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OPEN DOOR FOR FOREIGN BANKS TO PARTICIPATE IN SYNDICATED LOANS IN VIETNAM



The State Bank of Viet Nam (“**SBV**”) recently issued Circular No. 42/2011/TT-NHNN dated December 15, 2011 (“**Circular 42**”), which regulates the extension of syndicated credits or co-financing by banks to customers who have projects or business plans in Viet Nam.



Under Circular 42, a foreign bank now may participate in providing co-financing (including syndicated loans) to Vietnamese borrowers, whereas previously only Vietnamese banks could participate in providing syndicated loans. In general, the foreign bank must comply with the relevant regulations

pertaining to investment, lending and foreign exchange control as and when it participates in the syndication as a member. However, Circular 42 does not allow the foreign bank to take on the role of the lead arranger, facility agent or security agent. In other words, if the syndication involves both Vietnamese and foreign banks, the syndication must appoint a Vietnamese bank to hold such positions. The Vietnamese bank must ensure its compliance with the prudential ratios and other limits set out by the SBV before and after entering into the syndicated loan.

Since Circular 42 is relatively new and untested, it is not immediately clear whether the rights and benefits of the foreign bank under the syndicated loan agreement will be fully recognized and enforced. Although Circular 42 provides that if the syndication realizes the security assets in order to recover the debt, the syndicate members are entitled to recover capital in accordance with their participation ratio. However, because the applicable laws pertaining to the realization of security assets under the loan agreement still impose certain restriction and limitation on the foreign banks, it is not clear if the foreign bank will be subject to an equal treatment and entitlement as a Vietnamese bank.

Despite the shortcomings mentioned above, Circular 42 still has made a significant change in the legal policy towards foreign lenders. Circular 42 is expected to facilitate an alternative route which enables the Vietnamese banks to extend more credit to their customers in response to the fact that SBV still caps the banks’ credit growth at a certain limit (e.g. 20 percent in 2012).

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