

Vietnam Issues Stricter Rules for Establishment of Joint Stock Commercial Banks

On 26 March 2010 the State Bank of Vietnam (“SBV”) issued Circular No. 09/2010/TT-NHNN, regulating the establishment of joint stock commercial banks (“Circular”).

Governing scope

The Circular provides for the issuance of a licence for the establishment and operation (“Licence”) of a joint stock commercial bank (“JSC Bank”).

The Circular regulates conditions, procedures and dossiers for the issuance of Licences as well as responsibilities of relevant organisations and individuals.

Applicable entities

- JSC Banks as stipulated in the governing scope
- Shareholders participating in establishment of the JSC bank (“Shareholders”), which mean organisations and individuals owning at least one issued share in the JSC bank at the time of its establishment
- Preparatory Committee for establishment of a JSC Bank (“Preparatory Committee”), which means an organisation composed of members elected by the founding shareholders to represent them in commencing work relevant to an application for issuance of a licence. The Preparatory Committee has at least five members, one of whom acts as head of the Committee
- The SBV including its various departments, subsidiaries and branches.

Competence to issue Licences

The Governor of the SBV decides on the issuance of Licences.

Licensing conditions

• Charter capital

The charter capital must be at least equal to the legal capital level prescribed by law at the time of establishment and must be contributed in Vietnamese Dong. Decree No. 141/2006/ND-CP on the list of levels of legal capital of credit institutions dated 22 November 2006 stipulates that the legal capital of a joint stock commercial bank for the year 2010 is VND 3,000 billion.

Loan money may not be used in any form as capital contributed for the establishment of a JSC Bank.

• Shareholders

Organisations set up under Vietnamese law or individuals holding Vietnamese nationality may be eligible to become shareholders provided that such organisations or individuals are not prohibited by the Enterprise Law from establishing and/or managing enterprises in Vietnam. Currently the following organisations and individuals are so prohibited:

- » State bodies, units of people’s armed forces of Vietnam using State assets to establish business enterprises to make profits for their own bodies or units
- » State officials and employees in accordance with the laws on State officials and employees
- » Officers, non-commissioned officers, career servicemen, national defence workers in bodies and units of the people’s army of Vietnam; officers, career non-commissioned officers in bodies and units of the people’s police

- » Management personnel, professional management personnel in enterprises with one hundred per cent State-owned capital, except for those appointed to be authorised representatives to manage the State share of capital contribution in other enterprises
- » Minors; persons whose capacity for civil acts is restricted or lost
- » Persons who are serving prison sentences or prohibited by a court from conducting business;
- » Other cases as stipulated by the laws on bankruptcy

There must be at least one hundred shareholders that are financially capable of contributing capital for the establishment of a JSC Bank, including at least three founding institutional shareholders having legal person status and satisfying all the required conditions.

The above funds must be deposited and retained at a Vietnamese commercial bank from the granting of in-principle approval by the SBV until the issuance of the Licence. An individual or organisation and his/her/its related persons are allowed to contribute capital to establish one JSC Bank only. An institutional shareholder must have been operational for at least three years and profitable for the latest three years.

A shareholder being a State enterprise must obtain written approval from the Prime Minister.

- Founding shareholders

An individual founding shareholder must be a manager of an enterprise having been profit-making for the most recent three years or a holder of a university degree or post-university degree in economics or law.

He/she must undertake to financially support the JSC Bank when it lacks capital or liquidity.

An institutional shareholder must have been operating for at least five years prior to the application to establish the JSC Bank. In the case of an enterprise, it must have its own equity not less than VND 500 billion (about USD 26 million) for the latest five years and have made profits for

five consecutive years preceding the year of application for a Licence. In the case of a commercial bank, it must have its total asset value of at least VND 50,000 billion (about USD 2.6 billion), its non-performing loan rate of under 2% of the total outstanding loans at the time of application for the establishment of the JSC Bank and has committed no violation of the banking regulations on safety in banking operations in the year preceding the time of being licenced; and has been earning profits for five consecutive years preceding the year of application for the Licence.

- The charter of the proposed JSC Bank must conform to the provisions of current laws in force. Two things should be borne in mind here: (i) there is no “model charter” for a joint stock commercial bank as in the case of a State commercial bank (issued under Decision No. 122/2001/QD-NHNN of the Governor of the SBV dated 20 February 2001), and (ii) the “current laws in force” refer to the Law on Credit Institutions, other relevant laws and their implementing documents as both of them may be amended and added to from time to time.
- The scheme on the establishment of the JSC Bank must have the following principal contents:
 - » Necessity to establish the JSC Bank
 - » Name of the JSC Bank and expected location of its head office, its term of operation, charter capital upon its establishment and contents of its operation
 - » Financial capacity of shareholders
 - » Organisational structure and personnel
 - » Risk control capacity
 - » Information technology
 - » Capacity of operating stably and developing in the market
 - » Internal supervision, control and audit system
 - » Business plan projected for the first three years (which includes at least a statement of total assets, a business report, minimum capital safety indicators, and indicators of operation efficiency) and explanations on the JSC Bank’s capacity to implement the plan each year

Dossier of application for in-principle approval

The dossier comprises of:

- Application for a licence to establish a JSC Bank, stating the satisfaction of the foregoing conditions and requesting in-principle approval for such establishment
- Draft charter on organization and operation of the banks
- Draft scheme on the establishment of the bank, with contents specified above
- List of founding shareholder and proposed list of non-founding shareholders
- Dossiers of shareholders
- Dossiers of members of the Managing Board, the Control Commission and executives
- Minutes of the meeting of founding shareholders on the election of the Preparatory Committee and the head of the Preparatory Committee.

Dossier of application for a Licence

The dossier comprises of:

- Application for issuance of the Licence in standard form set by the SBV
- JSC Bank's charter
- JSC Bank's establishment scheme
- Minutes on the first shareholders' meeting approving the contents related to the establishment of the JSC Bank
- Minutes of the meeting of the Managing Board on the election of its chairman; minutes of the meeting of the Control Commission on the election of its head and full-time members
- Managing Board's decision on the appointment of the general director
- Dossiers of non-founding shareholders
- Dossiers of members of the Managing Board, the Control Commission and executives
- List of capital-contributing organisations and

individuals

- Certifications of organisations' and individuals' deposits issued by Vietnamese commercial banks
- Provincial/municipal People's Committee's written approval for the JSC Bank to be headquartered in the locality
- Written certification of the lawful ownership right or use right to the head office
- Internal regulations on organisation and operation of the JSC Bank

Principles for compilation of dossiers

Copies of papers and documents must be certified by the competent agencies in accordance with the law.

Titles of all documents signed by the Preparatory Committee must show "the preparatory committee for establishment of a joint stock commercial bank."

Operational conditions

To conduct operation, a licenced JSC Bank must have its charter approved by the SBV, obtain a business registration certificate, have sufficient charter capital as prescribed by law, which must be deposited in an interest-free blockaded account opened at the SBV's branch in the province or city where the bank is to be headquartered at least 30 days prior to the inauguration of its operation, have a convenient office for transaction with customers; and ensure safety in its operation, especially cash safety.

Contents of Licences

A Licence must have the following principal contents:

- Serial number, place and time of issue
- Name of the Bank: full name in Vietnamese and English; its abbreviations in Vietnamese and English, and transaction name (if any)
- Location of the head office
- Operation area
- Charter capital
- Scope of operation

- Term of operation
- Full name and permanent address of the JSC Bank's at-law representative
- Full names and permanent addresses of founding individual shareholders and names and addresses of head offices, serial numbers of Licence or business registration certificates, for founding institutional shareholders, capital amounts contributed by founding shareholders and percentages of their capital contribution for the establishment of the JSC Bank.

In addition to prescribing the responsibilities of the organisations and individuals related to the issuance of Licences, the Circular sets out specific tasks relating to the coordination among, and the licensing and post-licensing procedures to be performed by, the various departments of the SBV (including the Council for Evaluation of Licensing Dossiers, the Inspectorate, the Department for Banks and Non-bank Credit Institutions, the Legal Department, the Department for Monetary Policy, the International Cooperation Department, the Internal Auditing Department, the Department for Banking Strategy, the Information Technology Department, the Finance and Accounting Department and the SBV's branches in provinces or cities where the proposed JSC Banks will locate their head offices).

Effect of the Circular

The Circular takes effect 45 days after its issuance. On this effective date, Decision No. 24/2007/QĐ-NHNN dated 7 June 2007 of the SBV and its amending and supplementing Decision No. 46/2007/QĐ-NHNN cease their validity.

JSC Banks licenced before this effective date need not conduct procedures for re-issuance of a new Licence.

Contact Us

For further information, please contact:

Dao Nguyen

Partner

dao.nguyen@mayerbrownjism.com

Hoang Anh Nguyen

Partner

hoanganh.nguyen@mayerbrownjism.com

Mai Phuong Nguyen

Partner

phuong.nguyen@mayerbrownjism.com

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