

BANKING WORKING GROUP – POSITION PAPER

*Prepared by
Banking Working Group
Vietnam Business Forum*

MACRO ISSUES**1. Comments on Macroeconomic Issues**

According to data from the General Statistics Office of Vietnam, Vietnam's GDP over the first 9 months of 2016 is estimated to have gone up 5,93% yoy, continues a growth trend that the following quarter is higher than the previous one (quarter I increased 5.48%, quarter II increased 5.78%, and quarter III is estimated at 6.4%). This trend shows that Vietnam's economy has overcome the challenging period.

On the other hand, the Vietnam Manufacturing PMI increased from 52.2 points in the previous month to 52.9 points in September and this is the highest level over the past year and a half. The number of new orders increased for the tenth consecutive month since December 2015, and the growth rate in September is faster than in August. This figure shows that an improvement in manufacturing activity could be maintained in the rest of 2016. Lingering El Niño effects will likely continue to weigh on agricultural output, but we expect solid manufacturing and service sector output to lift GDP in the remaining part of the year.

FDI remains one of the key drivers for Vietnam's growth. Given the political stability, cheap labour cost, stable macro environment and several bilateral trade agreements which Vietnam has signed, we expect FDI continues to shift their manufacturing base from other Asian markets to Vietnam. Vietnam remains the bright spot in the region. Many FDIs look at Vietnam not only as a consumption market but also a manufacturing hub for the region. Those FDIs want to take advantage of Vietnam's trade agreements with other countries to export to those markets at lower tariff. Choosing suitable FDIs and taking into account of the environmental impact is getting more and more important for the country.

The State Bank of Vietnam ("SBV") always consistently stabilizes macroeconomic, closely monitors market developments, controls inflation through monetary, interest rates, liquidity operating policies and measures. The SBV has recently signalled the intention to focus on growth by lowering lending interest rates, issuing Circular 07 to resume foreign currency lending to exporters who need to pay for local expenses, and issuing Circular 06 to replace Circular 36 to increase RWA for loans in real estate sector step by step, and reducing ratios of using short term deposits to finance medium long term loans gradually. Those policies of the SBV will certainly help provide more stimulus to the economy and help the country realise its growth target of 6.7%. However, we would like to recommend the SBV to manage money supply with caution. There has been a large amount of credits provided to real estate and infrastructure projects for the past few years. This credit has helped revive the property market and helped many banks reduce NPL ratios. However, we suggest that banks should not be reckless in growing their loan books especially to real estate sector.

2. Risk management framework for enterprises**Proposal on how the SBV could play a role in setting up an open platform for better market transparency and benchmark fixing**

With regard to market development for FX and Interest Rate hedging instruments, BWG members often receive client enquiries on long tenor hedging tools (e.g. Interest Rate Swap, Cross Currency Swap), which is currently a challenge for commercial banks to offer to clients as there is no effective interbank market respectively.

One of the major hurdles is the lack of a short term yield curve benchmark since derivative products are not that effective on interbank market. Currently as per what we observed, VNIBOR is only contributed by local banks, and due to various reasons, it is not effectively reflecting the true market fluctuations, particularly for tenors of above 1 month.

Generally, after a reliable and transparent market benchmark is developed, commercial banks could start to develop an interbank market and thus could provide hedging instruments to corporates.

Currently, long term yield curve benchmark has been formed based on Government Bond. Besides, the SBV is re-evaluating Development Scheme of Money market in order to develop a short term yield curve benchmark. The SBV will work closely with BWG in general and a number of BWG members in particular to work on this short term yield curve. This, however, needs to go in line with all existing Law and regulations.

3. Developing Cash management products

The typical cash management products currently applied internationally include:

- **Cash sweeping and pooling** are used to help clients maximize deposit interests since bank may offer a better rate (if day-end/overnight balance is above certain level according to regulations of the bank in each period). In particular, accounts of companies in one corporation will automatically aggregate balances (from the books, book entries, which are not actually transferred) at the end of the day into a designated account to get an overall balance of all accounts. Based on that overall balance, the bank will pay interest at the equivalent rate to the prevailing regulations.
- **Inter-company lending:** At day end, account balance of the companies in one group (sub-accounts) will be automatically transferred to a master account as a channel to aggregate liquidity balance for the group. This transaction can be considered as inter-company lending.

However, in an absence of specific legal framework and guidance from the SBV on such products, banks are not able to provide cash management services to clients.

We would like to recommend that the SBV promptly consider and develop new products on cashflow management as mentioned above. BWG is willing to support by providing international best practices so that the SBV can evaluate impacts and prepare legal framework for these cash management products.

TECHNICAL ISSUES

PART A: KEY TECHNICAL ISSUES

The Banking Working Group – Vietnam Business Forum (BWG) would like to propose the following issues to the SBV:

1. Circular 36/2014/TT-NHNN, on restrictions and prudential ratios in the operation of CIs and FBBs

- Verifying information of related persons in keeping credit limits in control is crucial when calculating credit limits for a specific group of customers and related persons. Both banks and their customers, however, are facing stiff challenges in identifying and clarifying information of related persons. Thus, we recommend that SBV should give more specific guidance on related persons in alignment with prevailing international standards on how to

identify relevant parties/persons to control the credit limit extended to a single customer and related persons.

- Added to that, we also suggest that SBV remove credit card from the list of non-approval or restrictions of credit extension, since credit cards are being used as a means of payment. Banks need to be sure that the borrower (also the one with the authority to make decisions on and approve credit extension) will pay card balances ahead of maturity.

We are aware that the SBV is preparing the Scheme on restructuring of banking system 2016 – 2020. Once this scheme is approved, the SBV will consider amending a number of regulations. The SBV will then study and provide feedbacks to BWG's issues regarding Circular 36.

2. Circular 15/2015/TT-NHNN on guiding foreign exchange transactions

BWG would like to have more specific guidance from SBV on the following items:

- Converting Currency 1 (a foreign currency passively received from overseas) to Currency 2 (the foreign currency of the crediting account) in case of transferring money from abroad into Vietnam;
- Banks and customers are having difficulties in sending written confirmation in case transactions are agreed via electronic means (fax) and respectfully suggest SBV provide more specific guidance on required documents for other foreign currency purchasing transactions denominated in a foreign currency to transfer money abroad.
- Using of swaps to adjust the signed forward contracts;
- Additionally, we propose applying a lead time to release foreign currency to customers traveling/having business trips overseas of five days prior to departure instead of two days as regulated in the Circular.

Circular 15 is considered to aim at strictly managing the purchase and sale of foreign currency, and requiring documents in order to purchase foreign currency, avoiding speculation, hoarding, particularly in situations of large market fluctuation, which causes huge pressure on the supply and demand of foreign currency and exchange rates. However, these recommendations are practical and do not affect the goal of managing foreign exchange of SBV. SBV noted these recommendations for further consideration in the right time.

PART B: REVISITING PENDING ISSUES

These issues were discussed several times by SBV and the Group and SBV has noted to consider further study in the future along with the process of finalizing the relevant legal framework.

1. Circular 07/2015/TT-NHNN on bank guarantee

We recommend that SBV allow the exclusion of the guarantees which are issued on the basis of a counter guarantee issued by foreign banks overseas out of the credit limit to a single customer to be in line with international practices.

2. Circular 23/2014/TT-NHNN guiding the establishment and the use of a payment account in organization providing payment services

We hope that SBV considers accepting a more flexible VND account structure that allows foreign investors to use multiple accounts simultaneously at a same custodian bank, and making procedures to open an account more simple for foreign investors.

As discussed in the Banking working group report for 2015, we hope that SBV considers simplifying applicable requirements for foreign investors to allow consistent application of documentary requirements for foreign investors, and to make it more convenient and quicker for

foreign investors to make an entry to the local stock market, to be specific: (1) removing requirements on presentation of personal ID or passport for a registered agent or proxy of the account holder; (2) removal of the need to translate into Vietnamese any documents in English with public notary authentication; (3) removal of the requirement for notarized translation for other documents in English; and (4) removal of the requirements relating to powers of attorney, sample signature and copy of personal ID or passport of an assignee in case a customer uses SWIFT messages to send orders and instructions to a custodian bank in Vietnam.

3. Recommendation on adding banking products to the Program of amending and issuing legal documents of SBV in the future

Agent banking

Article 106, CI Law, specifies that commercial banks may act as agents in areas related to banking activities, insurance brokerage and wealth management in line with the State Bank's rulings. We suggest that SBV issue as soon as possible a Circular guiding banking agent activities. The Banking working group stands ready to share available information on prevailing international practices and cooperate with SBV.

Draft Circular on factoring activities of credit institutions, branches of foreign banks

CI Law and Circular 04/2013/TT-NHNN, dated Mar. 1, 2013, only recognize discounting and factoring activities with a reserved recourse right. However, the recourse request to the exporter (in case of having a reserved recourse right is a must) will not be able to protect Vietnamese exporters, while there is no basis to recourse the buyers in case they default or are behind payment. We suggest that SBV release regulations on discounting and factoring which allows recourse claims on both buyer and seller. In other words, we propose that SBV allows non-recourse discounting and factoring in line with prevailing international practices.

New draft Circular regulating lending activities

BWG has made its comments on this draft Circular. The draft Circular allows using loans to repay debts bought back from lending institutions and foreign bank branches, and/or other credit institutions and foreign bank branches, providing that the bank maintains a well-documented procedure to prove that such loan is not granted to cover up bad debts. In practice, many newly formed companies in Vietnam have been acquiring loans in foreign currencies from overseas through their parent companies' relationships. But, given that they earn their revenue in Vietnamese dong, and when their financial health and business performance become more solid, they may want to take loans in Vietnamese dong to repay the foreign exchange facilities. Thus, we recommend that SBV include this part in the upcoming Circular on lending, in lieu of Decision 1627, to better support customers' business operations if the purpose of borrowing is not to cover up bad debts. We also suggest that SBV allow roll-over loans to ensure transparency in reporting and cash management, rather than banks having to set their rates again.

PART C: SOME OTHER ISSUES REQUIRING COORDINATION OF MULTIPLE MINISTRIES TO RESOLVE

These issues have been noted by SBV and the Group but cannot resolve yet due to the fact that these are big issues, requiring a lot of time to study, amend the laws because it involves many parties

1. Simplifying paperwork and supporting documents for foreign exchange transactions

Pursuant to the Ordinance on Foreign Exchange and relevant guidelines, credit institutions and other organizations authorised to engage in foreign exchange operations when conducting foreign exchange transactions with customers, are responsible for reviewing, verifying, keeping

the papers and supporting documents related to the actual transactions to ensure the bank's foreign exchange services provision to customer in compliance with laws and regulations. In addition, in accordance with regulations on non-cash payment, organizations and individuals using payment services bear legal responsibility for the accuracy and authentication of their provided information and supporting documents.

During the implementation process, we found some difficulties as follows:

- Customers also find it difficult to provide credit institutions/organizations providing payment services with sufficient documentation, especially in case of the documents provided by third parties (including government agencies such customs and taxation agents).
- Additional costs incurred and born by credit institutions/organizations providing payment services and customers, to meet the requirement on documents. This is a loss to the economy.

Thus, we would like to have the following recommendations:

- Governing state agencies should share databases to support credit institutions / organizations providing payment services on information verification (e.g. customs declarations verification system), instead of requesting customers to provide. However, we do note that this datebases sharing requires coordination of many agencies, and is not just the responsibility of SBV.
- Customer should be responsible for the accuracy and authentication of their provided information and supporting documents. The SBV is respectfully requested to provide specific guidance on required supporting documents.

In the near future, SBV said it will cooperate with customs authorities to review the required documents for foreign exchange transactions. The WG will continue to work with SBV to clarify the difficulties in requesting to provide and identifying those documents on the practical basis with caution to avoid distortion and abuse on the market to transfer money abroad illegally.

2. Circular 30/2014/TT-NHNN on entrustment lending

SBV has released various official guidance to the Banking working group on the implementation of the Circular. Several concerns, however, remain in relation to the businesses (both Vietnamese and foreign invested firms) entrusting their idle funds to banks which have a funtion to offer entrustment lending. In a feedback from SBV, trustee must determine whether the entrustment is a business operation of the entrusting party. Entrustment activities are considered as business operations when done continuingly and/or for profit making purposes. Nevertheless, for this to be translated into real life, we suggest that specific definitions of the terms “continuingly” and “for profit making purposes” be provided.

Regarding this issue, we are aware that SBV has noted and issued Official Letter No. 6107/NHNN-PC dated August 12th, 2016 to Ministry of Planning and Investment on reviewing laws on investment and business, including proposal to add guidance on how to define the terms “continuingly” and “for profit making purposes” in Item 16, Article 4, Law on Enterprises for consistent implementation. We suggest SBV to have further coordination with relevant agencies, especially MPI, MOJ, etc, and provide guidance for banks once exact definitions are given.

CONCLUSION

Above are a few technical concerns that the Banking working group would like to put forward based on our experience from the field and current international practices. We hope to receive more detailed guidance from SBV as well as its advice on how to tackle the challenges faced by banks as they apply relevant regulations. The Banking working group is more than happy to cooperate with SBV and other relevant agencies in fine-tuning the regulatory framework in alignment with common international practices and local approaches.