POSITION PAPER OF BANKING WORKING GROUP

Prepared by
Banking Working Group

SUMMARY OF TECHNICAL ISSUES

Category 1: Issues for which consensus has not been reached in terms of standpoint and how to deal with at a technical level between SBV agencies and BWG: **No remaining backlogs**

Category 2: Issues that SBV has acknowledged and will soon have a plan to deal with in the near future

Category 3: Issues that require joint efforts, and issues that SBV has acknowledged and will consider and follow-up on when revising its Circulars and Decrees

Category 4: Issues that pertain to other ministries' jurisdiction and responsibilities.

TABLE 1. ISSUES WITHIN THE STATE BANK'S JURISDICTION AND RESPONSIBILITIES

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
I. CATEGORY 2 – ISSUES THAT SBV HAS ACKNOWLEDGED AND WILL SOON HAVE A PLAN TO DEAL WITH IN THE NEAR FUTURE			
1.	(BWG – Retail banking division) Circular 19/2016-TT-NHNN on bank card operations	1.1.**Installment on Credit Card** Installment on Credit Card is one of the Credit card functionalities and under Credit card operation: • Offered to existing Credit cardholder based on credit behavior. Installment on Card average ticket size is relatively small, approx. 30MM VND and there is no involvement of 3rd party fund transfer • Customer's transaction are periodically monitored across all aspects including AML.	**Further actions required** SBV will look further into the working group's recommendations as it comes up with policies/guidelines on how to deal with issues relating to credit extension/Installment on credit cards.

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		• There is no increase in Credit line, appropriate end user monitoring process is in place • Following Circular 19, cash advance is one of the Credit card activities; Installment on Card is akin to Cash Advance, however the fund is credited to Customer chosen banking account and they have the option to pay back in a structured plan instead of having to withdraw from the ATM. **<u>Recommendation:</u>** Consumer Finance BWG members recommend Installment on Card to be under scope of Circular 19	
2.		**1.2. Partnership with card switching institutions** Article 24.2 - BWG members have faced practical challenges and implementing complexities (in relation to delegation of authority in offshore banking systems, timeframe constraints: more time is needed to agree on various items and answer questions on the draft Techspecs & Codes of Conduct, 18-24 months for testing to ensure reliable connection. - BWG suggests that SBV considers not to put this Article 24 in effect starting from Jan. 1, 2019, and expects to receive detailed updates on the interchange roadmap and plan from NAPAS.	**Further actions required**
3.	**Sales of foreign exchange to cover due liabilities incurred form derivative-related activities**	There are no guidelines that directly govern purchase and sales of foreign exchange for settlement of due liabilities incurred from derivative-related activities in related derivative circulars. Nevertheless, given the existing circulars relating to legitimate derivative transactions, there is a common understanding and	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA,

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		practice in the market that as a customer is permitted to engage in derivative transactions for the purposes of interest rate and exchange rate hedging associated with the underlying transactions, he/she may acquire foreign exchange to cover due foreign currency liabilities incurred from derivative transactions, to pay or reimburse the derivative service providing bank. Here, the foreign currency cash flow does not go to the open market, but only serves the purpose of payment to the derivative service providing bank. More specific guidelines from SBV will help protect both the customers and banks from the potential legal risks that may emerge from derivative-related activities, and align with the unique nature of these products and international best practices.	VNBA etc.) to further discuss and understand, expectedly in Q1/2019.
4.	**Execution of FWD/Swap trading in international markets without the need for a reciprocal transactions with domestic customers**	As specified in Circular 28/2016/TT-NHNN (Article 6.3), banks may only engage in foreign exchange forward and swap transactions with foreign financial institutions for risk management purposes for foreign exchange forwards and swaps they have committed and executed with domestic customers. This regulation does not really restrict speculative practices in international markets, since banks can still engage in speculative acts through spot deals. Furthermore, if a bank has a need for a cross currency swap to acquire the foreign exchange it needs to cover its settlement and lending operations, it will not be able to do so because there is no reciprocal transaction with a customer in domestic markets. We suggest that SBV allow banks to engage in FWD/Swap trading in international markets without the need for a reciprocal transactions with domestic customers.	**Further actions required** SBV recommends that credit institutions have their applications for a license/conversion readily available if they are in need of currency Swaps to acquire the foreign exchange cash flow needed for their settlement and lending purposes. In fact, many applications have been approved by SBV.
5.	**Engagement in FX SWAPs and/or Mark-to-Market**	Before settlement of an FX Forward, for different reasons, customers may ask bank to modify one or more details of the transaction (for example, time of settlement and amount of	**Further actions required**

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	transactions between banks and customers in case of premature termination or extension of FX FWDs	payment) previously executed. According to international best practices, in the event of modification of an FX Forward, banks often use FX swaps because FX swaps may ensure that the mark-to-market value of the FX forward at the time of transaction modification is accurately reflected, thus safeguard customers' interests. In case an FX swap is not an option, when the previous transaction is cancelled, the bank's systems will automatically mark-to-market the underlying transaction and may result in a MTM loss/gain for the customer, which needs to be settled between the parties. We suggest allowing engagement in FX SWAPs and/or Mark-to-Market transactions between banks and customers in case of premature termination or extension of FX FWDs.	BWG and SBV to hold derivative workshops to further discuss and gain more insights, expectedly in Q1/2019
6.	**Draft cybersecurity decree**	***1. General views*** *We appreciate that you have been open to and considered comments and recommendations from the business community including banks at the dialogue of the Vietnam Business Forum (VBF) on 13 September 2018 regarding Cybersecurity Law in your drafting documents guiding the implementation of this Law. These considerations are now being reflected in the Draft documents, which will facilitate investment activities in Vietnam by foreign investors including foreign banks operating in Vietnam.* **2. *Specific comments*** ***2.1 The draft Decree Detailing a Number of Articles of Cybersecurity Law ("draft Decree")*** ***Article 3 - Justification for establishment of material national security information systems***	**Further actions required**

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		We understand that material national security information systems as stipulated in Section 2, Article 10 of Cybersecurity Law and specified in Article 3 of this Decree are those being installed, managed and owned by the State and satisfactory with conditions as stated in this Decree. *For avoidance of any confusion on information systems being installed, managed and owned by non-state owned companies, we would suggest to further elaborate this Article as per the following quote:* *"Material national security information systems in various fields, as defined in Article 10.2 of the Cybersecurity Law are those being installed, managed and owned by the State and when affected with contingency, breaches, control takeover, tampering, interruption, cessation, incapacitation, attacks or sabotage, may result in the following consequences:"* *As clearly indicated in Section 1, Article 25, Draft Decree, we understand that a company would have to store data, establish its branch or represententative office in Vietnam only when they are fully qualified **with all the conditions** as stated in points a-d, Section 1 of Article 25.* *For example:* *Currently, banks are offering internet-based payment service, a traditional banking service locally and in the world. The internet-based applications for payment services to clients are mainly to facilitate clients' payment demands. These electronic payment applications are **not** public forums that point (c), Section 1 of*	

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		Article 25 has referred to i.e. for communication and information exchanges between multiple clients/service users and for them to perform activities as stated in Section 1, 2 Article 8 of Cybersecurity Law. *For the growing banking and finance industry in Vietnam, we recommend that the interpretations of Article 24 and Article 25 are to be based on the banking and finance industry characteristics to guide practical and effective compliance. For example, Point (a), Section 1 of Article 25 has included "electronic mails". This could mean electronic mail by public service providers or every business that use electronic mails that may not be the intention here.* *Point (b), Section 1 of Article 25, regarding systems that gather, maintain, analyse and process data referred to in Article 24, is another example that could capture every I.T. system, as these activities are core to I.T. systems. Section 2 of Article 24 on "data generated by users in Vietnam" is similarly wide.* *Guided by the intentions of the Cybersecurity Law, a specific banking sector-based interpretation of what these and other terms should mean for the banking and finance industry as well as cross-border financial and payment activities could facilitate clear and practical implementation.* *Furthermore, in reference of Section 2, Article 25 of the draft Decree, it is understood local and foreign companies who are qualified with all conditions as stated in Section 1, Article 25 would have to store data and set up their branches, offices locally* ***at the requests by the Minister of Public Security****. In our view, this is a reasonable requirement as the Ministry of Public Security is the*	

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		authority in dealing with breaches of the cybersecurity regulations. Therefore, the Ministry of Public Security will definitely have authority in dealing with breaches of the provisions of Section 4, Article 8, point a or point b, Section 2, Article 26 of Cybersecurity Law as stipulated in point d, Section 1, Article 25 of this draft Decree once these breaches were identified and subject to sanctions. **2.2 *Draft Decision on the List of Material National Security Information Systems*** *As per our above-mentioned comments on Article 3 of the draft Decree, we would suggest that the material national security information systems in financial and banking industry will only include systems, which are being installed, managed and owned by the State.* *We hope that our comments will assist your promulgations not only aiming to supervise the cybersecurity by the Government but also fostering Vietnam further as an attractive business environment for enterprises.* - It is not technically feasible to stipulate that data must be stored for the entire duration of the enterprise (which may take several decades) as well as in conflict with some legal documents. issued along with this theme; Circular No. 43/2011 / TT-NHNN issued by the State Bank of Vietnam dated December 20, 2012 PROVIDING ON THE PRESERVATION PERIOD FOR DOSSIERS, DOCUMENTS IN BANKING SECTOR For example: Section 236 in TABLE	

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		STORAGE, DOCUMENTS AND DOCUMENTS IN THE BANKING INDUSTRY (Issued in conjunction with Circular No. 43/2011 / TT-NHNN dated 20 December 2011 of the Governor of the State Bank) Card issuers: card issuance application, change of card information, card delivery confirmation ... (after termination "is 5 years. We suggest modifying this as follows: The data retention period provided for in Article 24, point 1 must comply with the relevant provisions of Vietnamese law, issued by the enterprise's line ministries. We would like to discuss with the State Bank of Vietnam. We hope that these comments will partly support the promulgation of legal normative documents while ensuring the state management objectives, network security, while maintaining a favorable business environment for enterprises operating in Vietnam.	
7.	Circular 18/2018/TT-NHNN **1. IT systems placed at the parent bank and used by branches of foreign banks**	**1. The IT system is located at the offshore parent bank used by foreign bank branches** Foreign IT systems used by foreign bank branches, including main systems and backup systems, are located outside the territory of Vietnam and are managed, maintained and operated. Foreign bank branches are end-users and participate in all activities coordinated by the Headquarters such as backup exercises ... along with the entire global branches. Basis:	**Further actions required** BWG to submit comments and recommendations, for both sides to continue the discussion via a separate technical meeting

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		When implementing the Circular No. 315 / CNTH8 dated 15 March 2016 on the assurance of confidentiality of information and information technology in banking operations, the Department of Information Technology affirmed: Foreign banks or branches of foreign banks that use IT systems in foreign countries owned by their parent banks and managed and operated are not governed by this regulation. **(Item No. 5 of the attached appendix)** However, in the Summary of some new points of Circular 18, the SBV mentioned that the information systems provided by the parent bank still *"The circular creates a more equal environment for IT application among domestic and foreign organizations operating in Vietnam when it requests foreign bank branches to use information systems. The information systems provided by the parent bank must be complied with by the parent bank (outside Vietnam) to provide services to Vietnamese customers or to serve the technical and professional activities of the SBV. The 100% foreign owned limited liability company has the same rights and responsibilities as domestic credit institutions with respect to the requirements for ensuring the security of the information system. "* Overseas IT systems used by foreign bank branches (more specifically, IT systems located at the parent bank, used by the Bank to provide services to customers and operations internal services) are not governed by this rule, except for Article 24 on online transaction management, Article 21.4 on backup. We request the SBV to further clarify the non-exempt items which are required to be complied with this Circular	
8.	**Level 2 systems**	In article 4 of Cir18/2018/TT-NHNN, it is mentioned that when a system process confidential information, it will be treated as system level 2 (important system).	**Further actions required**

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		In addition, confidential information is organization's confidential one or State Secret. On the other hand, in article 5.21 of Decree 45/2007/QD-NHNN, password for accessing computer network, database system; password for using banking application programs are classified as State Secret. If we base on Decree 45 and article 4 of Cir18, there are so many systems classified as system level 2 while they may just process internal activity of bank and should be classified as system level 1 only. The purpose of discriminating level 1 and level 2 system thus cannot be achieved. We would respectfully request the SBV to allow banks to exclude Password from Confidential Information when classifying system based on Cir18.	
9.	**Classification of state secret information**	3. In Decree 117/2018/ND-CP, information about client's account and deposit are not mentioned as State Secret any more. However, in Dec 45/2007/QD-NHNN, article 15 define document related to client's deposit and other assets are defined as State Secret. Kindly clarify if banks can base on Dec 117/2018/ND-CP and treat client's account and deposit as being not State Secret?	**Further actions required**
10.	**Recommended Know your customer procedures (e-KYC) for account opening**	As part of the traditional practice for account opening process, there are 2 specific steps in the KYC process that all of the banks are following: wet signature on the form and a physical face-to-face meeting by bank staff. In the context of digital world and capability in technology investment, **BWG** together would like to propose new methods to conduct these 2 steps. We believe that both customers and the banks are well protected as the authenticity of the transaction is assured and the necessary steps of the account opening form are still fulfilled.	**Further actions required** -

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		Face-to-face meeting for identity verification and account opening: Traditionally, the bank will need to meet up physically with customer to do identity verification. This process requires either bank staff or customer to travel to a physical meeting point which costs time and money for both sides. With the unstoppable development of modern technology, we are all of the same view that this process can be fulfilled by other methods that can be conducted in real-time while also ensuring the highest levels of security: - Customer and bank staff to verify identification using video call to conduct conversation (acceptable in the European Union) - Customer and bank staff to conduct conversation using phone call with audio record function - Assigned third party vendors are granted the authority to conduct this identity verification process which the banks can use to complete the KYC process - Opportunity for customers to upload photo ID/passport, supporting documents on KYC to mobile app for verification **Signature in the account opening form:** Traditionally, to confirm the transaction between customer and the bank, customer's signature is collected in ink form (wet signature). However, with the development of technology, there are different ways to confirm the transaction between 2 parties that we see as alternatives:	

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		- Customer can sign directly on bank mobile app - Customer can take picture of his/her signature then upload to the bank via secured link - Customer can fill in application form online in which there is a tick box for customer to give consent to the bank and supported by a mobile phone OTP validation - Customer can download the form online, sign, scan and send back to the bank - Customer can provide signature through DocuSign (documents are encrypted and complete audit trail is maintained) We would like to propose new solutions for account opening and KYC to bring basic banking services closer to more users and would like to further discuss with the SBV.	
II. CATEGORY 3 – ISSUES THAT REQUIRE JOINT EFFORTS, AND ISSUES THAT SBV HAS ACKNOWLEDGED AND WILL CONSIDER AND FOLLOW-UP ON WHEN REVISING ITS CIRCULARS AND DECREES			
11.	**Circular 15/2015/TT-NHNN** 1. FX swap maturity (365 days) as per Circular 15/2015/TT-NHNN 2. Liquidity management of interbank activities:	**1.1 FX Swap's tenor (360-365 days) under cir 15/2015/TT-NHNN** There is no tenor restriction for among foreign currencies par but there is a tenor restriction of 365 days for Foreign currencies against VND transactions. We would like to request SBV to remove its restriction as the current supporting documents control is sufficient enough for banks to control the purpose of buying foreign currencies with following rationales + Tenor of FX forward should be determined by market liquidity and client genuine needs. It helps to develop the FX market in more efficient way and client has a capacity to hedge for their genuine needs.	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.

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		+ Additionally, tenor the cross currency swap for USDVND transaction is also allowed upto the tenor of the loan and this is no difference from the FX hedging like FX forward. **1.2. Liquidity management of interbank activities:** It is a normal process for banks to borrow short term money from their counterparts or SBV to meet their daily funding needs. Given SBV has used OMO activities effectively, we would like to request SBV to open the FX swap activities similarly to OMO activities given the same nature and in line with SBV's direction in injecting and withdrawing money from banking system. The current rule to ask the bank to prove they have liquidity issue if they would like to perform the FX swap with SBV seems not to be realistic and applicable for banks to apply. We would like to request SBV have the same treatment for both OMO/FX swap activities as + Still follow the SBV's direction in liquidity management + Given opened choice for banks either to use their USD or Government bond in accessing the VND liquidity or SBV can use these tools to withdraw VND from market if needed. + it fact, it helps SBV better to control the VND cost in the market as FX swap rate and OMO rate will be similar to what SBV's rate.	
12.	**Non-residential entities in Vietnam (foreign investors) engaging in FX derivative and interest rate derivative transactions**	Currently, non-resident customers (foreign investors) may not engage in derivative transactions, even when they have demand for interest rate hedging between the VND and their home currency. We suggest that SBV allow foreign investors to participate in derivative trading, as it will meet their legitimate needs while also help improve market liquidity.	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.

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13.	**Diversifying derivative products**	The existing line-up of available derivative products is still too underdeveloped to fully meet customers' needs. Cost production products are not mentioned in Circular 01/2015/TT-NHNN. We suggest that SBV consider adding more derivative products for diversification and to meet the market demand.	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.
14.	**Cross-currency interest rate swap (CCS) derivative dealing should be recorded in the trading book instead of banking book**	Under Circular 41/2016/TT-NHNN, providing on capital adequacy ratios, only derivative transactions with less-than-one-year maturity may be recorded in the trading book. Cross-currency swap derivative transactions, however, are often more than one year in maturity. We suggest that SBV consider removal of this regulation to allow derivative transactions with a maturity of over one year to be recorded in the trading book.	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.
15.	**Underlying transactions may be part of an interest rate derivative deal**	1. In real life trading, sometimes, a customer takes a loan in USD with floating interest rates, and in the past, out of fear of USD interest rate fluctuation, used one currency interest rate swap to change from floating interest rates to fixed rates. From that point on, depending on the liquidity of the domestic derivative markets and fluctuations of exchange rates and VND-related interest rates, the customer wants to have a cross-currency swap contract to hedge against foreign exchange and VND interest rate risks. However, in accordance with Circular 01/2015/TT-NHNN, use of one currency interest rate swap as a valid documentary evidence for a cross-currency swap is not allowed. BWG suggests that SBV modify the requirements on valid supporting documents to make it easier to adopt and apply derivatives and help customers to take a more active role in hedging against foreign exchange risks and interest rate risks in alignment with the intent of Circular 01/2015/TT-NHNN.	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.

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		2. Banks' involvement in traditional business activities such as deposit taking and lending with different maturities and in different currencies may entail interest rate and exchange rate risks for their balance sheets. Use of interest rate derivatives to hedge against and alleviate interest rate risks in banking business, including the risks arising on or off the balance sheet, is normal in international best practices. Asking for interest rate risk hedging or mitigating plans to be reviewed and approved as currently the case with Circular 01/2015/TT-NHNN is unrealistic because in the real world, banks already have to comply on a daily basis with existing regulations on foreign exchange positions, prudential ratio limits and rules applicable to the operations of a credit institution. To that end, banks also have in place in-house policies to control interest rate risks and exchange rate risks for the activities they are involved in. Accordingly, involvement in hedging activities needs to rely on the customers' day-to-day real demand and allowed limits. This requirement has raised the biggest barrier for the growth of derivatives markets, and pinned down transaction volumes and market liquidity. Moreover, given the fast moving market prices, if ones have to wait for the hedging plan to be made and approved to be able to engage in dealing, the price may have changed by a large proportion by the time a bank may start dealing, and as a consequence, incur high hedging costs. We suggest removal of the need to have an interest rate risk hedging and mitigating plan in place and approved by a competent authority when a bank takes actions to hedge against risks for activities under way on the bank's very own balance sheet. We therefore recommend that SBV allow banks to have more autonomy in engaging in interest rate derivative dealing to hedge against and mitigate interest rate risks and exchange rate risks that	

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		may arise from their commercial activities to ensure safe and efficient operations.	
16.	**Cross-currency swap (CCS) dealing with a shorter term than that of the underlying transaction**	Market liquidity and hedging costs are important considerations for the customers to decide whether they want a special VND-related derivative. As the derivatives market in Vietnam is still in a nascent stage, with extremely low liquidity for longer maturities, making it virtually impossible for customers to hedge against risks due to the non-existence of a working market (for example, customers cannot secure a 10-year CCS contract for a 10-year loan because a local CCS market for this maturity does not exist). A solution to this concern is that customers may hedge against risks by engaging in a CCS contract with a shorter term that the market may accommodate. When the contract settlement is due, based on Circular 01/2015/TT-NHNN, customers do not have on hand legitimate supporting documents to execute payment and exchange of the underlying fund. At that point, customers may further extend the contract/sign a new contract for another maturity cycle, or terminate the CCS contract (if the market conditions are unfavorable for the customers), and settle any MTM gains/losses that may arise as recommended in paragraph 23 below. To help develop local derivative markets, we suggest that SBV consider allowing customers to engage in CCS contracts with a shorter maturity than that of the underlying transaction and offset the MTM gains/losses to help customers hedge against risks.	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.
17.	**Banks involved in interest rate derivative contracts must ensure that the net accumulated losses from their trading, provision and**	This rule can be understood that for the entire valid derivative portfolio of a bank, the total paid yields, minus total received yields must not exceed 5% of its tier 1 capital, and the earnings must be timed from the starting day of the deal to present. Applying this rule has resulted in certain ordeals for banks in building and nurturing VND-related derivative markets since the interest rate spreads between VND and other currencies are often	Further actions required BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.

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	use of interest rate derivatives does not exceed 5% of the bank's tier 1 capital (Article 12, Circular 01/2015/TT-NHNN)	significant. Take for example the case of a currency swap where the bank receives a Libor-based USD rate and pays a VND fixed rate (which is often higher than the Libor rate). Given the interest rate differential between the two currencies of 5%, to comply with the aforementioned rule, the total transaction volume based on the maximum principal value that the bank is allowed will be limited depending on the transaction maturity: 100% of the bank's capital for a 1-year maturity and 20% of the bank's capital for a 5-year maturity, even though in respect of interest rate risk management, the bank has also had other deals going on, such as investing in bonds or lending to customers in VND to offset the risk. The abovementioned rule raises a barrier and will not encourage customers and banks to participate in derivative markets to hedge against foreign exchange and interest rate risks as a way to improve market liquidity and promote market growth. We suggest that SBV consider repealing this rule to enable local derivative markets to grow, enhance market liquidity and make hedging costs more affordable to the customers. As for the objective of risk management in staying within safe capital ratios, this issue has been addressed through Circular 36/2014/TT-NHNN, Circular 06/2016/TT-NHNN and Circular 41/2016/TT-NHNN, with Basel II norms adopted.	
18.	**Management of foreign exchange positions generated from related transactions and reciprocal derivative transactions**	While Circular 07/2012/TT-NHNN establishes rules on the foreign exchange position of foreign credit institutions and bank branches ("Circular 07"), it does not provide specific guidance on how to deal with foreign exchange positions created from derivative trading, especially when foreign exchange spots, forwards, or foreign exchange swaps are used for hedging purposes of derivative transactions, because derivative deals do not have opening principal exchanges since the loan has been released and used prior to the use	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.

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		of the derivatives to hedge against foreign exchange risks and interest rate risks. Guidelines on how to calculate foreign exchange positions generated from currency derivatives will also follow international best practices because they reflect accurately and truthfully the actual foreign exchange position of the banks. Moreover, reporting accurately and truthfully the foreign exchange position by banks will also help SBV to have accurate and reliable data for its decision making and introduction of accurate and plausible foreign exchange control policies.	
19.	**Derivative-based netting**	BWG is facing several challenges pertaining to ISDA-based netting. To be more specific: - Banks are applying Basel 2 and Basel 3, and an interest applies to derivatives. In the set pathway, Vietnam will stick to Basel 2 by the end of 2020. - This Interest costs in the case of unrecognized netting jurisdictions is very substantial, and currently China and Indonesia have had roadmaps in place to use netting to cut such costs and drive derivatives market development. - BWG has been working on this with ISDA. The working groups suggests that SBV form a task force and hold consultations/meetings with BWG, ISDA, SBV, ADB and relevant ministries (Ministry of Justice on the Bankruptcy Law).	**Further actions required** BWG and SBV to hold derivative workshops with related parties (ISDA, VNBA etc.) to further discuss and understand, expectedly in Q1/2019.
20.	**Commitment fee collection** Circular 39/2016/TT-NHNN	Commitment fee collection We look forward to SBV's further instructions.	**Further actions required**
21.	**Payment hierarchy for overdue loans**	Article 18.4 and Article 20 Article 18.4, Circular 39, establishes that for overdue loans of personal customers, financial institutions must collect the principal	**Further actions required**

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	Circular 39/2016/TT-NHNN	first and interest later. To comply with this Article 18.4, banks are facing these challenges: By collecting overdue principal first, the borrower may choose to pay only the overdue principal amount, without paying the interest. As this overdue interest amount is not turned into overdue debt under Article 20, Circular 39, the borrower's credit track record will not be tainted (no bad debt). For name lending, this means that it will be very difficult for the bank to collect the interest and may not be able to collect it at all. We look forward to SBV's further instructions.	
22.	**Article 5.3** Circular 13/2018/TT-NHNN	Article 5.3 establishes that: a) The first line of defense is in place to identify, control and alleviate the risks that may arise from the operations of the following functions: (i) Front-office functions (including product development), other revenue-generating functions, and back-office functions that make risk-bearing decisions. Challenges: Reading the above regulation, we understand that in the event there is standpoint discrepancy between a front-office function and compliance division in relation to compliance with local rules for a commercial transaction, the final decision will rest with the front-office function – the one making risk-bearing decisions as noted above. We hope to receive SBV's confirmation that this understanding of ours is correct. In that case, is there any problem in terms of independency and avoidance of conflicts of interest in compliance risk review and approval? Article 18.C. "Assisting relevant functions in the design and review of internal policies to ensure compliance with applicable laws".	**Further actions required**

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		Challenges: This provision may be interpreted as the compliance function should assist the design and review of internal policies to ensure compliance with any laws and regulations. In the real world, however, the compliance function may only be responsible for compliance in areas it is assigned to as per the bank's internal rules, which may not include other technical lines of work, such as taxes, finance, human resources, financial crimes and others. We look forward to SBV's further instructions.	
23.	**Responsibility to review information transactions/other transactions of entities and individuals as per relevant rules**	**1. Screening domestic VND transactions for blacklisted entities and individuals is subject to the provisions of AML Law No. 07/2012/QH13, and entities and individuals as per penalizing notices of the United Nations Security Council and US unilateral sanction notices.** **Concern:** Article 33, Anti-money Laundering Law, on delaying transactions, establishes that: *"1. Reporting parties shall **apply transaction delaying measures when parties related to the transaction fall under blacklists**, or there is reasonable doubt that the requested transactions are associated with criminal acts, and shall report without delay in writing to a competent authority."* Decree 122/2013/NĐ-CP, Article 8. Blocking accounts, sealing off, holding in custody, dealing with money and assets relating to terrorism and financing of terrorism detected through financial activities or non-financial business lines, rules that: *"1. Financial institutions and non-financial business entities and individuals **are***	**Further actions required**

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		responsible to regularly check and investigate whenever there is doubt that a customer's transaction is associated with terrorism and terrorism financing. *Where money and assets associated with terrorism and terrorism financing are detected, immediate actions shall be taken to cease movements and freeze all such money and assets, while at the same time, reporting immediate in writing, attached with related documents, to the head of the provincial level Police Department for review and decision making."* To meet the aforementioned rules of the law, banks/credit institutions offering payment services must conduct screening before relationship creation and screen all transactions before starting the procedure, including cross-border fund transfers and domestic bank transfers. Challenges and potential implications on the banking system: ▪ There is a massive volume of domestic bank transfers in VND between banks/payment service providers. Depending on individual banks, domestic VND transfers may range from several thousands to hundreds of thousands of transactions per day. ▪ The information on blacklisted subjects disclosed by the Ministry of Public Security is actually non-exhaustive (for example, only year of birth rather than full date of birth, only country where the subjects are living in rather than a full address, no information on personal ID paper number, passport number, nationality and so on; whereas, Vietnamese name resemblance is common), and as a result, a system scan may return a lot of false alarms. This may lead to cash transfer transactions being blocked until they are verified and confirmed to have nothing to do with blacklisted subjects.	

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		▪ The required review and screening to confirm that a fund transfer is not associated with blacklisted subjects may make banks/payment service providers unable to comply with the provisions of Article 8, Circular 46/2014/TT-NHNN, on cashless payment, as it requires recording in the transactional account of the payer/beneficiary within 01 business day after receipt of the payment order/bank transfer order. ▪ Initiation of screening and verifying steps will immediately disrupt the services offered by banks that provide online STP services. ▪ Every fund transfer transaction is processed by at least two different financial institutions (the transferring bank and recipient bank), and in most cases, the transaction will be transferred through/processed by the State Bank (via the Citad system). If every bank/payment service provider (including the State Bank) has to verify whether it is a false alarm before making the transfer, the time needed to process a transaction in the banking system will be longer (by two to three times), resulting in no small waste of resources for the society as a whole. **Evidence from the field:** All banks/payment service providers in the system have and are: • Screening customer data: at the time the State Bank/Ministry of Public Security releases the blacklist (based on the entire existing customer data available); screening at the time of creating new relationships; regular screening of all customer data. This helps make sure that no blacklisted subjects may set up/maintain an account with a bank or financial institution in Vietnam.	

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		• In other countries around the world, such as Australia, USA, Singapore, Japan and others, regulators also do not require payment service providers to do screening for domestic transactions in the local currency. 2. **Guidelines on alias screening for blacklisted entities and individuals in accordance with AML Law No. 07/2012/QH13** We understand that this screening requirement only applies to the full name (family name and first name) of blacklisted individuals, and not aliases, especially aliases that have very few characters in them, or aliases that contain numeric characters. These aliases may be used only to provide more supporting information where a scan or screening is needed. This is also an international best practice applied in advanced nations, such as USA. US laws also do not have specific rules on screening weak aliases, but leave it to financial institutions to have more leeway in which specific aliases to screen and to what extent, taking into consideration their own risk appetite and size of business. **1. Our suggestion:** To make sure that SBV rules remain in line with payment service reality in the banking system at present, and guarantee implementability and compliance in the industry, we suggest that: - SBV allow banks/payment service providers to screen only **domestic fund transfers in VND executed over the bank's counter**, because in an account-based fund transfer, both the beneficiary and transferor have been screened by the account opening bank.	

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		- SBV issue guidelines on how commercial banks should deal with false alarms, or allow banks to have autonomy in setting their own screening thresholds/logic that fit their risk profile, size and nature of business. 2. We suggest that the AML Dept. and SBV consider and confirm that our understanding above is correct, or give specific guidance allowing banks autonomy in relation to alias screening depending on each bank's size and nature of business.	
24.	**Recommended change to how to classify "customer information" as state secrets** Decree 117/2018/NĐ-CP on privacy, storage and disclosure of information relating to customers' deposits and accounts, replacing Decree 70 Decision 45/2007/QĐ-NHNN Article 14, CI Law	According to SBV's disclosure rules below: disclosure of customer information in line with the Credit Institutions Law, except the following: Information classified as State secrets, information disclosed to the State Bank in line with the State Bank Law and CI Law, information disclosed for anti-money laundering and counter-terrorism purposes in line with existing laws on anti-money laundering and anti-terrorism. Privacy and disclosure of such information is subject to the provisions of Ordinance 30/2000/PL-UBTVQH10, Dec. 28, 2000, on protecting State secrets, and Decree 33/2002/NĐ-CP, March 28, 2002, providing detailed implementing guidance for the Ordinance on protecting State secrets. ***"1. Scope:*** *Article 14.3, CI Law of 2010, revised and updated in 2017 (CI Law), establishes that foreign credit institutions and bank branches must not disclose information relating to customer accounts, deposited money, deposited properties and transactions at such foreign credit institutions and bank branches to other entities and individuals, unless so requested by a competent authority in*	**Further actions required**

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		accordance with applicable laws, or with the subject customer's consent. Along this line, SBV has put in place a Decree that outlines only the scope of customer information involved, privacy and disclosure of customer information (authority, procedures and steps) for application by foreign CIs and bank branches, competent authorities, other relevant entities and individuals, safeguarding to legitimate rights and interests of the customers and foreign CIs and bank branches, and not applicable to the following: Information classified as State secrets, information disclosed to the State Bank in line with the State Bank Law and CI Law, information disclosed for anti-money laundering and counter-terrorism purposes in line with existing laws on anti-money laundering and counter-terrorism. Privacy and disclosure of such information is subject to the provisions of Ordinance 30/2000/PL-UBTVQH10, Dec. 28, 2000, on protecting State secrets, and Decree 33/2002/NĐ-CP, March 28, 2002, providing detailed implementing guidance for the Ordinance on protecting State secrets." We suggest that SBV provide further guidance on whether the aforementioned information is considered as official legal opinion to form such above conclusions, or relevant Decisions and legislation still need modification, especially Decisions 45 and 24 of SBV, and Decision 151/2003/QĐ-BCA, Mar. 11, 2003, of the Ministry of Public Security. BWG will send a letter to the Ministry of Public Security asking to remove customer information from the State secret list in association with the amendment of Decision 151, and SBV may revise Decisions 24 and 45 accordingly.	
III – ISSUES THAT HAVE BEEN SOLVED			

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
25.	**Circular 18/2018/TT-NHNN** **Article 12.2b. Human resource arrangements**	"2. Management of Level 2 information systems and above shall be carried out as follows: b) Establish or appoint a department to manage and operate the center for cyber information security operation meeting requirements specified in Article 46 herein (not applicable to branches of foreign banks, intermediary payment service providers and non-banking credit institutions); We suggest that SBV elaborate on whether it is obligatory for this dedicated function to be based in Vietnam or another country, following the parent bank's concentrated corporate model.	**Problem solved**
26.	**OTP application for every single transaction / a batch payment instruction** Decision 630/QĐ-NHNN Attachment 02: Solutions for online transactions … While executing an online payment transaction, the online banking system generates a transactional code for the customer	BWG would appreciate if SBV answers our questions below. - For a batch payment instruction (the customer sends only one payment instruction through the Internet banking system, which is comprised of multiple single payment transactions, for example, salary payment for the company's employees or many vendors, and so on), does each of these single transactions in the batch instruction need to go through the verifying steps as per Decision 630? - When adopting batch approval for single payment instructions (the customer combines many single payment instructions and gives only one approval), does each single payment instruction in this batch approval approach need to go through the verifying steps as per Decision 630? Most banks now can only do one-time verification for a batch payment order/batch approval. Verification of every single transaction/single payment instruction will cause technical challenges for banks in applying OTP for every single	**Problem solved**

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
	The customer enters the transactional code in Soft OTP to allow the software to generate an OTP code When that is done, the customer enters the OTP code on the online payment interface to complete the payment transaction.	transaction/single payment instruction. Furthermore, this practice is not consistent with what banks around the world are doing. We hope that SBV answers our questions above. Also, we want to recommend the one-time verification option for a batch payment order/batch approval.	
27.	**Documentation required from the customer for debit card reissuance** Circular 26/2017/TT-NHNN revising and updating Circular 19/2016/TT-NHNN, on bank card operations	1. In practice, most non-nationals who first came to Vietnam have access only to a visa/non-resident card with a 12-month validity periods, and with this period, they have met the requirements for a resident person as per the current foreign exchange control regulations. When these customers apply for a bankcard (mostly debit cards), their resident period cannot be a full 12 months. Circular 26 does not specifically establish that a non-national's resident period to have access to a local bankcard is a remaining 12 months dating from the card opening date. We therefore suggest that SBV consider and confirm our understanding above in relation to bankcard issuance to non-nationals that banks may rely on the customer's allowed resident period of 12 months or longer as specified on their visa/non-resident card/resident card. In case the remaining resident period on the visa/non-resident card/resident card is less than 12 months, the customer will need to furnish other documents (i.e. work permit, labor contract, personnel certification, and so on) to allow verification of the resident period. This will help simplify the bank	**Problem solved**

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		procedures that customers must follow, and encourage cashless payments. We suggest that SBV consider and confirm that this practice is acceptable to help simplify bank procedures for customers. 2. In the event of card reissuance for a non-national when the original card is lost, faked or damaged, which is a "force majeure" case, as the customer has previously qualified for applicable card issue requirements, we suggest not requiring customers to start over with the paperwork for resident period verification. The bank will in this case be responsible for assessment and control of card reissuance to these customers.	
28.	**Requiring merchants to set up a transactional account with an acquirer to receive card-related payments** Circular 26/2017/TT-NHNN revising and updating Circular 19/2016/TT-NHNN, on bank card operations	Circular 26/2017/TT-NHNN adds a paragraph e) to Article 22.3, Circular 19/2016/TT-NHNN, requiring merchants to maintain a current account with the acquirer to be able to receive card-based payments. Before the release of Circular 26/2017/TT-NHNN, merchants only need to sign a card-based payment agreement with the acquiring institution, and can ask the acquirer to transfer proceeds from card-based services to a merchant's transactional account maintained at any bank that offers payment services in Vietnam. As far as we are concerned, this new requirement may have the following potential impacts: (i) It may undermine the expansion and access to cashless services by merchants; (ii) It may impede the ability to connect and make full use of available strengths among acquiring banks and banks do not yet	**Problem solved**

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		offer card acceptance services, but have a large corporate customer base that has demand for card payment acceptance services, in order to jointly push cashless payment, enhance banking service quality, and facilitate customers' business. (iii) Setting a new account not only results in additional cost burden for customers to maintain the new account at the acquirer, but may have impact on the customer's ability to effective maintain cash management and risk management. We suggest that SBV consider removal of this requirement and allow merchants to freely choose any bank to open a transactional account to receive reimbursement from the acquiring institution, which will also help drive cashless payment, strengthen partnership and resource pooling among banks, and meet customers' cash flow management needs (especially FDI companies).	

TABLE 2. ISSUES THAT REQUIRE COORDINATION WITH OTHER RELEVANT MINISTRIES/LINE AGENCIES

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
29.	**Simplification of supporting documents in FX transactions**	**At the May 2018 technical meeting**, SBV has duly taken notes of BWG's inputs and confirmed that current FX rules were not specific on the extent of supporting documents verification. BWG has been working with MOJ and courts to clarify the responsibilities of banks and related parties. BWG has sent a letter requesting for a meeting with the Ministry of Justice. In return, the Ministry of Justice gave a written response whereby they mentioned that this is an issue within the SBV's jurisdiction. SBV has been getting involved as requested by the Ministry of Planning and Investment to determine the nature of this activity, in order to identify the authority and responsibilities of relevant ministries and line agencies. BWG was requested to continue ongoing cooperation, and provide update information for the ministries/line agencies to be better informed to come up with solutions to this issue.	**Further coordination required** BWG is working closely with VNBA, and encourages use of this List as the Ministry does with standard baseline in the industry. BWG will further work with the Court.
30.	**Cash management products**	In respect of the issue of cash pooling among subsidiaries of a group of companies, on Apr. 10, 2018, the Office of Government sent Letter 976/VPVP-KTTH, regarding audit findings for FLC Faros Construction JS Co. to the Ministry of Finance and Ministry of Planning and Investment, in which the Prime Minister gave his directive comments: ***"The Ministry of Planning and Investment, as a lead agency, shall collaborate with the Ministry of Justice, Ministry of Finance and SBV to look into the comments and recommendations of MOF in Official letter 151/BTC-TTr, and take initiatives in recommending changes and updates to existing laws and regulations relating to investment trust, business***	**Further coordination required** BWG will continue working with MPI, MOF, MOJ and SBV to define relevant attributions at the later November 2018 meeting. **Update:** At the inter-ministerial meeting, relevant ministries/line agencies recognized the issue and agreed to cooperate with BWG in the near future.

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		***cooperation contracts**, stock swap between non-public joint-stock companies ...".* This means that MPI has been appointed by the Prime Minister as a lead agency, to work with other relevant agencies (including SBV) to finalize the legal framework governing investment trust and business cooperation contracts of entities and individuals that are not a credit institution.	
31.	**Dual authentication on Host-to-Host and e-Portal** Circular 23/32 on opening and using accounts; Circular 46/2014/TT-NHNN, on non-cash payment; Accounting Law Decision 1789 on bank accounting documentation regime	**At the May 2018 technical meeting, SBV suggested that BWG work with the Ministry of Finance on the Accounting Law and accounting documents.** BWG has hold a meeting with MOF and SBV in July 2018. In this meeting, SBV and MOF raised their views: The Accounting Law and current relevant legislation have introduced general rules, some of them are for paper-based transactions and inconsistent/inappropriate for a digital environment, thus may need further review and improvement. - The Ministry of Finance duly took notes of the issues raised by BWG and would continue work with BWG to find the solution. - Things that cannot not be reflected in a digital environment: BWG and relevant ministries to jointly work and suggest the revision of regulations on electronic transactions (Decrees/E-Transaction Law), as existing rules still require presentation of data on paper-based documents.	**Further coordination required**
32.	**Amount in words on a payment order**	**At the May 2018 technical meeting, SBV suggested that BWG work with the Ministry of Finance on the Accounting Law and accounting documents.**	**Further coordination required**

No.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
	Circular 46/2014/TT-NHNN, guiding on non-cash payment services Decision 1789 on bank accounting documentation regime.	BWG has hold a meeting with MOF and SBV in July 2018. In this meeting, SBV and MOF raised their views: The Accounting Law and current relevant legislation have introduced general rules, some of them are for paper-based transactions and inconsistent/inappropriate for a digital environment, thus may need further review and improvement. - The Ministry of Finance duly took notes of the issues raised by BWG and would continue work with BWG to find the solution. - Things that cannot not be reflected in a digital environment: BWG and relevant ministries to jointly work and suggest the revision of regulations on electronic transactions (Decrees/E-Transaction Law), as existing rules still require presentation of data on paper-based documents.	
33.	**Legal entity classification in account opening and use** Circular 23/32, on opening and using accounts, and Circular 02, revising Circular 32	**At the May 2018 technical meeting, SBV suggested that BWG work with the Ministry of Justice on the Civil Code given the fact that Circular 32 draws from the Civil Code to shape its provisions.** BWG has sent a meeting request with the Ministry of Justice. In return, the Ministry of Justice gave a written response whereby they mentioned that this is an issue within the SBV's jurisdiction. VBF has called for comments from relevant members (working groups, chambers of commerce, among others) and submitted to SBV.	**Further coordination required**