
k Mizuho Bank: 15 per cent of Vietcombank; and
l Bank of Tokyo Mitsubishi UFJ: 20 per cent of Vietinbank.

Of note, in 2011 ANZ completed its divestment in Sacombank (15 per cent, the bulk of which was sold to Eximbank, a large local commercial bank) and Oversea-Chinese Banking Corporation sold its 15 per cent shareholding in Vietnam Prosperity Bank (VP Bank) on 22 November 2013.

34 United Overseas Bank was reported to have initiated negotiations to acquire 100 per cent of GP Bank, a small commercial bank.

Foreign strategic investors in SOCBs undergoing equitisation must also go through a special SBV approval procedure set out in Circular 10/2011/TT-NHNN dated 22 April 2011 of the State Bank of Vietnam on providing the criteria for selecting strategic shareholders to the equitised state-owned commercial banks.

The limited extension of the foreign investors ownership limits has not produced the desired effect of attracting foreign capital into the Vietnamese banking sector. The government and the SBV are reported to be in the process of discussing further increases to these limits.

Since 1 April 2007 – and in accordance with Vietnam's WTO accession undertakings – entirely foreign-invested banks, in which one of the foreign shareholders is a 'parent bank' holding a majority equity interest, may be established in Vietnam.[35] The parent bank must have total assets of more than US$10 billion at the end of the year prior to application. Entirely foreign-owned banks must comply with Vietnamese prudential requirements on a stand-alone basis.

Foreign banks may also open branches as subsidiary units with no separate legal status.[36] The parent bank must have total assets of more than US$20 billion at the end of the year prior to application. A foreign bank branch may not open transaction points at locations other than its registered branch office, which, in practice poses real practical problems for the expansion by foreign banks of their activities in Vietnam.

Some foreign banks operate through representative offices, which are prohibited from conducting commercial operations in Vietnam.[37] A representative office merely acts as a link between the parent bank and their clients in Vietnam. As such, its activity is generally limited to market research and the promotion and follow-up of the offshore parent entity's activities involving Vietnamese credit institutions or companies.[38]

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

The SBV controls the banking activities of all banks licensed to operate in Vietnam through the delegation of specific powers to internal departments of the SBV. The Banking Inspection and Supervisory Agency of the SBV is specifically designated to examine the operations and activities of credit institutions.[39]

All banks must send a vast number of periodic reports to the SBV, varying from those required on a daily basis to those required on an annual basis. This is regarded as contributing to an unwieldy and ultimately costly banking environment. In addition, banks must immediately report to the SBV irregular developments that are adverse to the business operations of the bank or major changes to the organisational structure of

35 Article 5.4 of Decree 59.

36 Article 7.4 of Decree 22.

37 Article 7.7 of Decree 22.

38 Article 62 of Decree 22.

39 Decree 96.

the bank.[40] Notwithstanding the volumes of reporting required, there is a clear lack of sophisticated information disclosure relating to the activities of banks, in particular from an accounting perspective.

A bank is required to obtain written approval from the SBV prior to making any changes to its corporate identity, including a change to its name, capital, location, scope of business, and management, listing on off-shore stock exchanges (although this has not yet occurred), as well as significant changes to its shareholding structure.[41]

ii Management of banks

The laws and regulations concerning the management of commercial banks as well as the role and responsibility of the shareholders[42] are detailed in the LCI. Provisions of Decree No. 59/2009/ND-CP dated 16 July 2009 on the organisation and operation of commercial banks (Decree 59), adopted shortly before the LCI was passed, are also applicable to the extent they are not contrary to the LCI.

The management structure of an entirely state-owned bank, a joint-venture bank or a bank with entirely foreign capital (as opposed to a bank that is a company limited by shares or a joint stock commercial bank) corresponds to that of a limited liability company and is constituted by the members' council, the board of controllers and the general director.[43] In relation to a joint-stock commercial bank, the board of management is responsible to the shareholders for the operation of the bank. Both the members council and the board of management should consist of between five and 11 members.[44] For joint-stock commercial banks, at least half of the members must be independent and members who are not executive officials of the credit institution.[45] In both types of structure, the board of controllers is constituted by at least three members, at least half of whom must be full-time.[46]

Subject to the decisions that are reserved at law or are in the bank's charter for decision by the owners (in limited liability structures) or shareholders, the members council or the board of management has the authority to make decisions in the name of the bank and to exercise the rights and obligations of the bank, in particular with respect to investment and asset acquisition decisions with a value of more than 20 per cent (for limited liability banks) and 10 per cent (for joint-stock commercial banks) of the charter capital of the bank.[47] The general director has authority for transactions of lesser amounts.

The shareholders of a joint-stock bank must, by law, approve investments and acquisitions and sales valued at more than 20 per cent of the bank's charter capital and

40 Article 141 of the LCI.

41 Article 29 of the LCI.

42 Articles 66 and 70 of the LCI.

43 Article 32 of the LCI.

44 Article 62.1 of the LCI.

45 Article 62.1 of the LCI.

46 Article 44.2 of the LCI.

47 Article 63.8 and 67.2 of the LCI.

contracts with a value of more than 20 per cent of the bank's charter capital between the bank and its management (members of the board of management, or of the board of controllers, or the general director), or between the bank and major shareholders, i.e., shareholders holding at least 5 per cent of the bank's charter capital, or their respective related parties and between the bank and its affiliates.[48] In a limited liability bank, all transactions of the bank with the members of the members council or its top management, or both, must be approved by the members council.[49]

The board of management, the members council or the owner (in case of a one-member limited liability bank) may appoint one of its members (if applicable) or employ another person as the general director. The general director manages the daily business of the bank, supervised by the board of management or the members council and the board of controllers and is responsible to the board of management or the members council.

Each of the board of management or the members council, the board of controllers and the general director acts for a term of five years and may be reappointed for an unlimited number of terms. The election and appointment of the chairman and members of the board of management or the members' council, the head and members of the board of controllers, and the general director of a bank must be pre-approved by the governor of the SBV, and their duties and powers must be specified in the charter of the bank.

Any individual or any institutional shareholder represented by an individual who is a member of the board of management or the members council, board of controllers or a general director may not, while he or she is in office, sell his or her shares. This provision in the LCI varies from the previous rule under Decree 59 which required the retention of only 50 per cent of the total number of shares owned when elected or appointed to the relevant managerial position during the term of service and for a period of one year thereafter.[50]

A foreign bank branch in Vietnam may be managed by only one general director who may not be a manager or executive of any other credit institution or economic institution in Vietnam.

The LCI also introduced a prohibition (which is in line with the generally applicable Vietnamese Law on Enterprises) on the increase of remuneration or salary of and the payment of bonuses to the members of the board of management or the board of members, members of the control board, the general director, the deputy general directors, and the chief accountant of the credit institution suffering losses.[51]

48 Article 59.2(p) and (q) of the LCI.

49 Article 67.2(l) of the LCI.

50 Article 56-1 of the LCI and Article 36.4 of Decree 59.

51 Article 38.8 of the LCI.

iii Regulatory capital and liquidity

Vietnamese legislation contains prudential requirements and separate debt provisioning guidelines.[52] However, the SBV does recognise that Basel II (not to mention Basel III) is far from being implemented in Vietnam and it is aiming for gradual implementation over the coming years.

Consolidated regulation over banking groups in Vietnam is still in its early stages. However, in addition to the capital adequacy requirements mentioned in the subsection below, banks with subsidiaries must prepare consolidated financial statements.[53] Such statements must be sent to the state administrative bodies and the general director and board of management will be liable for the accuracy of such reports. Banks are also required to report to the SBV on any major changes in their organisational structure.[54]

Capital adequacy

In 2010, consistent with its stated intention to tighten prudential requirements, the SBV raised the minimum capital adequacy ratio (CAR) of credit institutions (excluding foreign bank branches) to 9 per cent from the previously applicable 8 per cent. The ratio is calculated as the percentage of 'equity' over 'total assets in credit at risk'.

For the purposes of this capital adequacy test, 'equity' comprises: (1) Tier 1 capital, including charter capital, the reserve fund for supplementing the charter capital, the professional development investment fund, the investment and development fund, retained profits, shares issuance premium received and added to the capital less the amounts used to repurchase shares (as the case may be); and (2) Tier 2 capital, including 50 per cent of the additional value of fixed assets following their revaluation, 40 per cent of revalued financial assets, financial reserves, long-term unsecured subordinated convertible bonds and other deeply subordinated debt instruments.[55] Tier 2 equity cannot exceed Tier 1 equity.[56]

Items that must be deducted from the equity of a bank include: (1) in relation to Tier 1 capital only, good will, operating losses including accumulated losses, contributions to the capital of other credit institutions or subsidiaries, significant investments over 10 per cent of the total of all components of Tier 1 capital after deduction of all preceding items, and investments over 40 per cent of the total of all components of Tier 1 capital

52 Circular 13/2010/TT-NHHN dated 20 May 2010 on prudential ratios in operations of credit institutions ('Circular 13') and Decision 493/2005/NHNN on classification of debts (Decision 493). Much criticised by the banking industry, Circular 13 was amended many times by Circular 19/2010/TT-NHHN dated 27 September 2010, Circular 22/2011/TT-NHNN dated 30 August 2011 and Circular 33/2011/TT-NHNN dated 8 October 2011. The adoption of a new circular to replace Circular 13 has been delayed many times with the latest official target date being set for March 2014 (SBV Decision 253/QD-NHNN dated 24 February 2014) on the 2014 programme for publication of circulars by the SBV.

53 Article 82.3 of Decree 59.

54 Article 82.4 of Decree 59.

55 Article 5 of Circular 13.

56 Article 5.3 of Circular 13.

less all preceding deductions;[57] (2) the reduced value of fixed assets following their revaluation by the bank; and (3) the total amount of the reduced value of all types of financial assets following their revaluation.[58]

'Total assets in credit at risk' comprises the value of assets in credit of a bank which are adjusted at risk levels ranging from zero to 250 per cent[59] plus off-balance sheet undertakings that are adjusted at risk levels from zero to 100 per cent.[60]

In addition to the individual bank's capital adequacy ratio, the LCI now requires banks having subsidiaries to calculate a consolidated capital adequacy ratio for the group using a similar methodology.[61]

Large exposures and related-party transactions

A commercial bank's total credit exposure (including guarantees)[62] to a single borrower is limited to 15 per cent of its equity.[63] The LCI subjects foreign bank branches to the same restrictions by imposing that the single borrower limit calculation be based on the branch's allocated onshore capital instead of the parent bank's equity (as was the case under the previous regime). Only those foreign banks committed to investing in Vietnam in the long term while remaining in the branch form have made provision for such change to the single borrower limit calculation by allocating additional capital to the relevant branch in order

57 Article 5.2 of Circular 13.

58 Article 5.4 of Circular 13.

59 Article 5.5 of Circular 13. There are six categories of assets in credit depending upon the level of risk: (1) cash and gold or equivalent: zero per cent; (2) debt recoverable from other credit institutions or equivalent: 20 per cent; (3) investments in projects under finance companies and claims secured by immoveable property: 50 per cent; (4) paid-up charter capital in subsidiary companies and affiliates, claims on non-OECD governments and financial institutions: 100 per cent; (5) loans to non-securities trading subsidiaries and affiliates: 150 per cent; and (6) loans made for investment in securities and real estate: 250 per cent.

60 Article 5.6 of Circular 13; the risks co-efficient of the value of off-balance sheet undertakings are: zero per cent for an undertaking guaranteed by the government or the SBV, fully secured by cash or by savings accounts or deposits of valuable paper issued by the government or the SBV; 50 per cent for an undertaking secured by immoveable property; 100 per cent for interest rate and currency transactions and other off-balance sheet undertakings.

61 Article 6 of Circular 13.

62 'Credit exposure' includes loans, discounting, finance leasing, factoring or bank guarantees, investment in bonds issued by a client and other forms of extension of credit (Article 4.14 and 128 of LCI). Therefore, going forward bank guarantees are also included in the 15 per cent single borrower limit while previously the maximum aggregate exposure in loans and guarantees to a single client was 25 per cent of a credit institution's equity. This significant tightening was strongly debated prior to the adoption of the LCI.

63 Article 128.1 of the LCI.

to comply with the new prudential ratios.[64] Other foreign banks have chosen instead to transfer to their offshore entities the loans exceeding the cap.

The aggregate amount of credit exposure to a group of related clients must not exceed 25 per cent of a commercial bank's or foreign bank branch's equity.[65]

There are currently no indications that the above limits apply where loans are extended under trust lending arrangements, in which the bank acts as an agent for on-lending of funds provided by other organisations or where the borrower is a credit institution. Such loans must, however, be taken into account for the calculation of the aggregate outstanding credit of a bank[66] used also as the basis for the calculation of the annual credit growth cap of the bank.

In exceptional cases, the Prime Minister can authorise the above single borrower and related borrowers credit exposure caps to be raised to up to 400 per cent of the equity of the credit institution or foreign bank branch.[67]

The total amount of credit exposure by a credit institution to any single enterprise or all enterprises that such credit institution controls[68] must not exceed 10 or 20 per cent, respectively, of the credit institution's equity.[69]

Use of short-term funds

A commercial bank may only use 30 per cent of its short-term mobilised funds (i.e., that are repayable within one year) to finance medium and long-term loans.[70]

Liquidity ratio

The minimum liquidity ratio that a commercial bank must maintain in respect of each type of currency and gold is 15 per cent of defined liquid assets (including cash and cash equivalents) over liabilities due immediately. This ratio increases to 100 per cent of liquid assets in dong, US dollars, euros and British pounds being claimed within seven business

64 The SBV have approved capital increases: in 2012, for Natixis Ho Chi Minh City (HCMC) Branch from US$15 million to US$31.7 million, and in 2011, for JPMorgan Chase HCMC Branch from US$27 million to US$77 million, First Commercial Bank HCMC Branch from US$15 million to US$40 million and Industrial Bank of Korea HCMC from US$15 million to US$115 million.

65 Article 128.1 of the LCI.

66 Article 9.3 of Circular 04/2012/TT-NHNN dated 8 March 2012 on entrustment and acceptance of trusteeship by credit institutions and foreign bank branches.

67 Article 128.7 and 128.8 of the LCI.

68 These include subsidiaries or affiliated companies of the credit institution or an enterprise controlled by the credit institution (Article 127.1(e) of the LCI). Control is defined as 'an investment accounting for more than 50 per cent of the charter capital or voting shareholding capital of any one enterprise, or another investment sufficient to control decisions of the general meeting of shareholders or members' council (Article 4.25 of the LCI).

69 Article 127.4 of the LCI.

70 Circular 15/2009/TT-NHNN dated 10 August 2009.

days against liabilities payable within that time period and the aggregate amount of certain contingent liabilities payable within the subsequent seven business days.[71]

Equity investments

Under the LCI, commercial banks must establish or acquire subsidiaries or associated companies to carry out the underwriting of securities issues, securities brokerage, management and distribution of securities investment fund certificates, securities portfolio management and sale or purchase of shares, finance leasing and insurance.[72] They may not exercise these activities directly. However, with the exception of finance companies, the creation or purchase of such subsidiaries, or even the exercise of their control by the bank, seems to be quite restricted due to the cap on the maximum level of investment that a bank and its subsidiary and affiliated companies can make in an enterprise operating in such sectors as insurance, securities, management of security assets, foreign currency remittances by Vietnamese residing abroad, trading in foreign exchange or gold, factoring, issuance of credit cards, consumer credit, payment services or credit information or investment fund or investment project. This cap is set by the law at 11 per cent of the enterprise's or fund's charter capital or 11 per cent of the value of the investment project. The total investment made by a credit institution (including its subsidiaries and affiliated companies) must not exceed 40 per cent of its own charter capital and its reserve fund.[73]

The underwriting by commercial banks,[74] the most active participants in Vietnam's nascent corporate bond market, of convertible bonds is now clearly permitted by the SBV.[75]

Risk provisioning and debt classification

Decision 493 imposes risk provisioning requirements on commercial banks and a debt classification regime. This piece of legislation introduced for the first time the possibility for a credit institution to classify debt on a qualitative basis, based on its own, SBV approved, internal credit risk-rating systems (ICRS). In view of the lack of guidance regarding the establishment of ICRS, each credit institution is establishing its own system and there is a consequential lack of consistency in the classification of debts and in the establishment of prudential ratios.

The SBV issued Circular 02/2013/TT-NHNN dated 21 January 2013 on asset classification, risk provisioning and utilisation of provisioning by credit institutions and foreign bank branches (Circular 02) to replace Decision 493. Circular 02 was intended

71 Article 12 of Circular 13.

72 Article 103.2 of the LCI.

73 Article 129.1 and 129.2 of the LCI.

74 But not by foreign bank branches.

75 Article 1.1(a) and 7.3 of Circular 28/2011/TT-NHNN dated 1 September 2011 of the State Bank of Vietnam providing for the purchase of enterprise bonds by credit institutions, foreign bank's branches.

to become effective on 1 June 2013.[76] Given, however, that its implementation could potentially aggravate the amount of NPLs in the banking system, the SBV postponed the entry into effect of the circular to 1 June 2014. Subsequently, in March 2014, the SBV decided to further delay the implementation of certain rules set out in Circular 02 until 1 January 2015.[77] It is too early to assess the future impact of Circular 02 on the operation of commercial banks in Vietnam but it seems that the circular translates SBV's intention to create an asset classification and provisioning framework closer to international practices and practical operational conditions of credit institutions and foreign bank branches.

Circular 02 expands on the concept of 'assets classification' used before the adoption of Decision 493[78] (instead of 'debt classification' approach adopted in Decision 493) and extends the scope for risk provisioning to cover the following additional classes of assets: (1) credit extended via credit cards; (2) investments in unlisted corporate bonds (including through entrustment arrangements); (3) credit extension using funds entrusted by clients; and (4) deposits (excluding current deposits) at domestic credit institutions and foreign bank branches operating in Vietnam and at foreign credit institutions.

The assets classification methodology rules have been amended to provide for a parallel classification using both qualitative methods (as approved by the SBV) and standard quantitative methods.

Circular 02 introduces an additional requirement for credit institutions and foreign bank branches to provide the results of assets classification to the SBV managed Credit Information Center and in turn, the banks must adjust such classification based on the classification provided by the Credit Information Center.[79]

iv Recovery and resolution

As in other countries, failure of credit institutions represents a high systemic risk and is politically sensitive. The LCI provides that bankruptcy procedures can be declared against a credit institution only after putting it under SBV 'special control regime' aimed at redressing its situation, and only when such special control has failed.[80]

The detailed bankruptcy procedures are provided in a special government Decree No. 05/2010/ND-CP dated 18 January 2010 Regulating Application of Law on Bankruptcy to Credit Institutions. At the end of the bankruptcy procedures, the credit institution's licence will be revoked by the SBV in accordance with the procedures set out in SBV Circular No. 34/2011/TT-NHNN dated 28 October 2011 guiding the order and procedures for revoking licences and liquidating assets of credit institutions and foreign bank branches, representative offices of foreign credit institutions and other foreign institutions engaged in banking activities.

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76 Non-bank credit institutions have until 1 January 2014 to fully comply with Circular 02.

77 Circular 09/2014/TT-NHNN dated 18 March 2014 amending Circular 02/2013/TT-NHNN dated 21 January 2013.

78 Decision 488 /2000/QĐ-NHNN5 dated 27 November 2000 on assets classification, risk provisioning in banking activity of credit institutions

79 Article 9.1 of Circular 02. The requirement will become effective on 1 January 2015.

80 Articles 145 and 155 of the LCI.

The SBV has yet to require credit institutions operating in Vietnam to establish 'living wills' to ensure their winding down in the event of their failure in an orderly manner while preserving their critical functions. Although there are currently no specific legal or regulatory 'bail-in' powers allowing the SBV or other governmental authorities to require the mandatory write-down and/or the conversion to equity of debt issued by credit institutions, the SBV has in practice very broad powers allowing it to influence the way a credit institution's failure would be 'resolved'. From the report No. 104/BC-NHNN from the SBV to the National Assembly dated 15 August 2012, the 'conversion to equity of debt issued by credit institutions' was identified as one of the measures that SBV could use to resolve non-performing loans, along with a number of other prominent measures such as instructing credit institutions to reschedule debt repayment schedule, allocate provisions, or reserve funds. Beyond this there are currently no publicly available further guidelines on the possible implementation of proposed write-down and/or conversion to equity mechanisms.

IV CONDUCT OF BUSINESS

In order to protect depositors, all credit institutions and local branches of foreign banks established under the LCI and permitted to receive deposits from individuals must participate in the deposit insurance scheme. Vietnam's deposit insurance system was updated in 2012 with the Law on Deposit Insurance becoming effective on 1 January 2013. Under this law eligible Vietnamese dong deposits including term deposits, non-term deposits, savings deposits, certificates of deposit, promissory notes and bills will be protected up to a limit (such limit to be provided by the Prime Minister) per depositor per bank.[81]

The LCI prohibits banks from disclosing any details relating to a client unless it is requested by customers, by the general director of a deposit insurance organisation, or by a state body during an inspection or for the internal activities of the bank.[82] Banks can also disclose information when they participate in a merger or acquisition or with customer consent. However, the banks' capacity to do so may be restricted if the relevant information is classified as 'state secrets'. The scope of the application of state secrecy rules in banking and finance is not well defined.

Without the consent of depositors, a bank cannot carry out investigations into deposits or to freeze a deposit, deduct from or transfer deposits, except in the limited case of being requested to do so by a competent court or a judgment enforcement authority.[83]

81 Decree 68/2013/ND-CP dated 28 June 2013 adopted to guide the implementation of the Law on Deposit Insurance maintained the previous limit of 50 million Vietnamese dong (approximately US$2,400).

82 Article 5 of Decree 70/2000/ND-CP dated 21 November 2000.

83 Civil Proceeding Code and Law on judgment enforcement.

A new Law on Anti-Money Laundering effective from 1 January 2013[84] replaces previous legislation, and provides tougher measures, including with respect to customer due diligence and record keeping.

The definition of money laundering has been widened under the new legislation and banks must not conceal or provide services in respect of money that has an illegal origin; and must immediately notify the competent state body (the Anti-Money Laundering Agency under the SBV) of any high value transactions (what constitutes a high value transaction will be defined by the Prime Minister) and any transactions where it suspects or there is reason to suspect the assets are related to crime.[85] In addition, banks must put in place internal anti-money-laundering rules on customer information, reporting suspicious transactions and coordination with law enforcement agencies. The new regulations also contain internal training and annual audit requirements. A bank violating the money-laundering regulations may be subject to administrative penalties.[86] Individuals committing money-laundering offences may be subject to criminal sanctions, including prison terms of between one and 15 years.[87]

Depending on the nature and seriousness of other banking violations, a bank may be subject to administrative penalties which range from a warning or a fine up to 70 million dong, or suspension of operations, with or without a specified time-limit (e.g., withdrawal of the operation licence).[88] There is no publicly available information relating to the imposition of any such sanctions to date.

V FUNDING

Joint stock banks in Vietnam frequently raise funds by share or convertible bond issuances.[89] Under the LCI, Vietnamese banks may also finance their operations through 'mobilised capital', which may consist of: (1) cash deposits; (2) borrowed capital from domestic and foreign credit institutions (sometimes by way of repurchase agreements); (3) funds raised via the issuance of valuable paper, such as time deposit certificates or bonds; and (4) borrowed capital from the SBV via securities lending or through open market operations.

In mid-2012, the SBV tightened control over the interbank capital market. Circular 21/2012/TT-NHNN dated 18 June 2012 initially banned all interbank term deposits and reduced the maximum tenor of interbank loans to one year. Subsequently, in an improved liquidity environment at the end of 2012 – beginning 2013 and

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84 The Law on Anti-Money Laundering No. 07/2012/QH13.

85 Article 11 of the LCI.

86 Article 35 of the Law on Anti-Money Laundering.

87 Article 251 of the Criminal Code of Vietnam.

88 Decree 202/2004/ND-CP on administrative offences in the field of money and banking as amended by Decree 95/2011/ND-CP dated 20 October 2011.

89 By way of example, Saigon Thuong Tin Bank (Sacombank) increased its charter capital from 5,115 billion to 6,700 billion dong and Export-Import Bank (Eximbank) increased its charter capital from 7,219 billion to 8,800 billion dong through share issuances.

following strong lobbying efforts of the banking industry, the SBV issued Circular 01/2013/TT-NHNN dated 7 January 2013 to partially lift the ban on interbank deposits and allow interbank deposits of up to three months.

As the central bank, the SBV may refinance commercial banks by re-lending in accordance with credit contracts, discounting or rediscounting valuable paper or by granting loans guaranteed by pledges of valuable paper.[90] The SBV's refinancing policy is one of the ways in which it supplements short-term capital and provides payment means for commercial banks.

In extraordinary cases for the purpose of stabilising the monetary market, the SBV may grant special loans to commercial banks that may be insolvent causing a threat to the stability of the banking system.[91] During the financial crisis, the SBV has not officially granted any special loans to a bank on this 'emergency basis', although it did inject significant amounts in open-market transactions to improve the liquidity of commercial banks. In August 2012, the SBV provided ample liquidity to Asia Commercial Bank to avoid a bank run following the arrest of one of its key shareholders and a number of its top executives.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Other than in the case of state-owned banks, entirely foreign held bank subsidiaries and joint-venture banks, Vietnamese law prohibits any shareholder that is an organisation from holding, directly or via proxy, more than 15 per cent, and any individual from holding, directly or via proxy, more than 5 per cent, of a bank's charter capital.[92] The combined shareholding of shareholders and their related parties is also limited to 20 per cent.[93] In special cases in the national interest, the Prime Minister may, at the SBV's request, permit shareholdings in commercial banks that exceed the statutory limitations.[94]

The governor of the SBV must provide prior written approval of: (1) the purchase and sale transactions of 'significant shareholdings' (defined as 'a level of shareholding of 5 per cent or more of the voting share capital of a bank); and (2) purchase and sale transactions of an amount of shares that results in any shareholder holding more than a significant shareholding or any shareholder no longer holding a significant shareholding.

90 Article 11 of the SBV Law.

91 Article 24.2 of the SBV Law and Article 151 of the LCI. The SBV refinanced a private bank, Asia Commercial Bank (ACB) when there was a run on the bank in 2003 resulting from rumours that the General Director had absconded.

92 Article 55.1 and 2 of the LCI.

93 Article 55.3 of the LCI.

94 Article 34.4 of Decree 59.

The SBV may not approve such a transaction if it considers that it may lead to 'instability in banking operation'.[95] Since this term is not defined and is potentially broad, the SBV has, in practice, a fairly wide discretion in approving transactions. Note also the restrictions on foreign ownership in Vietnamese banks set out in Section II, *supra*.

In 2010, the SBV issued Circular 04,[96] which governs the merger, consolidation and acquisition of credit institutions, which replaced prior legislation that was narrower in scope.

Circular 04 permits the merger of commercial banks into an existing entity, and the consolidation of commercial banks into a new entity, subject to prior written approval of the Governor of the SBV.[97] The SBV will evaluate a detailed file, containing the documents that are required by statute, including a business plan, and the opinions of the local SBV branch and the people's committee of the province or city where the relevant banks have their head office. Factors taken into consideration when considering whether to approve or refuse the merger, consolidation or acquisition plan will be the viability of the business plan presented to the SBV, the current organisational and operational status of the banks and the impact of the merger or consolidation (as the case may be) on 'social stability' within the locality.[98] Any merger or consolidation is also subject to competition approvals and the satisfaction of minimum capital and prudential requirements.

Circular 04 is still a rudimentary framework for mergers and acquisitions in banking. It does not provide for a possibility to use special purpose vehicles to acquire target banks. The circular is silent on the possibility for the target bank to provide guarantees covering the purchaser's repayment of the acquisition finance. It has also left out a significant part of bank mergers and acquisitions outside its scope by not providing any guidance as to how bank mergers and acquisitions implemented outside Vietnam could affect foreign bank branches, subsidiaries or affiliates in Vietnam.

ii Transfers of banking business

Other than through the merger or consolidation activity previously described, a bank cannot transfer its clients' bank deposits to another entity.

It may, however, assign its loan arrangements to a foreign or domestic purchaser (subject, in the case of an assignment to a foreign entity, to compliance with exchange control procedures). The terms of any such assignment are freely negotiable with the sole

95 Article 36 of Circular 06/2010/TT-NHNN dated 26 February 2010 guiding organisation, management and executive operation, charter capital, assignment of shares, and amendment of and addition to licence and charter of commercial banks (Circular 06).

96 Circular No. 04/2010/TT-NHNN dated 11 February 2010 on mergers, consolidations and acquisitions of credit institutions (Circular 04).

97 Article 34 of the Law on Credit Institutions.

98 Articles 10.4, 14.4 and 18.4 of Circular 04.

exception that certain 'group 1 standard debts', being very well-performing loans, may only be sold at the value of the debt.[99]

The debtor and any guarantors must unconditionally accept the assignment of the creditor's rights from the seller to the buyer of the debt.[100] The security for any transferred debt will also follow the debt to the benefit of the assignee, without the need for borrower consent (unless the security contains specific transfer restrictions), although the reregistration of the security may sometimes be problematic from a practical perspective.

Decree 59 also contains a special control and bankruptcy regime applicable to all forms of commercial banks, including state-owned banks, which allows the SBV to appoint a special committee to oversee a bank experiencing financial difficulties. The appointment of such a special committee is not automatically disclosed to the public. The government also issued further specific guidelines on bankruptcy procedures applicable to credit institutions, which took effect on 15 March 2010.[101] This provides that a credit institution that is incapable of repaying its due debts upon the request of its creditors only be subject to insolvency procedures after the SBV has determined to terminate the special control regime in writing. The same approach was adopted by the authors of the LCI.

Banking businesses are transferred as part of a merger or an acquisition where assets (e.g. loans) and liabilities (e.g. deposits) are transferred in block. There are no specific rules on the transfer of deposits as depositors may choose to continue to bank with the new entity or terminate the relationship. In any case, the merger or acquisition must be approved by the SBV.

VII THE YEAR IN REVIEW

In 2013, the National Assembly passed a number of very important pieces of legislation, such as the revised Constitution, the new Land Law and the new Law on Corporate Income Tax, all aimed at providing a solid legal basis for further reforms of the economy.

The government continued to successfully control inflation, which has been its top priority since 2012. Despite multiple interest rate cuts, aimed at boosting a weakening economy, the SBV has managed to avoid weakening market confidence and triggering renewed pressures on prices and exchange rates. These efforts to get the economy back onto a growth path have, however, seen quite limited results. In 2013, Vietnam achieved a marginally higher growth rate than in 2012,[102] which was itself the lowest achieved since 2000 – including the crisis years of 2008 and 2009.

Serious systemic weaknesses have persisted and concerns relating to the financial status of certain SOEs have compelled the government to significantly tighten controls

99 Article 7.1 of Regulation on purchase and sale of debts by credit institutions issued by Decision 59/2006/QD-NHNN dated 21 December 2006 (Decision 59).

100 Article 16.2.a of Regulation on purchase and sale of debts by credit institutions issued by Decision 59.

101 Decree No. 05/2010/ND-CP dated 18 January 2010.

102 5.42 per cent in 2013 against 5.25 per cent in 2012.

over their borrowing – particularly offshore borrowing. The government also issued new charters for all major SOEs, requiring them to obtain dual approval from the relevant line ministry and the Ministry of Finance for offshore loans of any size or for significant onshore loans. As a result, negotiating new loans for SOEs has become a much lengthier process.

i Non-performing loans

The exact NPL ratio remained a much-debated issue throughout the year. At the beginning of 2014, Moody's estimated that the real ratio stood at 15 per cent of the outstanding loans.[103] The SBV immediately issued an official press release confirming that, based on the data reported by the banks, the ratio was 3.63 per cent at the end of December 2013. The SBV has, however, acknowledged a low degree of reliability of the reports by the banks and for the first time provided its own estimate of 9 per cent,[104] which corresponds with the majority view of the market on the level of NPLs at the end of 2012.[105] The gap between the reported NPLs data and the SBV's own estimate may have explained the further postponement of the implementation of the new and more internationally recognised rules on assets classification and risk provisioning. It is hoped that, by 1 January 2015, VAMC will be able to reduce the level of NPLs at banks further and the banks will have time to either resolve their NPLs or make adequate provisioning for bad debts.

The high real NPL ratio also explains the very low credit growth achieved by the banking system.

VIII OUTLOOK AND CONCLUSIONS

Based on the key targets set out by the National Assembly (5.8 per cent GDP growth, 7 per cent inflation rate, 2 per cent depreciation of the Vietnamese dong, 12 to 14 per cent credit growth and 5.3 per cent fiscal deficit) it is expected that the SBV will continue to take measures to support growth in the economy and to encourage credit expansion. The forcibly pushed-down lending interest rates may have reached the floor and the method has revealed its limitations. The government and the SBV will need to devise new ways to get the credit currently trapped in the government bonds market back to the real economy.

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103 Moody's Vietnam Banking Outlook 2014.

104 SBV press release dated 21 February 2014 (www.sbv.gov.vn/portal/faces/vi/vilinks/videtail/vicm101/vict101?dDocName=CNTHWEBAP0116211755627&_afrLoop=6674381827839900&_afrWindowMode=0&_afrWindowId=null# per cent40 per cent3F_afrWindowId per cent3Dnull per cent26_afrLoop per cent3D6674381827839900 per cent26dDocName per cent3DCNTHWEBAP0116211755627 per cent26_afrWindowMode per cent3D0 per cent26_adf.ctrl-state per cent3Dgx2e74tib_379).

105 www.reuters.com/article/2012/10/24/markets-ratings-vietnam-idUSWNA826820121024.

More profound structural reforms in the three closely related key areas: (1) the banking sector; (2) SOEs; and (3) the real estate sector, will be needed to boost growth. Increased investments in infrastructure could also be a solution.

On the lenders' side of the economy, the government will pursue the implementation of the banking system restructuring programme with the long-term objective of reducing the number of commercial banks in Vietnam from over 60 to between 30 and 40. An Inter-ministerial Steering Committee was established in March 2014 to implement the 'Restructuring the system of credit institutions for the period 2011–2015' and the 'Management of bad debts in credit institutions system' projects.[106] The committee is headed by Deputy Prime Minister Vu Van Ninh with the State Bank Governor Nguyen Van Binh as its deputy head. More bank mergers and consolidations are therefore expected in 2014.

The government will also need to address the banks' cross-ownership, poor management, weak asset quality, low profitability and weak capitalisation. A greater share of foreign capital in the capital of Vietnamese banks is also being considered.

On the borrowers' side, the government has declared that it will push forward with the restructuring and 'equitisation' of SOEs. Further measures are being discussed to support small and medium enterprises.

The government appears to be committed to restructuring the economy, but currency fluctuations and inflationary pressures will continue to affect government policies and regulatory frameworks. The initial results and the government's commitment to restructuring the economy have been noted by the markets. In January 2014, Fitch Ratings upgraded Vietnam's outlook to 'positive' from 'stable'.[107]

In the banking sector, the SBV is expected to strengthen its foreign exchange control policy. Having successfully put gold trading under centralised management, the SBV will continue restricting further the use of foreign currency in Vietnam. More specifically, the use of foreign currency bank accounts will become more restricted. The SBV also reaffirmed that previously tolerated cross-border foreign-exchange trading was an illegal activity, and declared bitcoin an illegal currency.

In relation to the SBV's regulatory agenda, in light of its vague timetable, the roadmap set out in Decision 2637/2010 dated 7 October 2010 to issue implementing guidelines for the two new banking laws (the SBV Law and the LCI) has been only partially implemented. For 2014, the SBV has issued a new and more detailed monthly plan for the issuance of its circulars[108] with clearer timetables and more stringent progress-reporting requirements. It is hoped this new approach will help accelerate the new banking laws coming into effect.

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106 Prime Minister Decision No. 363/QD-TTg dated 11 March 2014 to establish a Multi-Sector Steering Committee to implement the 'Restructuring the system of credit institutions for the period 2011–2015' and the 'Management of bad debts in credit institutions system' projects.

107 Moody's has however maintained a negative outlook on the Vietnamese banking system.

108 SBV Decision 253/QD-NHNN dated 24 February 2014 on 2014 SBV circulars issuance programme.

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