Vietnam

Information Gathering and Survey Regarding Non-Performing Loans and Corporate Restructuring System

Final Report

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To Japan International Cooperation Agency

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This final report describes the results of the fundamental survey on laws relating to NPL disposal and SOE reform, and recommendations on policies which are favorable for the promotion of NPL disposal and SOE reform regarding technical cooperation projects of the SOE reform and the NPL disposal of the banking sector in Vietnam, which JICA will implement at the request of the Government of Vietnam. This final report was produced by Nishimura & Asahi LPC based on a commission by JICA.

The views expressed in this final report are those of the survey team only, and do not represent the views or policies of JICA and Nishimura & Asahi LPC.

Moreover, this final report presupposes the laws, and political and social situations at the time of producing this final report. Therefore, unless specifically described herein, the laws described in this final report are laws which are effective at the time of producing this final report, not amended laws which are yet to become effective, nor laws that will be amended in the future.

List of Abbreviations

Abbreviation	Full Form
ABA	Asian Bankers Association
ASEAN	Association of Southeast Asian Nations
CIC	Credit Information Center
DATC	Debt Asset Trading Corporation
DES	Debt Equity Swap
DICJ	Deposit Insurance Corporation of Japan
DIV	Deposit Insurance of Vietnam
EG	Economic Group
GC	General Corporation
GDP	Gross Domestic Product
IMF	International Monetary Fund
IRCJ	Industrial Revitalization Corporation of Japan
JICA	Japan International Cooperation Agency
LUR	Land Use Right
LOB	Law on Bankruptcy
MOF	Ministry of Finance
MOJ	Ministry of Justice
NPL	Non Performing Loan
NRAST	National Registration Agency for Secured Transaction
RCC	The Resolution and Collection Corporation
SBV	State Bank of Vietnam
SCIC	State Capital Investment Corporation
SOE	State-Owned Enterprise
VAMC	Vietnam Asset Management Company

Definitions

In this report, regardless of the definition of Vietnamese laws, domestic enterprises established in Vietnam that have not been the subject of investment from entities outside of Vietnam are defined "domestic private enterprises," while domestic enterprises established in Vietnam that have been the subject of investment from entities outside of Vietnam are defined "foreign-invested private enterprises," and legal persons or entities of any form established abroad are defined "offshore entities." Persons or enterprises

who invest from outside of Vietnam, into Vietnam, are defined “foreign investors,” and “foreign investors” include “Foreign-invested private enterprises” and “offshore entities.”

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Part I Background

I. Background of the Report

The Government of Vietnam has moved to "socialist-oriented market economy" from a planned economy since launched "Đổi Mới" policy launched in 1986. Vietnam has achieved more than 6% of high growth rate on average during the last decade, and the continuous economic growth is expected.

On the other hand, there are structural issues remained such as management of state-owned enterprises (SOEs), a weak financial system, and less efficient public investment. In 2011, the Government of Vietnam decided to proceed with drastic reforms on these structural issues by 2015.

SOEs account for approximately 40% of GDP, 20% of employment, 30% of revenue, and 20% of balance of credit to the domestic economy. Also some industries have continuously been dominated by a monopoly or an oligopoly. It seems that SOEs have certain advantages in their financing, for their assets such as land usage, business opportunities, and become tools used for the management of macroeconomic policy.

From the last half of 1990's, many small and medium-sized SOEs have been equitized and then privatized, while some of the SOEs in industries which are important from national strategical point of view (such as electric energy, coal mining, textile, shipbuilding, petroleum, rubber, communication, publication, chemistry, etc.) have been grouped into GCs, which have been subsequently reorganized into conglomerate EGs.

As the Government of Vietnam embarked fiscal stimulus package and monetary easing in response to the global economic crisis starting in 2008, these GCs and EGs accelerated their management of various Non-core Businesses, such as real estate development and stock investments. In addition to the existing inefficient management of their core businesses, the sharp decline of the real estate market and stock market after 2009, and the sharp fiscal and monetary tightening in 2011 to curb high inflation, causes some GCs and EGs to decline their business performance and to increase large amount of debts accordingly. This sharp decline of SOEs' business performance has resulted in a serious NPL problem in the banking sector.

In addition to the issues of SOEs, the monetary easing from 2007 to 2011 rapidly expanded the scale of assets in the banking sector as inflation accelerated at the same time. In 2011, the Government of Vietnam tightened money supply to curb inflation, and this sudden tightening rendered many enterprises insolvent. In 2012, the NPL ratio rapidly increased, and SBV published that the NPL ratio at September 2012 was 8.82 %, which exceeded the one of 4.47% which was self-assessed by the financial institutions. In February 2013, SBV published that the NPL ratio decreased to 6%.

In response to the declining business performance of SOEs and the seriousness of NPL problem, the Government of Vietnam published that SOE reform and banking sector reform were the most important issues to be solved by 2015, and released the following comprehensive reform plans, and started to implement it.

[SOE reform]

"Decision on approval of scheme restructuring SOEs, focusing on EGs and state-owned corporations period 2011 - 2015" (Decision 929/QD-TTg) was released in July 2012, and the following reforms have started. MOF is in charge of adjustment of ministries and other governmental organizations.

- SOEs are classified into 4 groups based on the ownership percentage that held by the government ((i) 100%, (ii) less than 100% but not less than 75%, (iii) less than 75% but not less than 65%, and (iv) less than 65% but not less than 50%).
- Acceleration of privatization of SOEs (except SOEs which are 100% owned)
- Suspension of investments into banking, finance, securities, real estate, insurance "Non-core Businesses") and liquidation of such non-core investments

[Banking sector reform]

"Decision on approval of the project on restructuring the system of credit institutions during 2011 to 2015" (Decision 254/2012/QD-TTg) was released in March 2012 announcing that the NPL ratio should be decreased to 3% by 2015. SBV is mainly in charge of the reform with the following measures.

- Amend and supplement regulations on loan classification

- Increase of loss reserves
- Disposal of NPLs by of security interests
- Establishment of an asset management company

In addition, the Government of Vietnam issued its Decree on the establishment, organization and operation of Vietnam Asset Management Corporation (Decree 53/2013/ND-CP) and Decision on framework of NPL disposal (Decision 843/2013/QD-TTg) in May and June, 2013 and intends to accelerate reforms of SOEs and the banking sector.

In order to support endeavors for the reform by the Government of Vietnam, JICA supports the reform of bank sectors and SOEs through co-financing with the World Bank under the program "Economic Management and Competitiveness Credit"(EMCC) starting from 2012. In addition to the program, the Government of Vietnam requested to the Government of Japan for two technical cooperation projects in 2012. The one is regarding disposal of SOEs' debt and business revitalization of SOEs, and the other is regarding resolving NPL problem. And the Government of Japan adopted the request in March 2013. These two projects are technical cooperation which enhances effectiveness of the reforms which EMCC supports.

II. Purpose of the Report

In the investigation conducted for this report (the "Investigation"), survey team gathered information and surveyed the current status and actual conditions of the implementation of the following points, in order to examine the feasibility of providing secondary and tertiary "Economic Management and Competitiveness Credit"(EMCC), which are described at Part I, I. above, to discuss the possibility of providing new international loans in addition to the loans described above, and to consider the contents of the technical cooperation projects in detail:

(i) Legal framework relating to restructuring enterprises (including both SOEs and private companies)
(ii) Legal framework relating to NPL disposal in the banking sector
(iii) Legal framework relating to bank resolution and the financial safety net

The scope more specifically includes:

a. Framework of insolvency law regarding both SOEs and private companies
b. Legal framework of out-of-court workouts and alternative dispute resolution
c. Legal framework of reorganization (e.g., corporate mergers and splits) of SOEs and private companies
d. Legal framework of security interests
e. Framework of LURs
f. Framework of governmental organizations (VAMC, DATC and SCIC) which purchase and dispose NPLs and invest in SOEs
g. Legal framework of insolvency of credit institutions and deposit insurance
h. Legal framework of disclosure and governance of SOEs
i. Other related matters

In addition, this report clarifies the items (issues) of the legal frameworks and actual conditions of the implementation identified by survey team's investigation, which should be amended or improved in order to proceed with NPLs disposal and SOEs reform in Vietnam.

In the past, Japan also had an NPL problem. The NPL problem became a serious issue and led to a decade of economic decline from the first half of the 1990's to the first half of the 2000's with several financial crises. This is sometimes referred to as "the lost decade" (please refer to Exhibit 1 for detailed information). This failure in Japan was caused by the lack of awareness about the seriousness of the NPL problem and delays to take actions against it. After many trials and errors over 10 years, Japan reformed and developed various systems for NPL disposal, and has finally resolved the problem.

Considering the current stage of industrialization in Vietnam and the regional economic integration of ASEAN occurring from 2015, the Vietnamese economy will suffer serious damage if the NPL disposal and SOE reform are delayed. In order to assist with Vietnam's earnest efforts for NPL disposal and SOE reform, survey team clarifies issues with the current status of the implementation identified by survey

team's investigations, as well as items which should be amended or improved. Survey team also provides its recommendations regarding measures to resolve the issues for the Government of Vietnam to promote NPL disposal and SOE reform, based on survey team's reflection of the lost decade and survey team's knowledge and experiences gained from it. Provided, however, please note that because most of the subjects of survey team's investigation are on the legal frameworks, survey team's recommendations are focused on the legal frameworks. In addition, survey team's recommendations are preliminary, and assumed to require polishing through consultations with the Government of Vietnam.

Part II Framework of Legal Systems

In this part, survey team will describe the result of survey regarding the outline of legal systems about NPLs and restructuring of SOEs and actual state of these legal systems.

I. Framework of LURs

1. Basic principle

- In Vietnam, ownership of all land lies with the entire people, with the State acting as the representative owner. Thus, no enterprises, including domestic private enterprises, SOEs, and foreign-invested private enterprises, can be owners of land, and the subject of investment and use of real property pertaining to land must be by way of an LUR. The basic principle of an LUR is provided in the Law on Land 2013 (Law 45/2013/QH13) (the "amended Law on Land"), taking effect as from July 1, 2014.
- As of November 29, 2013, the National Assembly of Vietnam passed the amended Law on Land, which will come into force from July 1, 2014.

2. Classification of an LUR

- With regard to the relationship between the State and land users, LURs are classified into two types: (i) Land allocations from the State ("Land Allocations"), including (a) a Land Allocation with land use fees; and (b) a Land Allocation without land use fees, and (ii) a Land Lease from the State (a "Land Lease"), including (a) a Land Lease with annual rental; (b) a Land Lease with lump-sum rental; (c) a Sub-lease ("Land Sub-Lease") in industrial zones, high-tech zones, and economic zones ("Industrial Zones") from developers of Industrial Zones[1].

3. How to obtain an LUR

- Both domestic private enterprises and SOEs may obtain LURs, and mainly do so from (i) an allocation of an LUR from the State, (ii) leasing land from the State, (iii) receiving a transfer of an LUR (a "Land Transfer Receipt") from a domestic private enterprise or a foreign-invested private enterprise, (iv) leasing or subleasing land from domestic private enterprises, including leasing or subleasing land from developers of Industrial Zones who are domestic private enterprises, and (v) leasing and subleasing land from developers of Industrial Zones who are foreign-invested private enterprises; on the other hand, foreign-invested private enterprises may obtain an LUR, and mainly do so from (vi) leasing land from the State, (vii) leasing or subleasing land from domestic private enterprises, which should mainly include leasing or sub-leasing land from developers of Industrial Zones, being domestic private enterprises, (viii) leasing or subleasing land from developers of Industrial Zones being foreign-invested private enterprises, (ix) receiving in-kind contribution of an LUR by an existing eligible land user, commonly in the case of forming a joint venture with a domestic private enterprise or a SOE, and (x) an allocation of an LUR from the State merely for the purpose of implementing a project for the development of residential housing for sales or "sales in combination with lease".
- Although official statistics are not available, to the extent of experience of the survey team, the methods most preferable for domestic private enterprises so far are: (i) Land Allocation with land use fees, (ii) Land Transfer Receipts, and (iii) Land Leases with annual rental. This is because methods (i) and (ii) enable the land users to enjoy more economic rights (i.e. the right to assign or the right to mortgage) than other methods, while method (iii) is commonly applied to domestic private enterprises constructing and

[1] Although land users lease/sublease LURs in Industrial Zones from developers of the Industrial Zones, rather than from the State, the LUR of land users in such cases will still be recognized by the State such that the State issues the certificate of LUR to the land user. As such, the survey team deem the case of LURs in Industrial Zones leased or subleased from developers of the Industrial Zones to be a type of Land Lease.

investing in office buildings, serviced apartments, commercial trading centers, and/or business facilities where the rental is comparatively expensive, or the State will reserve the LUR type of Land Lease with annual rental. Land Allocation without land use fees is only applicable to land used for non-profit purposes.

4. Who determines LUR allocations/leases and prices

- Land Allocation is conducted by the people's committees of provinces and municipal cities where the land is located ("Competent People's Committees") upon the issuance of an administrative decision. Leasing land from the State is conducted by the Competent People's Committees on the basis of an administrative decision and an LUR lease contract between the State and the land user. A Land Sub-Lease is based on a lease or sub-lease agreement between the land user and a developer of Industrial Zones.
- Regarding how an LUR price is decided, in the cases of (i) and (x) allocation of an LUR from the State, (ii) leasing land from the State (by domestic private enterprises), and (vi) leasing land from the State (by foreign private enterprises), the particular price of an LUR is decided by the Competent People's Committees. On the other hand, in the cases of (iii) a Land Transfer Receipt; (iv), (v), (vii) and (viii) leasing or sub-leasing land from the developer of an Industrial Zone; and (ix) receiving an in-kind contribution of an LUR from an existing eligible land user, the price of the LUR can in principle be decided in accordance with the contract which the parties enter into, though the price of an LUR for tax purposes or other State administration purposes may still be relied upon for land use fees/rental fees which are decided by the Competent People's Committee.

5. How an LUR is treated on a balance sheet

- An LUR is recorded as an "intangible fixed asset" on the balance sheet in the cases of (i) a Land Allocation with land use fees, (ii) a Land Transfer Receipt, (iii) a Land Lease from before July 1, 2004, for which the rent was paid on a one-off basis for the entire term of the lease, or paid in advance for many years, with the remaining land lease term paid for at least five years, and granted with an LUR certificate. In these cases, the primary price of the intangible fixed asset shall be the total amount paid for the legal LUR, plus costs for site clearance, ground leveling, registration fees (excluding costs for building works on land), or the value of the LUR received for capital contribution. An LUR is not recorded as an intangible fixed asset on the balance sheet in the cases of (i) a Land Allocation without land use fees, (ii) a Land Lease with a one-off payment of rent for the entire term of the lease (the rent shall be gradually apportioned as a business cost in proportion to the number of lease years), (iii) a Land Lease with an annual payment of rent (rent shall be apportioned as a business cost in the relevant period).
- An LUR obtained via either a Land Allocation with land use fees, or a Land Transfer Receipt used by domestic private enterprises for a business purpose on a long term basis, is usually not subject to depreciation.

6. Duration of an LUR

- The duration of an LUR, including a Land Allocation and Land Lease, is considered and decided on the basis of the investment project or the application for land allocation or land lease, but will not exceed 70 years (normally will not exceed 50 years).

7. Registration of an LUR

- In the cases where (i) the State allocates, or (ii) the State leases land to a land user for use for the first time, or (iii) the land user leases or sub-leases a land lot in an Industrial Zone from a developer, the land user must perform registration procedures to obtain a new LUR certificate. Also, when a change in an LUR occurs due to, among other cases, (i) assignment of an LUR, (ii) contribution of capital using an LUR to form a new enterprise, (iii) assignment of investment projects using land, (iv) conversion from a Land Lease with

annual rental into a Land Lease with lump-sum rental, or in cases of execution of contracts related to LURs (and/or assets attached to the land), such as (a) a mortgage contract or a capital contribution contract, and (b) an assignment of assets attached to the land, procedures which record changes to the relevant LUR certificate may be required.

- In the case of a failure to register, domestic private enterprises and/or foreign-invested private enterprises may suffer certain administrative penalties. Also, they may not be able to exercise a right to assign, lease out, sub-lease out, or mortgage using the LUR or the right to be protected by the State, when another private entity infringes upon their lawful LUR.

8. Restrictions on the transfer of an LUR

- The following major restrictions apply to transfers of LURs: (i) the mortgagee's consent must be obtained before the transfer of LURs under a mortgage; (ii) the transferees of LURs in Industrial Zones must continue to use the land in accordance with the specified purpose; (iii) the transferees of LURs for implementing investment projects must obtain prior approvals from the competent authorities for changes of land use purposes, to comply with the purposes of the investment projects, and (iv) generally, the duration of an LUR upon assignment of an LUR right applicable to land subject to a stipulated duration shall be the remaining term of the duration of the LUR prior to the assignment of the LUR.
- In the case of domestic private enterprises, and SOEs which are allocated a particular land parcel, the land use fee of which is paid by money sourced from the State budget, the rights and obligations of the relevant land user with respect to such land parcel shall be affected and limited as follows: (i) the land user does not have the right to exchange, assign, donate, or lease the LUR; to mortgage, guarantee, or contribute capital using the LUR; and (ii) such land user shall not have the right to sell assets owned by them attached to the land; or to mortgage, guarantee, or contribute capital using the assets owned by such land user attached to the land, unless those assets are not funded by the State budget.
- In cases of transfer of an LUR which is booked as a fixed asset of a SOE and is transferable, a transfer must be performed in particular cases, such as when the assets are obsolete, unnecessary, or unusable for recovering capital in a public and transparent manner to preserve capital.

II. Legal System of Security Interests in Vietnam

1. Types of Security Interests under the Civil Code (Law 33/2005/QH11)

Types of security interests stipulated in the Civil Code (Law 33/2005/QH11) are as follows:

- Mortgage
- Pledge
- Deposit
- Security Deposit/Security Collateral
- Escrow Account
- Guarantee
- Lien (A lien is not listed as a form of security to ensure the performance of a civil obligation as provided in Article 318 of the Civil Code (Law 33/2005/QH11). However, Article 416 of the Civil Code (Law 33/2005/QH11) provides a lien as a form to secure the performance of an obligation in bilateral contracts).

While there are other security interests under relevant laws other than the Civil Code (Law 33/2005/QH11), mortgage and pledge are the security interests which are most commonly used in Vietnam.

2. Mortgage

- A mortgage of property means the use by one party (the "mortgagor") of property under the ownership of the obligor as security for the performance of a civil obligation to the other party (the "mortgagee"), without transferring such property to the mortgagee. The parties may agree to deliver the mortgaged property to a third person to hold.
- A mortgage can be established on any properties that are permitted for transactions, including LURs and buildings or facilities attached thereon.
- To create a mortgage on LURs, a notarized mortgage agreement should be executed separately from the financing agreement, and the registration of such mortgage with a competent authority (the local office for the registration of LURs) is mandatory.
- To create a mortgage on movable assets, only the execution of a mortgage agreement is required, and registration with the NRAST is optional; provided, however, that the mortgage does not have any priority or enforceability effect against a third party if it is not registered.
- Only domestic financial institutions can be mortgagees of the LURs and assets attached thereto.
- A mortgage cannot be created on the LURs owned by a SOE if the source of the payment for the LURs or usage fees therefor comes from the State Budget.

3. Pledge

- A pledge of property means the delivery by one party (the "pledgor") of property under its ownership to the other party (the "pledgee"), as security for the performance of a civil obligation.
- A pledge is not commonly created on the LURs and assets attached thereto.
- To create a pledge, a pledge agreement should be executed in writing, and delivery of the pledge assets by the pledgor to the pledgee is also required. Except for certain assets, the registration of the pledge with the NRAST is optional, but the pledgee cannot claim its priority or enforceability against a third party without the registration of the pledge.

4. Characteristics of Security Interests in Vietnam

- In the case where the secured claim is transferred to a third party by a creditor who has a security interest, the security interest created to secure the transferred claim is transferred to the third party. In the case where the secured claim is transferred by a securing party to a third party as a result of a merger, corporate split, or other M&A transaction, the parties shall reach an agreement on the assumption and performance of the security interest created to secure the claim.
- Parties to security interest related transactions can create a security interest to secure unspecified claims that will accrue or be extinguished repeatedly in future. However, to create a mortgage on LURs or properties attached thereto, financial institutions practically specify the secured loan under the mortgage agreement to ensure an enforceability of the mortgage.
- While the law does not expressly regulate a floating charge, it is interpreted that a creditor can, to some extent, create a security interest on unspecified assets which accrue or are extinguished repeatedly in the future. Under a security interest agreement, it is not required to specify the assets to be mortgaged or pledged, but it is required to describe the general scope of such mortgaged or pledged assets.

5. Enforcement of a Security Interest

- The security interest holder and the debtor can agree as to how to realize the secured assets in the case of a failure by the debtor to perform its obligations, and the security interest holder can enforce its security interest in accordance with such agreement without any involvement of the court. The parties can agree that the secured assets should be sold to a third party or the security interest holder at an agreed price, or a price to be determined

by an appraiser. If the parties fail to agree upon the enforcement method or the price, the security interest holder may commence an auction procedure.

- With respect to the enforcement of the security interest on the LURs and the assets attached thereto, the security interest holder can obtain the ownership of such LURs and assets at the agreed price. However, the law does not provide the details of the procedure to obtain the LURs and other assets, and it may prevent the effective enforcement of the security interest on the LURs and other assets.
- Even if a security interest holder and a debtor execute a mortgage, pledge or other security interest agreement including an arrangement on the enforcement of such security interests, in case where the debtor breaches or disputes the agreement and refuses to cooperate with the enforcement of the security interests, the security interest holder cannot dispose of the assets (regardless of whether it is real property or movable assets) unless the security interest holder obtains a consent from the debtor again upon the enforcement of such security interests, because the enforcement authority and the auction operating organization will not enforce the security interests without a court decision for such disputes. Though it is stipulated that the security interest holder may file a petition to the Competent People's Committee and police in order to ensure the execution of the secured interests under the current legal framework of security interests, this legal framework appears not to function well.

6. Treatment of Security Interests under the Bankruptcy procedure

- If a court accepts jurisdiction over a petition to commence a bankruptcy procedure, the enforcement of a security interest is temporary suspended, unless otherwise permitted by the court. However, the definition of a security interest under the current LOB (Law 21/2004/QH11) (the "current LOB") is not clear.
- A debtor under a bankruptcy procedure is allowed to repay a due debt to a creditor who has a security interest covering the due debt, to the extent of such coverage, subject to the approval of the trustee.
- Under the current LOB, a security interest holder can receive a priority payment. However, the law does not provide the details of such priority payment to the security interest holder.
- Under the current LOB, the security interest holder has a right to make comments on the evaluation of the assets of the bankruptcy company, and other rights to claim regarding the certain procedure.

7. Private servicers for collecting loans

- An enterprise providing debt collection service shall not be permitted to engage in any other business, which may include sale and purchase of loan claims/debts[2].
- As of the beginning of 2013, it is reported in the media that there are 19 companies licensed to provide debt collection in Ho Chi Minh City. However, as reported in the media recently, it seems that the licensing authority has stopped issuing any further business registrations for applicants for this type of service.
- Decree 104/2007/ND-CP does not restrict foreign-invested private enterprise to be licensed to do debt collection business, but debt collection service is deemed to be a sensitive business which tends to have connection with anti-social organizations, so the Government of Vietnam is not be ready to open for foreign investors.

[2] Articles 4.2 and 6 of Decree 104/2007/ND-CP

III. Court-involved Bankruptcy Proceedings[3]

1. Current Status

Court-involved bankruptcy proceedings are stipulated in the current LOB. The current LOB is under a process of amendment, and the amended LOB will be submitted to the National Assembly this year. This final report is based on the contents of the third draft of the amended LOB ("Amended Draft") which are available as of today. Please note that this final report does not cover the fourth draft of the amended LOB which became public as of March 6, 2014 due to a time constraint.

2. Reasons why enterprises in Vietnam rarely follow bankruptcy proceedings

(1) Generally speaking, the Vietnamese have a negative view of bankruptcy proceedings.

(2) The bankruptcy proceedings take a long time, and are complicated.

(3) The viewpoints of petitioners:

a. Petitioners who are creditors:

- Creditors try to discover all possible methods to recover their loans (even asking for help from debt collection service companies (debt collection service companies collect debts in accordance with Decree 104/2007/ND-CP), and state authorities, including the police, or conducting separate civil lawsuits) without initiating bankruptcy proceedings, under which they may only recover their debts equally with other creditors.
- For creditors that are banks, rather than initiating bankruptcy proceedings against the subject enterprise, banks usually engage in so-called private loan rearrangements with the debtor, especially for loans of SOEs. Such loan rearrangements may be made by various methods, such as debt reduction or extension of the payment term, etc., since the chance of recovering the loan is extremely low if the bankruptcy proceedings is initiated in order to recover a loan.
- Debtors that are not SOEs often have no valuable assets, and therefore no creditors wish to participate in the bankruptcy proceedings.

b. Petitioners who are debtors and shareholders:

- The bankruptcy proceedings does not always give the debtors a chance to recover their financial situation. And the current LOB does not explicitly regulate the situation in which creditors would waive their debts in a recovery procedure.
- The management of the debtors are afraid of being subject to penalties under Article 94 of the current LOB.
- Owners or major shareholders of enterprises are usually required to provide a guaranty when those enterprises obtain loans from banks. According to Article 39.3 of the current LOB, if the principal has become insolvent, the guarantor must perform the obligation in favor of the beneficiary of the guarantee. Such regulations may discourage an owner or a shareholder from filing a petition to commence bankruptcy proceedings, although such filing may be a statutory obligation. In the case of Japan, bankruptcy law applies to individual debtors and individual debtors can be granted discharge from their debts under bankruptcy law. Therefore, it is possible that the owner or manager, who provides a guarantee for an enterprise, can file a petition to commence bankruptcy proceedings against him/her at the same time the enterprise files the

[3] The bankruptcy proceedings are comprised of two main types of procedures: one is a rehabilitation procedure, and the other is a liquidation procedure.

petition to commence bankruptcy proceedings. On this point, the bankruptcy proceeding for individual debtors is not provided in the Amended Draft because it is reported that drafters were afraid that the courts would be overloaded if the scope in which the LOB is applicable is expanded and they opined that individual debtors should not be granted discharge from debts under bankruptcy law on the ground that it is very easy for individuals to conceal their assets.

In addition, in Japan, regarding an individual guarantee provided by the owner or manager, there is a guideline that states the creditor's duties to provide an explanation about the need for the guarantee and to determine an appropriate amount for the guarantee when the guarantee contract is established. There is no such guideline in Vietnam.

c. Petitioners being employees:

- The employees need to go through complicated procedures to elect their representative for the bankruptcy proceedings.

(4) Weak enforcement for persons with obligations to file a petition to commence bankruptcy proceedings

Survey team's initial research has disclosed no cases in which the relevant administrative sanction (stipulated under Article 15.5 of the current LOB and Article 9 of Decree 10/2009/ND-CP (which has just been replaced by Article 54 of Decree 110/2013/ND-CP dated November 11, 2013)) was applied to a charge of failing to file a petition to commence bankruptcy proceedings within the statutory period.

(5) Application documents

- Regarding the application documents under Article 15.4 of the current LOB, there has not been any further official guidance from the court.
- The application documents shall strictly comply with regulations on accounting and corporate finance, so that the court can refer to them when determining if a company is insolvent; however, it is difficult and costly for insolvent enterprises to prepare them.

  Under Vietnamese law, enterprises with foreign-owned capital and credit institutions, etc. must have their annual financial statements audited by audit firms. Moreover, under the Law on Enterprises (Law 60/2005/QH11), business entities are obliged to make accurate financial statements in accordance with the Law on Accounting (Law 03/2003/QH11) and the internal inspectors have the power to check them. In addition, shareholding companies shall forward their annual financial statements already approved by the Shareholders' Meeting to the competent state agencies (regarding SOEs, please see Part III-II, II.).

3. Period

(1) According to the "Doing Business: Vietnam 2014" report of the World Bank, resolving insolvency in Vietnam takes five (5) years, on average.

(2) Possible reasons why the bankruptcy proceedings takes a long time:

- It is difficult and time-consuming to decide whether enterprises have become insolvent or not.
- The current LOB and its related regulations do not contain any detailed guidance on how to transfer from the recovery procedure to the liquidation procedure, but merely a single provision in Article 5.2 of the current LOB.
- The shortage of judges and the inexperience of judges in dealing with bankruptcy cases.

The number of judges who handle bankruptcy cases has not changed in the Amended Draft (under the Amended Draft, a bankruptcy case will be handled by one judge or three judges, where necessity dictates). According to an interview with the Supreme Court, the Court is planning to educate judges in charge of bankruptcy cases and has already issued certain internal directives to request commencement of training courses and consider sending judges to study abroad.

- The complicated and troublesome requirements concerning the documents to be submitted to file a petition to commence bankruptcy proceedings.
- The requirements provided by Article 85 of the current LOB to suspend procedures for liquidation of assets are not easily satisfied in practice (e.g., some assets cannot be sold even though the prices have been decreased many times). In the case of Japan, during the process of liquidating assets, the asset management officer can waive the debtor's rights or assets that are difficult to sell. There is no such rule in Vietnam; however, according to an interview to a court in practice, subject to legal procedures, technically "lure" creditors to receive such unsold assets so that it may proceed with the next step to declare the enterprise bankrupt.
- It is difficult to convene creditors' meetings.
  Voting by proxy at a creditors' meeting is permissible under the LOB; however, exercising voting rights in writing without attending a meeting is neither provided by law nor applied in practice
- Committee of management and liquidation of assets (the "Committee") is ineffective.

  - There are inconsistent provisions between the current LOB, Decree 67/2006/ND-CP, and Resolution 03/2005/NQ-HDTP regarding the decision of establishing the Committee and appointment of personnel to the Committee by relevant State agencies.
  - In practice, relevant State agencies do not promptly appoint their personnel to attend the Committee. The late establishment of the Committee creates favorable conditions for the subject enterprise to disperse and hide assets. In the process of bankruptcy proceedings, to prevent debtors from concealing or damaging their assets, there are some measures, such as Restricted activities (Article 31 of the current LOB), Transactions considered invalid (Article 43 of the current LOB), Inventory of assets (Article 50 of the current LOB), and Temporary emergency measures (Article 55 of the current LOB).
  - Members of the Committee come from different sides and do not have expertise in fulfilling their duties in the Committee.
  - Coordination among the Committee members, the Judge in-charge, and the Executors appears to be weak.
  - Committee members work part-time and do not have many material incentives to work (e.g., the receipt of remuneration is uncertain).

4. Number of cases

Since the effective date of the current LOB (i.e., October 15, 2004), there have been 336 petitions accepted by the court, of which 236 were approved to commence bankruptcy proceedings. Of these 236 decisions, there were 83 cases declaring bankruptcy (including 7 cases in which the courts declared bankruptcy under Article 87 of the current LOB)[4].

[4] Based on the information provided by the Report of The Supreme Court on the Implementation of the current LOB (in Vietnamese).

According to the reference material of 2008[5],

- In 2005, the entire court in Vietnam accepted 11 new bankruptcy cases and there were 14 cases in total with cases continued from 2004. The Court resolved 1 case.
- In 2006, the entire court in Vietnam accepted 40 new bankruptcy cases and there were 53 cases in total with cases continued from 2005. The Court resolved 16 cases.
- In 2007, the entire judicial system in Vietnam accepted 144 new bankruptcy cases, in which the provincial-level court accepted 120 cases and the district-level court accepted 24 cases. There were 175 cases in total with cases continued from 2006. In those cases, the Court issued a decision to commence bankruptcy proceedings for 164 cases, issued a decision not to commence bankruptcy proceedings for 10 cases, and issued a decision to return a petition for 1 case. The district-level court resolved all 24 acceptance cases.
- As of 2008, there had been only one case in which an insolvent enterprise was permitted to undergo rehabilitation procedures.

5. The bankruptcy proceedings for SOEs

(1) The general bankruptcy proceedings under the current LOB applies to SOEs, unless an SOE is classified as (a) an enterprise that directly serves defense and security, or regularly and directly supplies essential public products and services under Decree 67/2006/ND-CP; (b) an enterprise that is engaged in insurance, securities, and other financial business activities under Decree 114/2008/ND-CP; or (c) a credit institution under Decree 05/2010/ND-CP.

(2) Special procedures to be taken if SOEs fall under one of the exceptions above:

- Notice by the court to a competent authority over the SOE after the acceptance of the petition.
- Taking measures to recover solvency prior to a court decision commencing bankruptcy proceedings, etc.

(3) Possible reasons why SOEs rarely follow the bankruptcy proceedings (in addition to Part II, III, 2 above):

a. Viewpoint of the debtors or the representatives of the owner of an SOE

- They are afraid of bearing responsibility for the bankruptcy (e.g., a negative impact on the chances of their next promotion, etc.).

b. Viewpoint of creditors (state-owned commercial banks, the Vietnam Development Bank, etc.)

- Creditors and debtors often have a close relationship.
- Creditors are afraid of increasing the bad debt ratio of the banks themselves. In Vietnam, debts are generally classified based on the period in which payments of principal and interest are overdue. Therefore, there is no clear rule, such as where the debts of the enterprise may not be classified as “bad debt” if an enterprise commences rehabilitation procedures.

[5] The Report “The actual situation of bankruptcy law and regulations and the improvement of the legal business environment in Vietnam”, MOJ – Ministry of Planning and Investment, GTZ SME Development Program, Hanoi, November 2008 (in Vietnamese)

(4) Actual bankruptcy cases of SOEs

In January 2007, Quang Nam Province Economic Court declared 2 SOEs bankrupt. One was an agricultural equipment enterprise that had a debt amount and loss of around VND 13 billion. Another is a sugar company that suffered loss of around VND 356 billion.

(5) The bankruptcy proceedings for an EG

The current LOB applies to each enterprise in an EG, because the EG itself does not have legal entity status. Under the laws of Vietnam, each EG shall prepare consolidated financial statements, and each parent company and subsidiary company shall also prepare its own individual financial statement.

IV. Out-of-Court Insolvency/Rehabilitation procedure

1. Current Status

In Vietnam, there are currently no rule of out-of-court workout procedures (a procedure where debts of an enterprise in financial difficulties is worked out without resorting to legal insolvency procedures), and reorganization methods such as mergers and asset transfers are used for the rehabilitation of debtors in financial difficulty.

2. Out-of-Court Workout Procedure

Out-of-court workout procedures under the current Vietnamese legal system are as follows (regarding reorganization of companies, please see Part II, V.).

(1) Dissolution under the Law on Enterprises (Law 60/2005/QH11)

An enterprise shall, in principle, be allowed to dissolve when it ensures payment of all debts.

(2) Sale and transfer of wholly SOEs under Decree 109/2008/ND-CP

- Sale
  Only SOEs that fall into the category of enterprises to be sold, as approved by the Prime Minister in the general scheme on reorganization of SOEs, or to be privatized, as approved by the Prime Minister in the general scheme on reorganization of SOEs, but which have failed to be privatized, shall be sold. Sales may be concluded through an auction or through an agreement, with or without the transfer of debts to the purchaser(s). Where the SOE's debts are not transferred to the purchaser, the SOE must deal with the debts. Article 5 of Circular 202/2009/TT-BTC provides for more details on the resolutions of outstanding debts.
- Transfer (free of charge)
  Only SOEs for which the book value of all their assets is less than VND 15 billion, having no land advantage, and that are scheduled to be transferred as approved by the Prime Minister, or that have been sold but which sale was not completed, shall be transferred to their labor collective.
- The draft of the new decree which replaces Decree 109/2008/ND-CP) was issued. In addition to the above procedure, the draft of the new decree stipulates new transfer procedures in which the transferee must be an SOE.

(3) Voluntary agreement with the debtor's financial partners

(4) Restructuring conducted by DATC by way of purchase of outstanding debts and assets, investment in the form of contribution of share capital, contribution of capital to joint ventures, and business cooperation.

3. Tax upon out-of-court workout procedure

When there is income from the discharge of indebtedness because the amount of debts is reduced during out-of-court workout procedures, this income may be considered to be taxable "other income" of the subject enterprise.

V. Reorganization of SOEs and Private Companies

1. Types of companies in Vietnam

In Vietnam, a company may be set up in the form of a one member LLC ("One member LLC"), a two-or-more members LLC ("Multiple member LLC"), or a shareholding corporation ("SC"). The required procedure and the availability of each above-mentioned scheme from legal perspective may depend on the type of company.

2. Four conceivable schemes

When a Vietnamese company with poor business performance (a state-owned or private enterprise) (a "Poor Business Company") revitalizes its business with the support of a sponsor, the following methods, which are available under the Japanese legal system, are conceivable;

(a) A Carve-Out Scheme	The Poor Business Company carves out part of its business (a profitable business, or a business whose profitability is anticipated to improve) and transfers that to another company, which is a receiving company incorporated by the sponsor company (the "Sponsor Company");
(b) An Additional Capital Contribution Scheme	The Poor Business Company accepts an additional capital contribution from the Sponsor Company;
(c) A Sweep of Entire Capital Scheme	A Sponsor Company makes an additional capital contribution to the Poor Business Company, after reducing its own capital entirely (retiring all of the equity interest held by the former shareholders);
(d) A Change of Shareholder Scheme	The Poor Business Company has its shareholders transfer the shares of the Poor Business Company to the Sponsor Company.

(1) The Carve-Out Method

- There are three legally possible methods: (i) the principal company is separated into a newly incorporated company, following which one of these new companies merges with the sponsor company; (ii) the principal company is separated into a newly incorporated company; then, one of the new companies is sold to the sponsor company; (iii) part of the business/assets/projects/contractual rights/debts of the principal company is transferred to the sponsor company. Currently, method (iii) is commonly used by companies in Vietnam for the purpose of reorganization.
- The internal authorized organ for approving important matters relating to separation, merger, and business transfer differs among these types as follows: (a) One-Member Company: the owner; (b) Two-Member Company: the Members' Council; (c) Shareholders of a Shareholding Company: General Meeting of Shareholders.
- In addition, in the case of a business transfer, if a transfer of assets of value equal to 50% or more of the total asset value of the company is to occur, unless

provided otherwise by its charter, the highest decision-making organ shall approve such transfer; for any transfer of assets of a lower value amount than specified in (i) above, a lower decision-making organ, such as a General Director/Director, or Board of Directors (Shareholding Company), may approve such transfer, as provided by the company's charter.

- If the principal company is a SOE, a representative nominated by the State is responsible for implementing the State's rights as an owner/member/shareholder. Such representative must execute the owner/member/shareholder's rights in accordance with the instructions of the organization assigned to manage the State capital.
- If a Poor Business Company is insolvent, with the approval/agreement of creditors, the relevant judge may issue a decision applying this recovery procedure. This recovery procedure shall be carried out in accordance with a plan approved by a judge, in accordance with the relevant provision of the current LOB.
- In terms of administrative procedures, registration with the Department of Planning and Investment (the "DPI") is necessary prior to consummation of the separation and merger. Regarding merger and business transfer, if the total market share of the parties is between 30%-50%, or the enterprise(s) established after the economic concentration is not a small/middle-size enterprise(s), the merger and business transfer must be reported to the Vietnam Competition Authority (the "VCA").
- In terms of procedures related to employees in the case of separation and merger, notification of the employees, and the provincial organization representing the labor collective on the implementation of the labor usage plan, is necessary. Also, if the separate company is unable to employ all current employees, it must formulate a labor usage plan with the participation of the organization representing the labor collective at the grassroots level. In the case of a share transfer, informing the employees of the labor usage plan formulated with the participation of the organization representing the labor collective at the grassroots level is necessary. In the case of a business transfer, formulating a labor usage plan with the participation of the organization representing the labor collective at the grassroots level, and informing employees of this, is necessary.
- In terms of procedures related to the counterparty to the contracts to which the company is a party, a party transferring its right to demand must notify the obligor in writing of the transfer of the right to demand. A transfer of the right to demand does not require the consent of the obligor, unless otherwise agreed or provided by laws. On the other hand, an obligor may transfer a civil obligation to a third party with the consent of the obligee, except where the obligation is personal to the obligor, or where the law provides that the obligation may not be transferred.
- In the case of a sale of fixed assets owned by SOEs, such sale of assets must be publicly carried out by an auctioning organization or a State-owned company itself, strictly according to the order and procedures specified by the law on asset auctions.

(2) The Additional Capital Contribution Scheme

- This method is legally possible for both One member LLCs, Multiple member LLCs, and SCs, if such entities undergo certain required internal procedures of the company, and administrative procedures.

(3) The Sweep of Entire Capital Scheme

- This method is not legally possible for a One member LLC, but seems to be possible for a Multiple member LLC and an SC, under the current language of the law. However, this scheme has not become established in practice in Vietnam, and the language of the law does not seem 100% clear on this scheme.

(4) The Change of Shareholder Scheme

- Basically, this method is legally possible for One member LLCs, Multiple member LLCs, and SCs.

3. The Regulation for Withdrawing from Non-core Businesses

- Non-core Businesses of SOEs are generally operated by their subsidiaries, which means that SOEs have Capital Investments in their subsidiaries. Therefore, SOEs need to sell those Capital Investments in order to withdraw from Non-core Businesses.
- Previously, SOEs were prohibited from selling their capital investment at a price lower than their book value in principal. As a result, the sales of SOEs' Non-core Businesses have been delayed. However, the issue of Decree 71/2013/ND-CP and Circular 220/2013/TT-BTC has paved the way for promoting rationalization of the selling procedure and making it possible for SOEs to sell their capital investments, including shares in other companies, at a price lower than their book value within a certain scope. In addition, the Government of Vietnam recently issued Resolution 15/NQ-CP dated March 6, 2014 to promote SOEs' reform by way of stipulating the main following measures: (i) permitting the sale at price below par value in compliance with the withdrawal solutions which was approved by the owners, (ii) requiring SCIC to take over Non-core Business of SOEs, and (iii) pushing SOEs equitization.

VI. The Legal Framework of Disclosure and Governance of SOEs

1. Corporate Governance of SOEs in Vietnam

- The Law on Enterprises (Law 60/2005/QH11) is applicable to enterprises of all economic sectors[6]. It means that the organization and operation of SOEs are also subject to the Law on Enterprises (Law 60/2005/QH11). In addition to the provisions of the Law on Enterprises (Law 60/2005/QH11), SOEs, to some extent, are subject to separate regulations regarding State-owned capital management. Among other things, specific regulations on GC (Decree 111/2007/ND-CP) and on parent companies in the EG (Decree 101/2009/ND-CP) should be noted in relation to the corporate governance of SOEs.
- The scope of Decree 111/2007/ND-CP is broad and unclear, but it seems to apply to GC (the corporations invested in or established by the State, including, but not limited to, the corporations which were reorganized from the corporations established under the 1995 State-owned Enterprise Law, and the corporations founded under the 2003 State-owned Enterprises Law (Law 14/2003/QH11))[7]. On the other hand, Decree 101/2009/ND-CP applies to the EG, a group of large-sized companies which form a conglomerate of enterprises. The scope of Decree 101/2009/ND-CP is relatively clear, because EGs are established by a decision of the Prime Minister[8].
- The relationship between the Law on Enterprise (Law 60/2005/QH11), Decree 111/2007/ND-CP and Decree 101/2009/ND-CP is not well-organized. For example, many provisions in Decree 111/2007/ND-CP refer to, not the provisions of the Law on Enterprise (Law 60/2005/QH11), but the provisions of the 2003 State-owned Enterprises Law (Law 14/2003/QH11), which is no longer effective. Also, it needs to be carefully examined whether the two Decrees are really compatible with the provisions of the Law on Enterprise (Law 60/2005/QH11). For instance, inspectors, or members of the Inspection Committee, are appointed and dismissed by the owner(s) of the company, under the Law on Enterprise (Law 60/2005/QH11). However, they are appointed and dismissed

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6 Article 1 of the Law on Enterprises (Law 60/2005/QH11)

7 Article 4.3 of Decree 111/2007/ND-CP

8 Article 9 of Decree 101/2009/ND-CP

by the Board of Directors, which should be a subject of the inspection under the two Decrees (as such, there might be a situation of a conflict of interest).

- External supervising/auditing organizations with respect to SOEs are (1) State owners (including Managing Ministries, provincial People's Committees, and SCIC, which are assigned to execute the rights as owners of SOEs), (2) the MOF, (3) State Audit, and (4) State Inspectorates. A brief overview of the division of the roles played by each organization is as follows:

  (1) State owners: To exercise the rights and perform the obligations of State owners (as assigned and decentralized)[9];
  (2) The MOF (not as a Managing Ministry): To cooperate with State owners in financial supervision and performance assessment over SOEs[10];
  (3) State Audit: To audit financial statements, the legal compliance, and the performance of SOEs[11];
  (4) State Inspectorates: To examine, assess, and handle the implementation of policies and laws, and the performance of tasks and exercise of powers by SOEs pursuant to the orders and procedures specified by law[12].

2. Disclosure of information on SOEs in Vietnam

- External supervising/auditing organizations may have the right to request necessary information from SOEs[13].
- Under the new Decree 61/2013/ND-CP, SOEs seem to be required to disclose their information about audited financial statements. In addition, Circular 171/2013/TT-BTC that has been issued as of November 20, 2013 stipulates the detailed rules of the diclosure by SOEs.

VII. The Legal Framework of Insolvency of Credit Institutions and Deposit Insurance

1. Depreciation of bad debts

- Credit institutions are required to classify debts into five groups, with increasing levels of risks of loss[14], and set up risk reserves consisting of (i) a specific reserve for each debt using the specific reserve ratio for the relevant debt group, and (ii) general reserves. Group 3 (sub-standard debts), Group 4 (doubtful debts) and Group 5 (possible capital loss debts) are collectively referred to as NPLs[15].
- Under the new circular 02/2013/TT-NHNN which is not yet effective[16], the definition of debts will be broadened; debt classification criteria will be revised; and credit institutions will need to adjust their self-classification of debts in accordance with the results of the classification of clients' debt group provided by the CIC.

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9 See Article 9 of Decree 36/2012/ND-CP, etc.

10 Article 5.3 of Decree 61/2013/ND-CP

11 Article 14 of the Law on State Auditing (Law 37/2005/QH11)

12 Article 3.1 of the Law on Inspection (Law 22/2004/QH11), amended by the Law on Inspection (Law 59/2010/QH12) in 2010

13 Article 41.1(c) and 79.2(b) of the Law on Enterprise (Law 60/2005/QH11), Article 16 of the Law on State Auditing (Law 37/2005/QH11), Articles 46.1 and 53.1 of the Law on Inspection (Law 22/2004/QH11), amended by the Law on Inspection (Law 59/2010/QH12) in 2010, Article 9.1 of Decree 61/2013/ND-CP, etc.

14 Article 6 of Decision 493/2005/QD-NHNN amended by Decision 18/2007/TT-NHNN

15 Article 2.6 of Decision 493/2005/QD-NHNN

16 Circular 02/2013/TT-NHNN as amended by Circular 12/2013/TT-NHNN, which will become effective as of June 1, 2014.

- NPLs will be removed from balance sheets by using the specific reserves, selling, and other methods, but there appear to have been found no explicitly legal grounds for credit institutions which are not policy/non-profit banks (e.g., The Vietnam Development Bank) to voluntarily waive their debts.
- There are upper limits for reserves as deductible expenses.

2. Bank Restructuring and Bankruptcy system

- Pursuant to Decision 254/2012/QD-TTg approving a Plan on the restructuring of the system of credit institutions in the period 2011 - 2015 (the "Banking Restructuring Plan"), credit institutions being joint stock commercial banks, finance companies and finance lease companies of Vietnam will be classified into 3 categories, comprising (i) healthy credit institutions, (ii) temporarily insolvent credit institutions and (iii) weak credit institutions.
- Under the Banking Restructuring Plan, some bailout measures may be applied to weak credit institutions, which may include:

Refinancing:	The SBV refinances insolvent credit institutions which are at risk of insolvency, but has not been placed under special control, up to the maximum amount equivalent to the charter capital of the refinanced credit institution, if other statutory conditions are fulfilled.
Special Control:	Weak credit institutions may be subject to special control by the SBV, where necessary, pursuant to Articles 145 through 152 of the Law on Credit Institutions (Law 47/2010/QH12).
Special Loans:	The SBV or other credit institutions may provide special loans to insolvent weak credit institutions which are under special control threatening the stability of the banking system, or which are at risk of becoming insolvent due to a serious breakdown but not yet subject to special control[17]. As a general rule, the borrowing credit institution is only permitted to use the special loan to pay out deposits with such credit institution of individual depositors.

- Pursuant to the Banking Restructuring Plan, after applying solutions for ensuring solvency, as discussed above, a weak credit institution may be, voluntarily or compulsorily, merged or consolidated into another credit institution, or acquired by another credit institution or the SBV.
- In addition, weak credit institutions must implement some solutions stipulated in the Banking Restructuring Plan, including restructuring finance, operation and corporate governance and management in order to make their financial situation healthy, and to restructure their operation and management and governance systems, etc.
- In the case where a credit institution enters into bankruptcy, in addition to the current LOB, the procedures for bankruptcy of credit institutions stipulated in the Law on Credit Institutions (Law 47/2010/QH12)[18] and in Decree 05/2010/ND-CP will be applied. Also, a credit institution may voluntarily request to be dissolved, subject to the approval of the SBV, if it is capable of settling all outstanding debts.
- According to the publicly available information, it appears that in the past two years, the restructuring of insolvent banks has been carried out mainly in the form of M&A, on voluntary basis. Particularly, in late 2011, the SBV detected nine banks[19] which it classified as weak banks and requested those banks to start restructuring. According to

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17 Article 1 of Circular 06/2012/TT-NHNN

18 Articles 155 and 156 of the Law on Credit Institutions (Law 47/2010/QH12)

19 The banks included Saigon Commercial Bank (SCB), Ficombank, Tin Nghia Bank, Habubank, Tienphongbank, GP Bank, Navibank, TrustBank, and Western Bank.

the media, three of them were consolidated; one bank merged into another; one bank consolidated with a finance company; and the other four proposed their own restructuring plans for the approval of the SBV, and are carrying out those plans under the supervision of the SBV (one of them restructured, with the participation of a well-known gold and jewelry company as a strategic shareholder).

3. Deposit Insurance system

- DIV is a financial institution wholly owned by the State operating with a not-for-profit purpose to protect the legitimate rights and interests of depositors and implement a deposit insurance policy. The SBV is vested with the power to manage DIV. The head of the Management Board is appointed by the Prime Minister based on proposal of the SBV.
- Deposits to be insured are deposits in VND of individuals deposited at deposit insurance participating organizations in the form of on-call, fixed term and savings deposits, deposit certificates, promissory notes, bills and other forms of deposits under the provisions of the Law on Credit Institutions.
- The obligation of DIV to pay insurance proceeds arises from the time the SBV sends a document to terminate the special control or a document to terminate the application or documents not to apply the measures to restore solvency, but the credit organization that is a deposit insurance participating organization still falls into bankruptcy or the SBV has documents to identify a foreign bank branch that is a deposit insurance participating organization losing its ability to make payments of deposits to its depositors.
- According to Article 25 of the Law on Deposit Insurance (Law 06/2012/QH13), insurance proceeds are payable in respect of all insured deposits of one individual at one organization participating in deposit insurance. However, there is a limit on the maximum amount of insurance proceeds. The limit is currently VND 50 million in accordance with Article 4 of Decree 89/1999/ND-CP (as amended). Any amount of the insured deposits (including principal and interest) in excess of the limit is dealt with in the process of liquidation of assets of the relevant deposit insurance participating organization in accordance with laws.
- The limit of VND 50 million mentioned above is no longer appropriate with the social-economic conditions of Vietnam, taking into account the GDP per capita, high inflation rate, deposit growth rate, etc. per the information shared by DIV. Additionally, such low limit does not appropriately protect the depositors. Accordingly, it appears that DIV has proposed to the Government that this limit be set at a higher level.
- In addition, currently, Decree 68/2013/ND-CP, guides the implementation of the Law on Deposit Insurance (Law 06/2012/QH13), which was issued on June 28, 2013. Although the law came into effect on January 1, 2013, DIV still needs to temporarily apply a significant number of circulars and other guidance documents which were issued in connection with the old regulations on eposit insurance provided for under Decree 89/1999/ND-CP.

VIII. Framework of Governmental Organizations Which Purchase and Dispose of NPLs and Invest in SOEs

1. VAMC

- VAMC, supervised by the SBV, is permitted to purchase credit institutions' NPLs through two schemes: (i) purchase at book value (i.e., face value of the principal balance of the purchased NPLs minus the amount of specific risk reserve which has not been used), with "special bonds[20]," and (ii) purchase at market value, without "special bonds[21]." "Special

[20] Article 7.1 of Decree 53/2013/ND-CP

[21] Article 7.2 of Decree 53/2013/ND-CP. However, it seems that VAMC will only purchase NPLs at face value for the time being.

bonds" are issued by VAMC in VND, with a maximum term of 5 years and interest of 0%, and can be used as a basis for obtaining refinancing loans from the SBV[22].

- Credit institutions with an NPL ratio of 3% or more of total loans must sell NPLs to VAMC unless otherwise permitted by the SBV[23].
- During the term of the special bonds, any recovered debt is (i) quarterly retained by, and directly paid to, the SBV by VAMC to repay the refinancing loans, or (ii) if the creditor has not obtained refinancing loans from the SBV, deposited by VAMC into a deposit account opened at the creditor (i.e., the credit institution selling the NPLs), and such funds cannot be withdrawn prior to the maturity of the special bonds[24].
- Upon the maturity of the special bonds, provided that the refinancing loans obtained from the SBV by using such special bonds (if any) have been fully repaid (so that the special bonds are unfrozen by the SBV), if NPLs have not been fully recovered by VAMC from debtors, the original creditor must (i) "re-purchase" (but no monetary payment will be made) the unrecovered balance of the principal of the NPLs at book value, and (ii) return the relevant special bonds to VAMC. After such re-purchase, the original creditor will receive the amounts of the NPLs collected by VAMC (after deduction of the amount payable to VAMC as a "collection fee")[25] .
- A credit institution selling NPLs must annually set aside specific reserves (which must be equal to the amount of the face value of the special bond devided by the number of years of the special bond's term. For example, if the face value of a Special Bond is 100 and the term of the special bond is 5 years, the amount of the specific reserve is 20.) for special bonds[26]. The specific reserves for the relevant special bonds is used for dealing with NPLs that are re-purchased from VAMC.
- VAMC has the function to collect loans by itself (e.g., it can exercise the rights of creditors and/or secured parties against borrowers, and collect debt by receiving, or acquiring ownership of, the security property itself). Additionally, VAMC has the right to request credit institutions, debtors and guarantors to provide relevant information on the debtors, guarantors and security properties, to conduct an auction without the consent of the debtor and to recommend the state management agencies concerned and the law enforcement agencies to coordinate and support the process of seizure of assets and settlement and recovery of debts and security property.
- As for VAMC's sale of the NPLs to other purchasers, no specific criteria are required for purchasers of the NPLs, and under the current regulations VAMC is not prohibited from selling the NPLs to offshore investors. However, in practice, the current law does not appear to be ready for VAMC's sale of purchased NPLs to the offshore investor. In particular, the following legal issues may become hurdles for such sale:
- Subsequent to the sales, there is a possibility that the relationship between the offshore investor purchasing the NPLs and the onshore borrowers of the relevant NPLs are deemed to be a Foreign Loan relationship. In the case of being deemed to be a Foreign Loan relationship, (i) although the onshore borrowers may have to register the "Foreign Loan" with the SBV if the payment term of the loan exceeds one year[27], procedures for the registration of Foreign Loans obtained by individual borrowers are not yet available; (ii) it is unclear whether the outstanding amount of the sold NPLs would be subject to the "quota on foreign commercial loans", under which the SBV may certify the registration of Foreign Loans within the total loan limit approved annually by the Prime Minister[28]; and

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22 Article 20.1 of Decree 53/2013/ND-CP

23 Article 21 of Circular 19/2013/TT-NHNN and Article 14.5 of Decree 53/2013/ND-CP.

24 Article 43 of Circular 19/2013/TT-NHNN

25 Article 22.1(b) of Decree 53/2013/ND-CP and Article 44.2(a) of Circular 19/2013/TT-NHNN

26 Article 46.2 of Circular 19/2013/TT-NHNN

27 Article 14.5 of Decree 219/2013/ND-CP, Article 1 of Circular 25/2011/TT-NHNN and Article 3 of Circular 22/2013/TT-NHNN

28 Article 17 of the Ordinance on Foreign Exchange Control (Ordinance 06/2013/UBTVQH13)

(iii) the procedures for the registration of Foreign Loans under the prevailing law would be appropriate for the registration of a single Foreign Loan, but may not be appropriate in the case of Foreign Loans resulting from the sale of bulk NPLs.

- Even if the NPLs are secured by shares in companies in Vietnam, such security may be meaningless or an obstacle in some cases, since foreign ownership in companies operating in a number of business sectors (including banking) is still restricted under the law of Vietnam.
- If the NPLs are secured by LURs, such security could be meaningless or be an obstacle, considering that offshore entities are generally not permitted to hold a mortgage over LURss, and offshore entities are also not permitted to receive an assignment of LURs from existing land users or to be leased or allocated LURs from the State without first setting up an onshore commercial presence[29, 30].
- VAMC has the right to participate in the process of the restructuring of the borrowers after purchasing shares in or contributing capital to such borrowers[31].

2. DATC

- DATC, supervised by the MOF shall, subject to meeting the statutory conditions, purchase or receive, as the case may be, debts and assets of enterprises in one or more of the following three cases: (i) debts and assets of any individuals or organizations, (ii) debts and assets excluded from the value of an SOE upon structuring or conversion of the SOE, (iii) debts and assets as assigned by the Prime Minister. Cases (ii) and (iii) should be applicable only to debts and assets of SOEs.
- Case (i) is applicable to the debts and assets of any individuals or organizations (including private enterprises and SOEs), provided that (1) at least 70% of the total investment capital source to purchase debts and assets of case (i) must be used for purchasing debts and assets whose debtors are 100% SOEs under restructuring, ownership conversion, and/or the financial improvement process, and (2) the effectiveness and capital retrieving feasibility according to the approved plan must be ensured[32]. With respect to case (i), we found from the current system of official legal instruments no regulations on specific process or criteria of DATC to determine prices of the assets or debts to be purchased.
- For case (ii) above, it appears that DATC may receive a transfer of the excluded assets without any compensation; however, upon receipt of proceeds earned from recovery of debts, etc., DATC needs to allocate the proceeds in accordance with the law.
- There are many actual cases involving case (iii) above, such as the Eximbank case in 2005[33], or more recently the Vinashin case; however, their details have not been made publicly available.
- No laws or regulations explicitly obligate credit institutions to sell loan claims to DATC; provided that in some cases SOEs are required to sell/transfer debts and assets to DATC. No laws or regulations mandate re-purchase by the original creditor or owner of the debts and assets.
- DATC performs debt collection, re-structuring, DES, and investments in joint ventures and other enterprises. DATC is authorized to perform consulting and brokering for debt and asset settlement, and investments in stocks, convertible bonds, and options.
- For loan claims obtained in case (i), (ii) and (iii), DATC is allowed to resell loan claims by direct negotiation, competitive offer, or public auction, subject to the law requirements;

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29 Both the current Law on Land (Law 13/2003/QH11) and the amended Law on Land do not permit offshore entities to receive a mortgage of assets developed on land. Vietnamese law only allows onshore foreign-invested enterprises to conditionally own residential houses in Vietnam, and it remains unclear whether an offshore entity may own other types of immovable property in the country.

30 In addition to the above, practical difficulties in exercising security interests may become another hurdle.

31 Article 13.1 (c) of Decree 53/2013/ND-CP

32 Article 8.1 (a) of Circular 79/2011/TT-BTC

33 http://www.vietcombank.com.vn/News/Market_News.aspx?ID=2956

however, direct negotiation may only be carried out if DATC fails to re-sell the debts and assets by auction or competitive offering. For loan claims obtained in cases (ii) and (iii), DATC is allowed to resell loan claims through negotiation only if the selling price is not lower than the value recorded in the accounting books of DATC including transportation costs and costs for upgrading assets (if any)[34].

- DATC is permitted to issue bonds to mobilize capital to allow the performance of the DATC's functions.
- With respect to the allocation of the roles played by VAMC, DATC, and SCIC, VAMC will focus mainly on bad debts of credit institutions by special bonds in order for credit institutions to obtain re-financing loans from the SBV. DATC, on the other hand, operates more or less as a normal debt trading company and focuses more on state-owned companies. SCIC is more like a state investor who holds and invests capital in state-owned companies, state-invested companies and other forms of investment.

3. SCIC

- SCIC is managed by the Government. The Prime Minister has the authority to decide most of the management decisions of SCIC, and the MOF has consulting functions. The main functions of SCIC include: (a) taking over and exercising State owner rights in state invested enterprises; (b) managing State invested capital (by exercising shareholder rights in invested companies, including appointing individual representatives); (c) investing State capital in key industries; and (d) providing financial services such as investment consultancy, equitization consultancy, corporate restructuring, divesture consultancy and business support services[35].
- SCIC has a duty to manage the "Fund for Enterprise Structuring and Development"[36]. However, it appears that the MOF shall be the decision maker for all the expenditure applications so that SCIC has no involvement in the process other than making remittance of money and supervising the utilization of the disbursed capital.
- On December 20, 2013, Decree 151/2013/ND-CP on the functions, duties and operational mechanism of SCIC came into effect. By the new Decree, SCIC has, among others, supplemental duties on (1) reporting the MOF for evaluation and submission to the Prime Minister for approval of the master plan on restructuring and innovation of single member limited liability companies 100% owned by the State that SCIC is assigned to manage as well as (2) reporting the MOF for evaluation and submission to the Prime Minister for approval of the 5-year development investment plan and business, production plan and strategy[37].
- Compared with the old regulations, SCIC has more freedom in making its investment decisions[38], except for those related to the enterprises which require State's majority ownership and those which have been made in accordance with instructions of the Prime Minister.
- As the descriptions on the functions of SCIC under the old regulations were quite broad and general, it appears, on the surface, that the new Decree does not add any new substantial/significant functions to SCIC. However, the new Decree made some clarifications and those clarifications may have the possibility of facilitating SCIC to

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34 Article 11.2 of the Temporary Regulation of Financial Management issued under Decision 1683/2004/QD-BTC. Please note that this restriction may have become obsolete under the Charter of DATC issued under Circular 79/2011/TT-BTC.

35 Article 3 of Decision 151/2005/QD-TTg

36 Article 4 of Decree 151/2013/ND-CP, Decision 21/2012/QD-TTg and Decision 992/QD-TTg

37 Articles 6.2 and 6.3 of Decree 151/2013/ND-CP

38 Article 16 of Decree 151/2013/ND-CP, and Article 30 of SCIC Charter issued under Decision 152/2005/QD-TTg.

conduct its functions[39]. Although such clarifications may practically widen the forms and sectors of investment for SCIC, the capital investment made by SCIC in economic-efficient sectors (beyond the vital sectors of the State, assignments of the Prime Minister and additional capital injection into enterprises in which SCIC has already invested) shall not exceed 30% of the total investment stated in the annual plan.

- Under the new Decree 151/2013/ND-CP, SCIC is not granted specific right to control or supervise the business and financials of SOEs beyond the ordinary rights conferred for owners/member/shareholders of the enterprises.

[39] For example, Article 7.1 (dd) of Decree 151/2013/ND-CP makes it clear that the Prime Minister decides the receipt of capital in EGs and GCs, whilst this issue was unclear under the old regulations. Also, it was made clear that SCIC does not receive the enterprises mainly providing public utilities/services and enterprises directly supporting national security (Articles 7.1 of Decree 151/2013/ND-CP).

Part III Recommendations for Promotion of NPL Disposal and SOE Reform

The NPL problem and reform of SOEs, as their borrowers, are inextricably linked together and are indivisible. In order to resolve the NPL problem, it is necessary to promote both NPL disposal and SOE reform.

First of all, to resolve the NPL problem, it is necessary to reform the banking sector which possesses a large number of NPLs, and to reduce the total balance of NPLs. In survey team's recommendations below, survey team focuses on measures to reduce the total balance of NPLs, because conducting reform of the banking sector is an issue for both the legal frameworks and financial administration. In particular: (i) Promoting NPL sales, (ii) Promoting NPL collections, and (iii) Improving write offs of NPLs and the solvency of debtors through the development of a system for corporate revitalization, are important steps. It is needless to say that promoting NPL sales is necessary to reduce the total balance of NPLs. By selling NPLs, banks can remove the NPLs from their balance sheet and improve their financial condition and credit. In addition, in order to sell the NPLs, it is necessary to improve the legal frameworks in which purchasers of NPLs can collect the NPLs, because a system which does not allow purchasers to collect their NPLs will discourage the purchase of them. Furthermore, if a system for corporate revitalization is developed, solvency of debtors will be improved, and because the number of purchasers of NPLs which promotes the collection of NPLs will increase, NPL disposal will be promoted and this will contribute to the revitalization of economic activities of enterprises and the economy of Vietnam.

Further, SOEs shall promote the disposal of their Non-core Businesses, such as their finance businesses, insurance businesses and real estate businesses, because a large amount of investments in the past into those businesses have been causing a deterioration of their financial performance. Beside, non-profitable core businesses and assets (factories, etc.) should be separated and disposed of, and corporate restructuring is required for the improvement of corporate value. Therefore, it is of upmost importance to establish legal frameworks, which promote the restructuring described above, as soon as possible.

In Vietnam, each of the following are in place (1) VAMC, which has been established for NPL disposal, (2) DATC, which has been established for purchasing debts and assets (which may promote business revitalization of SOEs) and (3) SCIC, which has been established for investments into SOEs. While these institutions have been established by the Government of Vietnam and have led to progress, in order to further promote the resolution of the NPL problem, the powers and functions of these organizations shall be enhanced.

The recommendations will sometimes specify the names/numbers of laws and regulations, however, these specified laws and regulations are just examples and not provided for the purpose of denying the legislation or amendment of other laws and regulations.

Please note that because most of the subjects of survey team's investigation are on the legal frameworks, survey team's recommendations are focused on the legal frameworks. In addition, survey team's recommendations are preliminary, and assumed to require development through discussions with the Government of Vietnam.

Part III-I Promotion of NPL Disposal

I. Promotion of Sales of NPLs

In order to facilitate the swift sales of NPLs, the sales of NPLs held by banks is required to be promoted. By selling NPLs, banks can remove the NPLs from their balance sheet and improve their financial condition and credit. In the following section, the issues for NPLs sales in the current legal system will be clarified, as well as providing recommendations for solving them.

1. Law Reform to Expand Eligibility to Purchase an NPL Secured by an Mortgage

(1) Current Legal System and Points at Issue

a. Basic Framework of LUR

(a) Outline

In Vietnam, all land ownership belongs entirely to the public. Private entities (including domestic private enterprises, foreign-invested private enterprises, offshore entities and individuals[40]) are not permitted to own land. It is necessary to obtain a LUR from the State in order to invest in and use land.

In connection with the relationship between land users and the State, LURs are classified into two types; "Land Allocations from the State" and "Land Leases from the State." In addition, "Land Allocations from the State" are subdivided into "Land Allocations with land use fees" and "Land Allocations without land use fees," whereas "Land Leases from the State" are subdivided into "Land Leases with annual rent," "Land Leases with lump-sum rent" and "Land Sub-Leases in Industrial Zones etc. from Developers of Industrial Zones[41]."

As of November 29, 2013, the National Assembly of Vietnam passed the amended Law on Land (Law 45/2013/QH13) which will come into force from July 1, 2014, but apart from some partial changes, the basic framework described above has not been materially changed.

(b) Differences between "Land Allocations from the State" and "Land Leases from the State."

According to the Law on Land (Law 13/2003/QH11, including its latter amendments), only domestic private enterprises may hold LURs based on "Land Allocations from the State", and in principle, the same rights are not granted to foreign-invested private enterprises[42]. Under the amended Law on Land (Law 45/2013/QH13), even foreign-invested private enterprises may obtain LURs based on "Land Allocations from the State," only in the case of "housing development projects by way of sales in lots or the combination of sales in lots and lease".

With regard to LURs based on "Land Leases from the State," domestic private enterprises may not hold LURs based on "Land Leases with lump-sum rent", but may hold LURs based on "Land Leases with annual rent." Under the amended Law on Land (Law 45/2013/QH13), domestic private enterprises may obtain LURs based on "Land Lease with lump-sum rent".

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40 There are various restrictions on land holding by individuals in Vietnam, but they are not analyzed in this report, because they are considered to be a minor issue of importance.

41 The duration of a LUR, including a Land Allocation and a Land Lease, is considered and decided on the basis of the investment project or the application for land allocation or land lease, but normally will not exceed 50 years.

42 Under Art 55 of the amended Land Law, the cases where domestic enterprises and foreing-invested enterprises are allocated land are substantially the same (and are limited). Even under the current Land Law, land lease with once-off payment entitles land users the same rights compared to Land Allocation.

On the other hand, foreign-invested private enterprises may hold LURs based on both "Land Leases with lump-sum rent" and "Land Leases with annual rent."

Offshore entities are not permitted to hold LURs based on "Land Allocations from the State" nor on "Land Leases from the State." In other words, they are not permitted to hold LURs of any kind.

LURs based on "Land Allocations from the State" with collection of land use fees the payment of which is not sourced from the State budget and LURs based on "Land Leases with lump-sum rent" may be transferred, leased and mortgaged. On the other hand, LURs based on "Land Leases with annual rent" may not be transferred or mortgaged (or leased except for certain cases).

(c) Taking Over LURs by Transfer

Only domestic private enterprises are explicitly permitted to take over LURs via transfer from the current LURs holder.

Foreign-invested private enterprises are not explicitly regulated to be permitted to take them over by transfer. Therefore, the explicit method by which foreign-invested private enterprises can obtain LURs are limited, in principal, to: (i) direct leases by the State, or (ii) subleases by domestic private enterprises or industrial zone developers[43].

Please note that offshore entities are not permitted to hold LURs and naturally are not to take them over by transfer from existing LUR holders.

Further, in Vietnam, the use of land under an LUR will be limited to the purpose determined at the time of allocation or lease from the State, and LUR holders will not be permitted to use land for any purpose other than such purpose[44]. Therefore, unlike the legal structure for real estate of Japan which, in principle, allows owners of land to use and earn revenue from their land without limitation investors taking over LURs will not be permitted to use land for purposes other than those set prior to its transfer, unless they change the purpose of using land under permission of State (including proceedings for amendment of their Certificate of Incorporation) or once the land is restored to the State and followed by a new entering into a land lease agreement with State for the purpose of obtaining a new LUR.

Survey team summarized the above, based on the amended Law on Land (Law 45/2013/QH13), as follows:

[43] In a cases where a foreign-invested private enterprise and a domestic private enterprise establishes a joint venture, the joint venture may receive a LUR as a contribution in kind from a current LUR holder.

[44] Purposes of using lands (ex. "industrial land", "residential land" and etc.) will be indicated in the decision of allocation, which will be granted by State of in the case of LURs allocation, and in the Land lease agreement with State in the case of LURs lease, and will be recorded in Land Use Certificate.

[Table based on type of LURs]

		LURs based on "Land Allocations from the State"	LURs based on "Land Lease with lump-sum rental"	LURs based on "Land Lease with annual rental"
Holders	domestic private enterprises	Δ	○	○
	foreign-invested private enterprises	Δ[45](in a certain case)	○	○
	offshore entities	×	×	×
transfer/mortgage		○	○	×
lease		○	○	Δ(in certain cases)

As explained above, under the amended Law on Land (Law 45/2013/QH13 , both foreign-invested private enterprises and offshore entities may not take over any type of LURs by transfer from existing LUR holders either. Because of these restrictions, in principle, foreign-invested private enterprises and offshore entities may not be possibly allowed to purchase LURs when mortgages are exercised and LURs are sold as well as when LURs are auctioned in order to enforce civil judgments in cases where debtors have not performed their obligations[46].

In this respect, the Article 169.1.k of the amended Law on Land provides that foreign invested private enterprises in Vietnam may obtain LURs pursuant to "an agreement in a mortgage contract for debt settlement", "an administrative decision of a competent State body on enforcement of a judgment" and "a legal document recognizing the results of auction of an LUR". However, since the meaning of "an agreement in a mortgage contract for debt settlement" is not clear, and the principle idea that "foreign-invested private enterprises and offshore entities are not permitted to take over LURs by transfer from existing LUR holders", has been adopted under the current Law on Land (Law 13/2003/QH11), is not clearly understood to be changed under the amended Law on Land, there is still room for construing that foreign-invested private enterprises in Vietnam will remain to be restricted from taking over LURs by transfer from existing LUR holders even after the implementation of the amended Law on Land (Law 45/2013/QH13).

These restrictions discourage foreign investment from flowing into the Vietnamese real estate market, which has been sluggish. NPLs secured by LUR mortgages are, as a result, not attractive for purchasers, especially for foreign investors, and this is an obstacle when selling NPLs secured by LUR mortgages.

b. Buildings

In the real estate legal system in Vietnam, land and buildings are divided, as in Japan, and ownership of a building is a separate matter from ownership of the land where it is located. Unlike land, buildings are permitted to be owned by private entities. From theoretical point of view, it is possible to obtain a mortgage both on a building and a LUR separately.

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45 Only in the case of "housing development projects by way of sales in lots or the combination of sales in lots and lease".

46 If security interests are exercised by the method of "selling to a third party at an agreed price with a debtor or a price to be determined by an appraiser," foreign-invested private enterprises and offshore entities cannot purchase a LUR as a secured property as a third party, and if security interests are exercised by the method of "selling under an auction procedure," they cannot participate in the LUR auction procedure as bidders.

However, under the current law in Vietnam, foreign-invested private enterprises are permitted to obtain ownership of residential buildings, only (i) for the purposes of providing residences for their employees (for company housing purposes), and (ii) in the case that such foreign-invested private enterprises do not engage in the real estate business among other conditions (Resolution 19/2008/QH12)[47]. As for non-residential buildings (i.e., buildings for offices), the current law is ambiguous in this regard. However, if a foreign-invested private enterprises wish to hold a building for its own use (for example, to locate its office or production lines) but not for reselling or leasing, survey team is aware of precedent cases that the company may purchase the building and the LUR based on leasing land from the State.

Offshore entities are materially restricted from owning buildings, and this is a large obstacle to foreign investment in Vietnam.

These restrictions discourage foreign investment from flowing into the Vietnamese building market, which has been sluggish. Additionally, NPLs secured by building mortgages are, as a result, not attractive to potential purchasers, especially for foreign investors, and this becomes one of the obstacles to the sales of NPLs secured by building mortgages.

c. Establishment of LUR mortgages

Real estate mortgages include LUR mortgages and building mortgages.

First, with respect to the establishment of an LUR mortgage, according to Article 111 (Article 174 and 175 of the amended Law on Land) etc., of the current Law on Land (Law 13/2003/QH11), only the credit institutions which are permitted to operate their business in Vietnam are allowed to be LUR mortgagees, and domestic private enterprises other than credit institutions, foreign-invested private enterprises, or offshore entities are not allowed to be LUR mortgagees[48].

Second, with respect to the establishment of buildings mortgages, although it is not specified in the law same as the LURs, it appears to be understood that basically only credit institutions which are permitted to operate their business in Vietnam are allowed to purchase NPLs secured by LUR mortgages, and domestic private enterprises other than credit institutions, foreign-invested private enterprises, or offshore entities may not purchase them. However, as special instutution functioning in debt sale and purchase, DATC and VAMC are not restricted to purchase NPLs secured by LUR mortgages.

As a result, in practice, only credit institutions permitted to operate their business in Vietnam, DATC and VAMC are allowed to purchase NPLs secured by LUR mortgages. Neither domestic private enterprises other than credit institutions, foreign-invested private enterprises, or offshore entities may purchase them.

Because purchasers of NPLs secured by LUR mortgages are limited to credit institutions permitted to operate their business in Vietnam, potential purchasers of NPLs are significantly limited, and this becomes a major obstacle to NPL sales.

d. Regulations under the Law on Real Estate Business (Law 63/2006/QH11)

The Law on Real Estate Business (Law 63/2006/QH11) provides regulations regarding the real estate business in Vietnam. In order to engage in the real

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47 Resolution 19/2008/QH12, that proactively eased the regulations on foreign invested private enterprises and foreigners obtaining of residential buildings, was expired in January 2014. Although the succeeding regulatory framework has yet to be promulgated, according to the competent authority, the Ministry of Construction, this easing of the regulation is being applied for extension of application.

48 Please note that it is not clear whether the Vietnamese branches of financial institutions established abroad are included in "financial institutions which are permitted to operate their business in Vietnam." SBV appears to have a view that they are, but there seems to be other governmental authorities which have the opposite view.

estate business, foreigners must establish foreign-incorporated private enterprises in Vietnam and offshore entities are not permitted to engage in the real estate business directly in Vietnam.

In addition, according to Paragraph 1 of Article 10 of the Law on Real Estate Business (Law 63/2006/QH11), the scope of real estate business activities that foreign-invested private enterprises[49] are permitted to manage are limited to: (a) investing in the construction of buildings for sale or lease, (b) investing in upgrading land and to invest in infrastructure works on leased land in order to lease out land with completed infrastructure, and (c) providing real estate business services, such as real estate brokerage services, real estate valuation services and real estate consultancy services.

Therefore, under the current Law on Real Estate Business (Law 63/2006/QH11), even if foreign-invested private enterprises in Vietnam obtain LURs in Vietnam, they are not permitted to resell the land. In the practice of investment certificates issuance, investment certificates may not be issued when foreign-invested private enterprises apply for investment certificates for the business purpose of such "resale of land".

In addition, even if foreign-invested private enterprises in Vietnam obtain LURs for the purpose of performing the above business activities permitted under the Law on Real Estate Business (Law 63/2006/QH11), the scope of land use will be limited because there are restrictions permitting the use of land to only a range of business purposes described in the investment certificates or lease agreements or LUR certificates. Therefore, for example, foreign-invested private enterprises in Vietnam, who originally obtained LURs with a plan to construct residential buildings and to sell or lease them, are not permitted to change that plan with the aim of reselling the LURs to a third party without constructing a building on the land.

Furthermore, in case foreign-invested private enterprises obtain ownership of buildings on the basis of Resolution 19/2008/QH12, such foreign-invested private enterprises is only entitled to sell the apartment after 12 months from the date of issuance of the ownership certificate (See Article 5 of Resolution 19/2008/QH12)[50].

It is incredibly difficult for foreign investors to purchase real estate which is restricted from sales or leases. Because the Law on Real Estate Business (Law 63/2006/QH11) restricts sales or leases of LURs or buildings by foreign investors, foreign capital may not flow into the real estate market, and therefore, the real estate market may fall into a slump. As a result, claims secured by real estate security interests are not attractive for potential purchasers (especially foreign investors) and this becomes one of the factors preventing the sales of NPLs secured by real estate security interests.

Additionally, according to the Ministry of Construction, the current Law on Real Estate Business (Law 63/2006/QH11) appears to be interpreted to provide that even domestic private enterprises in Vietnam are not permitted to resell the LURs without adding any construction, such as infrastructure or building, on the land. Therefore, domestic capital may also not flow into the real estate market, which becomes one of the factors that restrains the real estate market.

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49 Although the Article 10 of the Law on Real Estate Business (Law 63/2006/QH11) covers foreign-invested private enterprises as well as foreigners, as described above, since foreigners are considered to be a minor issue of importance, survey team will exclude them from this report.

50 However, foreign-invested private enterprises in Vietnam can sell the buildings if they have constructed and obtained the ownership of such buildings, because such sales fall under the category of "investing in the construction of buildings for sale or lease" stipulated in Paragraph 1 of Article 10 item (a) of the Law on Real Estate Business (Law 63/2006/QH11).

(2) Recommendations

a. Expanding the Eligible Enterprises of an LUR mortgagee

According to the current Law on Land (Law 13/2003/QH11), only credit institutions which are permitted to operate their business in Vietnam are allowed to be LUR mortgagees. Similarly, in the case of buildings mortgagees, the Law on Land is interpreted to provide that only the credit institutions which are permitted to operate their business in Vietnam are allowed to be LUR mortgagees. However, in Vietnam, because NPLs are mostly thought to be secured by real estate (LUR mortgage and buildings), for the promotion of sales of NPLs, it is essential that the eligibility of becoming a real estate mortgagee should be expanded to those other than credit institutions which are permitted to operate their business in Vietnam, and that the purchasers of NPLs secured by a real estate mortgage are expanded. On the other hand, survey team finds no strong need to limit real estate mortgagees to such credit institutions which are permitted to operate their business in Vietnam.

Therefore, it is recommended that by amending the Law on Land the eligibility of becoming a real estate mortgagee should be expanded to domestic private enterprises, foreign-invested private enterprises in Vietnam and offshore entities[51].

b. Easing the Foreign Investment Restrictions on LUR

It is preferable to eliminate the restrictions under the Law on Land which does not explicitly regulate to allow foreign-invested private enterprises in Vietnam and offshore entities to obtain LURs by transfer from other existing holders of the LURs, because these restrictions have become an obstacle to sales of claims secured by real estate security interests. That is to say, it is recommend to amend the Law on Land or issue Decrees providing a clear interpretation of the Law on Land, in order to permit foreign-invested private enterprises in Vietnam and offshore entities to obtain LURs by purchasing them from current holders of the LURs (the following approach "A").

The above amendment not only promotes the collection of claims by existing creditors' exercise of LUR mortgages due to the expectation of the rise of the debt collection ratio, but also enables the expansion of the range of purchasers of LUR mortgages and potential successful bidders in auctions carried out in exercising mortgages, because the range of purchasers in the real estate market will increase and the market demand for real estate will increase.

However, in the case that the Government of Vietnam does not entirely liberalize the ability of foreign-invested private enterprises in Vietnam to obtain LURs by transfers from holders of the LURs, the available alternative approaches, such as the following approach B, C and D, are intended to permit them to obtain LURs by transfer from holders of the LURs to the extent required for disposal of NPLs. In addition, it may be acceptable to prohibit foreign-invested private enterprises in Vietnam and offshore entities from obtaining LURs when it is not considered to be in the best interests of national security to permit them to obtain LURs, such as acquisitions of LURs over land which is used for national security purposes.

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[51] Some might argue that there is a regulation under Law on Credit Institution (Law 47/2010/QH12), only credit institutions are allowed to lend money, so permitting only credit institutions to be a mortgagor would be enough. Though survey team is aware of such regulation, to be a real estate mortgagee does not mean to be a party who lends money to the mortgagor, such as a foreign invested private enterprise purchases NPL secured by the mortgage on LUR. Therefore survey team is of the view that above-mentioned amendment is necessary.

A. To allow all foreign-invested private enterprises in Vietnam and offshore entities to obtain LURs by purchasing them from current holders of the LURs;

B. To allow foreign-invested private enterprises in Vietnam and offshore entities which satisfy certain conditions for the disposal of NPLs to obtain LURs by purchasing them from current holders of the LURs;

C. To allow SPVs which satisfy certain conditions for the disposal of NPLs (whether or not they are invested/owned by Vietnamese or foreign investors) to obtain LURs by purchasing them from current holders of the LURs; or

D. To allow foreign-invested private enterprises in Vietnam and offshore entities who purchase NPLs, which are secured by certified LURs mortgages from VAMC, DATC or credit institutions to obtain LURs by purchasing them from current holders of the LURs.

In this regard, the amendment made to the Land Law in Thailand for disposal of NPLs, where foreigners are restricted to own land, is a good reference. Please refer to Exhibit 2.

c. Easing Restrictions on the Limitations of LUR Purposes

As described above, in Vietnam, since the use of land will be limited to purposes determined at the time of allocation or lease from the State, and LUR holders will not be permitted to use lands for any other purpose, in order to change the purpose, they need to interact with the State. The burdens of administrative procedures and the lack of predictability are obstacles for foreign investors to invest into the real estate market. Therefore, it is recommended to make or revise Decrees or Circulars relevant to the purpose of using land in the Law on Land, in order to establish rules which permit changing the purpose of using land in cases of contributing to the disposal of NPLs, and to set a definite deadline for an approval procedure of such change of the purpose of using land from the Government of Vietnam, or make provisions that the change of the purpose of using land is construed to be an approval in the case where the government of Vietnam does not make a judgment on whether it approves of this change within a certain period.

d. Reform of Legal Framework Regarding Buildings

The Law on Residential Housing (Law 56/2005/QH11) and Resolution 19/2008/QH12 limit foreign-invested private enterprises in Vietnam and offshore entities from obtaining buildings as described above. These legal restrictions become one of the factors preventing sales of NPLs secured by a real estate security interest, because foreign capital does not flow into the building trading market and the market continues to be weak.

Therefore, it is recommended to establish the Law on Residential Housing (Law 56/2005/QH11) and its subordinate regulation in order to abolish the above restrictions regarding the obtaining of ownership of buildings by foreign-invested private enterprises in Vietnam and offshore entities. This makes the range of potential purchasers in the building trading market increase, and the market demand for buildings will increase, as well as increase the potential number of successful bidders in building auctions carried out in exercising the security interests. As a result, it may not only promote the collection of claims by existing creditors' exercise of security interests provided by buildings, but also enables the increase of the range of purchasers of claims secured by buildings.

Further, to increase the range of potential purchasers in the building trading market, it is also essential to abolish the restrictions concerning the transfer of buildings, other than the above restrictions concerning the obtaining of buildings.

e. Easing the Foreign Investment Restrictions of the Law on Real Estate Business (Law 63/2006/QH11)

With respect to LURs, the Law on Real Estate Business (Law 63/2006/QH11) does not permit foreign-invested private enterprises to conduct the business of reselling.

In addition, the Law on Real Estate Business (Law 63/2006/QH11) and Resolution 19/2008/QH12 do not permit foreign-invested private enterprises in Vietnam to conduct the business of reselling buildings, which domestic private enterprises in Vietnam are permitted to do. Also, domestic private enterprises in Vietnam are not permitted to resell LURs without constructing infrastructure of buildings on the lands.

Because these restrictions on disposal and usage of real estate discourages the potential purchasers to purchase real estate, the real estate market falls into a slump and the attraction of NPLs secured by real estate security interests declines for purchasers (especially foreign investors). This becomes one of the factors which prevent sales of the NPLs secured by real estate security interests.

In order to expand the range of purchasers for the real estate market, it is necessary to abolish the restrictions stipulated by the Law on Land and the Law on Residential Housing (Law 56/2005/QH11), and also the restrictions regarding sales of LURs and ownership of buildings stipulated by the Law on Real Estate Business (Law 63/2006/QH11).

Therefore, it is recommended that the Law on Real Estate Business (Law 63/2006/QH11) should be amended in order to add a stipulation that the field of real estate business activities in which domestic and foreign-invested private enterprises in Vietnam can engage, to permit to sell the land without constructing infrastructure or buildings after they purchase the LURs.

We also recommend permitting foreign-invested private enterprises in Vietnam to conduct the business of purchasing and selling (reselling) buildings with equal rights as current domestic private enterprises in Vietnam without any restrictions of a deadline for reselling.

The prohibition of reselling under the Law on Real Estate Business (Law 63/2006/QH11) also has the effect of restraining real estate speculative dealings. However, the restraining of speculative real estate dealing can be also accomplished by imposing a charge on prohibition from short-term sales or restricting a finance loan to a speculative purchase of real estate, rather than by prohibiting a real estate dealing itself.

2. Easing Restrictions on Foreign Ownership in Enterprises

(1) Current Status and Issues

Some NPLs are collateralized by shares in debtor-enterprises. Some investors may purchase NPLs aiming to obtain shares of debtor-enterprises by way of DES. However, since some business sectors are closed or only partly-open to foreign investment, there are regulations regarding the ratio of shares of Vietnamese enterprises in such business sectors that foreigners can hold, and some Vietnamese companies with foreign shareholders may be subject to certain business conditions or restrictions. Additionally, as for public companies, the ratio of shares which can be held is set at 49%.

Therefore, even if foreign investors purchase NPLs, in some cases, there is a restriction for foreign investors to obtain shares of debtor-enterprises by way of DES, enforcement of the collateral, or conversion of convertible bonds, and these restrictions may discourage foreign investors in purchasing NPLs.

(2) Recommendations

The equity participation of foreign investors may be subject to the Most-Favored Nation principle under several international treaties to which Vietnam is a party, and has a widespread impact on the relationship with other investors from other foreign countries. Therefore, survey team proposes to establish a special treatment applicable to specific cases (e.g., the case of purchasing NPLs from VAMC), and ease regulations regarding the ratio that foreign investors can hold in shares of the enterprise in Vietnam that owe NPLs and business conditions, or restrictions imposed on the Vietnamese companies with foreign shareholders so that foreign investors are motivated to purchase NPLs for the purpose of implementing DES, and motivate the purchasing of NPLs.

3. Establishing an NPLs Exchange Market

(1) Current Status and Issue

Many domestic and foreign investors are interested in purchasing NPLs in Vietnam. However, no market for the exchange of NPLs has been sufficiently established, and therefore, the opportunity to engage in NPL transactions is limited.

(2) Recommendations

The creation of a market will facilitate the matching of purchasers and sellers of NPLs and stimulate purchases and sales. Additionally, because setting up a NPL exchange market (both a primary and secondary market) would enable a market mechanism to form prices.

It would be necessary for many investors to participate in a NPL exchange market in order to allow for liquidity for NPL transaction. Therefore, in order to make a NPL exchange market accessible to a lot of investors, it is recommended that the SBV shall take a lead in establishment or amendment of the laws and regulations relevant to the sales and disposals of loans by establishing related systems to introduce the following measures:

- To establish a new decree regarding the rules of trade and the authority of the operating organization concerning the NPL exchange market.
- To develop a centralized system to manage information regarding NPLs (including the information concerning debtor-enterprises, security assets, history of debt collection and transaction history). In particular, to enhance due diligence information (including information of business conditions of real-estate security, rental fee level and tenancy deposit that must be returned) and stylize such information.
- To introduce rules for disclosure which enable investors to easily and quickly access the abovementioned information of NPLs through the internet.
- To prepare for a model claim assignment agreement so that investors can document transactions efficiently.
- To introduce systems for expediting and simplifying the registration of transfers of security interests in NPLs. Along with the liquidation of claims, security interests also transfer in principle, and thus it is difficult for investors to grasp the true security interests holder, which may cause stagnant transactions of NPLs. Therefore, it is important to establish a system that allows investors to instantly grasp the true security interests holder's identity (please refer to Part III-I, I, 6 for more details).

4. Developing Laws for NPL Securitization

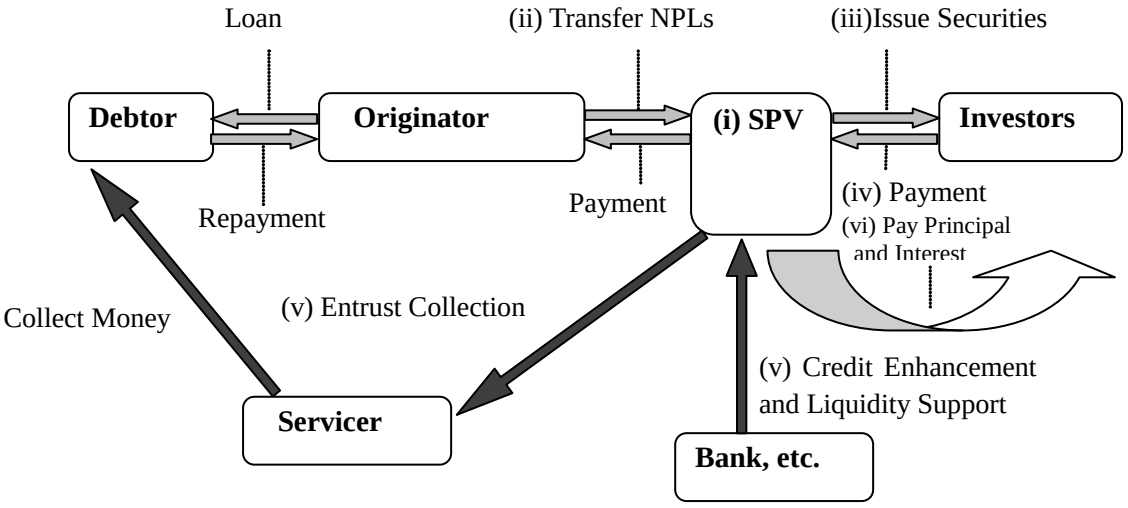
The securitization of NPLs is a scheme where an NPL holder sells NPLs to a special purpose entity (an "SPV") and this SPV issues and sells the securities backed by the purchased NPLs to investors. At present, this type of NPL securitization does not appear to be popular in Vietnam,

but do provide the following advantages: (i) Investors may invest in smaller amounts, (ii) Rather than investing in a single NPL, investing in pooled NPLs makes it possible to mitigate investment risks, and (iii) Issuance of different classes securities with a variety of risks makes it possible to invest to the extent of one's own risk appetite, which attracts investors. In addition, if the scheme of securitization is composed appropriately, foreign investors will be able to invest in NPLs through securitized products. Therefore, it is recommended to develop laws for NPL securitization in order to expand the pool of investors and promote NPL disposal.

It is necessary to develop various laws for securitization of NPLs. As described herein below, we provide an explanation and proposals regarding legal reforms for NPL securitization in two different cases: where securities backed by the purchased NPLs are issued in Vietnam, and where such securities are issued outside of Vietnam. Please note that, in the former case, it is sufficient if the regulations on foreign investment for foreign-invested companies in Vietnam are relaxed, but it would require establishment of new/detailed rules and regulations regarding securities. On the other hand, in the latter case, securitization would require that the domestic market be opened for foreign entities, but new rules and regulations regarding securities would not be necessary because the securities would be issued in foreign countries.

(1) Recommendations - Method of Issuing Securities in Vietnam

- A basic structure for issuing securities backed by NPLs in Vietnam (the "Basic Structure") is as follows[52].



(i) Establishing an SPV. Please note that the SPV is a Vietnamese entity in the case of Part III-I, I, 4, (1).

(ii) Transferring NPLs from the Originator to the SPV.
For bankruptcy remoteness, the Originator transfers the NPLs to the SPV, rather than holding the NPLs directly and issuing the securities backed by the NPLs, this is intended to prevent the underlying NPLs from being affected by the bankruptcy proceedings of the Originator by transferring the NPLs to the SPV in which the Originator does not have an economic impact. In addition, from the viewpoint of NPL disposal, there is an advantage that NPLs may be removed from the balance-sheet of the Originator.

[52] Yasuo Ide, "Introduction to Finance: The latest mechanism of securitization" (in Japanese) (2007), at page 61

(iii) SPV issues securities backed by NPLs which are transferred from the Originator to the SPV as mentioned in (ii) (The securities are typically structured into various classes/tranches to satisfy the investors' needs.)
(iv) Investors purchase the securities.
(v) In some cases, Banks or insurance companies join this Basic structure to provide credit enhancement for the SPV and to ensure that the SPV repays the principal and interest to the Investors. In some cases, the SPV entrusts the collection of money to a Servicer.
(vi) Investors receive principal and interest from the cash flow amount generated by NPLs.

- Necessary legal infrastructure for securitization of NPLs according to the Basic Structure is as follows.

a. Establishing Framework to Set up SPV (Basic Structure (i))

(a) Set up an Entity

Under the existing system, there is a method to use a Securities Investment Fund under the Law on Securities (Law 70/2006/QH11). However, it is highly likely that a Securities Investment Fund cannot invest in loan receivables. In addition, where the Securities Investment Fund falls under a Public Fund, and not a Members Fund which has no more than thirty (30) legal entity investors, there are some problems: it is necessary to carry out procedures for a public offering, and investment by foreigners is limited to up to 49%[53]. In order to carry out the securitization of NPLs more flexibly, one option is to promote the use of an existing joint stock corporation or limited liability corporation as an SPV via a type of special law, which provides for limitations on the SPV's business purposes, and tax reduction or exemption measures, etc., are necessary in order to convert a normal corporation into an SPV[54].

Another option is to make a new and widely useable law, such as a trust law or special purpose company law. In this case, the new law may also be used for real estate securitization.

(b) Holding Vehicle for Bankruptcy Remoteness

From the viewpoint of bankruptcy remoteness, it is advisable that the holding vehicle of the SPV be completely separate from the Originator. Accordingly, one of the options is to enact a new legal framework which establishes a type of holding vehicle with bankruptcy remoteness, which can ensure that there is no connection between the voting right holders of the SPV and a capital contributor of the SPV, similar to a Charitable Trust[55] under the English or American legal

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53 Article 2.2 of Decision 55/2009/QD-TTG

54 In the Philippines, where an SPV Act was established in 2002, promotes the transfer of NPLs to an SPV by providing for limitations on the business purposes and tax reductions or exemption measures with respect to the existing corporation, in the SPV Act.

55 Lawyers establish the SPV as an incorporator, and subscribe for all shares of the SPV. Next, the lawyers transfer all shares of the SPV to a trustee. At the same time, the trustee declares a trust over such shares. By this declaration of trust, the trustee becomes a settlor and the trustee of the shares of the SPV, and bears an obligation to exercise the shareholder's right in accordance with the purpose of the securitization. Also, the trustee should promise to contribute all the residual assets of the SPV to a charitable foundation upon the termination of the trust. This will enable the SPV to have no practical shareholders.

systems, or an Intermediate Corporation with Limited Liability[56] under Japanese law. Another option is to approve of the use of an offshore vehicle (e.g., a vehicle in a tax haven such as the Cayman Islands, which uses the Charitable Trust system) as the holding vehicle for the SPV in Vietnam (In this case, the SPV will be a foreign-invested vehicle) for the purpose of bankruptcy remoteness.

(c) Relaxing the Regulations on LUR Mortgages and on Foreign Investment

Under the current legal system in Vietnam, only authorized financial institutions or special corporations such as DATC or VAMC are allowed to be LUR mortgagees. As a result, when the SPV purchases NPLs secured by LUR mortgages, the SPV may not be an LUR mortgagee. Therefore, in order to enable the SPV to purchase NPLs which maintain their commercial value, it is essential to allow the SPV to be an LUR mortgagee.

(d) Approval for Establishment of Enterprises Whose Business Purpose is only Buying and Selling Claims

Under the current legal system in Vietnam, it is unclear as to whether enterprises whose business purpose is only to buy and sell claims may be established, and in practice, there is a potential risk that the license authority will not issue an Investment Certification to such enterprises. Therefore, in order to enable the establishment of an SPV whose business purpose is only buying and selling NPLs, it would be necessary to establish rules allowing the creation of entities whose business purpose is only to buy and sell claims.

b. Establishing a Legal Framework for Exemption from/Reduction of Taxes Relating to Assignment of NPLs (Basic structure (ii))

From the viewpoint of maximizing the distribution amounts to Investors, taxes relating to the assignment of NPLs from the Originator to the SPV shall be exempted or reduced[57].

c. Building a Preferred/Subordinated Structure (Basic Structure (iii))

In order to increase the attractiveness of securities backed by NPLs to Investors, it is also essential to establish a legal system that enables the SPV to split repayment sources into preferred portions and subordinated portions, and to issue various classes/tranches of securities according to various risks or profits.

d. Establishing Regulations on the Conduct of Business Relating to the Issuer or Sales Broker of the Securities (Basic Structure (iii))

In the case of a public offering[58], the issuer must register the offering with the state securities commission and submit a prospectus (including the audited

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[56] In Japan, an Intermediate Corporation with Limited Liability is a corporation under the Intermediate Corporation Act of Japan. While members of an Intermediate Corporation with Limited Liability bear no liability toward creditors of the corporation, contributions of funds are required by the Act in order to reserve funds for creditors. It is not necessary for the fund contributor to be a member of the corporation. It is a noteworthy point regarding an Intermediate Corporation with Limited Liability, that the fund contributor of the corporation is separated from the members of the corporation. Currently, Intermediate Corporations with Limited Liability have been reformed into General Incorporated Associations, due to an amendment of the Intermediate Corporation Act.

[57] In the case of the Philippines mentioned above, the SPV Act provides exemption from/reduction of taxes such as stamp duty, capital gains tax or value-added tax.

financial statements) and other documents to the commission under the Law on Securities (Law 70/2006/QH11). Also, in the case of private placement of shares, the issuer must register the offering with the relevant authority, under Decree 58/2012/ND-CP. In addition, in the case of private placement of an Enterprise Bond, Decree 90/2011/ND-CP stipulates obligations to disclose information, etc.

Furthermore, acting as a securities broker or underwriter for securities issuances fall under "Professional business activities" of securities companies under the Law on Securities (Law 70/2006/QH11). In this manner, there are certain regulations on issuance or sales of securities. However, there are no regulations on issuing or selling securities issued by an SPV or trust beneficiary rights issued by a trustee in case where they do not fall under "securities" under the Securities Act or "Enterprise Bond" under the relevant Decree. Therefore, it is also essential to include such financial instruments in existing regulations, or make new rules, such as laws or guidelines on issuing or selling them from the perspective of investor protection.

However, when you make such rules, one possible approach is that investors are divided into "professional investors" and "general investors," and the rules may be relaxed where financial instruments are sold to professional investors.

e. Establishing an Appropriate Asset Valuation System and Information Disclosure System which Requires SPV to Disclose Accurate Information to the Investors (Basic Structure (iv))

Accurate and sufficient information should be provided to the Investors in order for them to make investment decisions. In this regard, at present, there are no domestic credit rating agencies in Vietnam. Although it is possible for the Originator or the SPV to approach one of the international rating agencies, it is impractical to use such agencies because their fees are relatively high. Therefore, it is also essential to promote the establishment of domestic rating agencies. On the other hand, rating agencies should be required to have the ability to provide reliable rating information. Hence, it is advisable that a government authorized system and a clear authorization standard be introduced so that rating agencies can be smoothly established. Recently, a draft Decree on the establishment and operation of credit rating agencies in Vietnam has been drafted. In the draft, the minimum capital amount, the conditions required for directors and shareholder composition (e.g., a shareholder holding 5% or more paid-up capital of a rating agency shall not hold shares in another rating agency), etc. are provided.

In addition, as mentioned above in Part III-1, I, 4, (1), d., if new securities which will not be subject to the existing rules come into existence due to the introduction of the SPV Act or Trust Act, it is also essential to make rules regarding an information disclosure system, to provide a description of the securities and the risk of principal loss to the Investors.

Furthermore, it is advisable to introduce certain systems, such as a system which requires that the financial statements of the SPV be audited by an independent auditor, and a system for improving the quality of real estate appraisals in relation to the issuance of securities backed by secured NPLs secured by LUR mortgages.

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[58] An offer for sale of securities to one hundred or more investors, excluding institutional securities investors, etc (Paragraph 12 of Article 6 of the Law on Securities (Law 70/2006/QH11)).

Survey team's proposals described above are also effective to prevent the occurrence of a situation similar to the sub-prime crisis[59]. First, causes of the sub-prime crisis were that financial institutions made loans without strict credit evaluation, and that rating agencies underestimated the default rates of the underlying assets. Thus, the rating method used by rating agencies has also been a problem. Therefore, it is important that the securitization scheme establishes and operates reliable rating agencies, to appropriately evaluate assets, and to provide such information to the Investors. In addition, as can be seen from the fact that securitization schemes have not been prohibited since the sub-prime crisis occurred, the securitization scheme itself is not generally considered to be the immediate cause of the sub-prime crisis.

f. Establishing a Framework to Regulate Parties' Conduct (Servicer, Arranger, etc.) (Basic Structure (v))

To collect NPLs in a Basic Structure, there is a case where the Servicer which is licensed under Decree 104/2007/ND-CP collects NPLs. With respect to the Servicer, Decree 104/2007/ND-CP provides prohibited acts or other regulations. However, although the Servicer is required to hand over the collected debts and/or assets to the creditor in accordance with the signed service contract, there is no regulation requiring it to manage the collection money or assets separately from its own property. Therefore, there is a risk that the collected debts will be diverted, because the collected debts which are owned by the SPV have been mixed up with the properties of the Servicer, or collection debts which are owned by third parties ("Commingling Risk"). To avoid the Commingling Risk, a duty to segregate property shall be provided in Decree 104/2007/ND-CP. In addition, in Vietnam, the license authority is likely to refuse to issue a business license for the Servicer's business. However, as an opportunity to promote collecting NPLs, it is necessary to expand the Servicer's business by issuing the business licenses actively to persons who meet the requirements provided by law.

In addition to the above, in order to protect the Investors, it is necessary to establish a framework to regulate each party's conduct, for those who are involved in the Basic Structure.

g. Establishing a Legal Framework for Avoidance of Double Taxation (Basic structure (vi))

To avoid double taxation, which means that the revenues are taxed twice before the Investors receive any returns arising out of the profits being taxed once at the corporate level and the dividends being taxed when distributed to the Investors, it is necessary to enact rules enabling certain SPVs to be exempt from taxation, or dividends to be recognized as expenses, for taxation purposes, if the SPV distributes a certain portion or more of profits.

(2) Recommendations - Method of issuing securities in foreign countries

- The basic structure for issuing securities backed by NPLs in foreign countries is basically the same as the basic structure described in Part III-I, I, 4, (1), except that the SPV is a foreign entity established in a foreign country.

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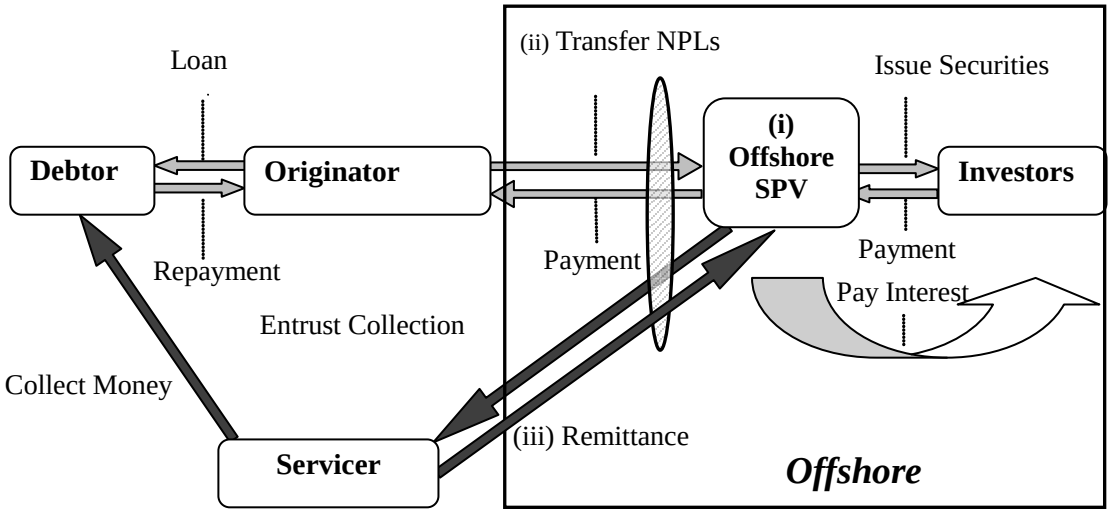
[59] The debts owed by people in the United States who had difficulty in following their repayment schedules and who are referred to as the "sub-prime" became bad debts; further, financial institutions suffered huge losses due to the falling prices of securitized products backed by those loans. This issue developed into the global credit crunch. The "sub-prime crisis" is a general term for such a series of troubles. (Mizuho Research Institute Ltd.; "Sub-Prime Financial Crisis" (in Japanese) (2007)).



- Necessary legal infrastructure for securitization of NPLs is as follows.

a. Relaxation of regulations on LUR mortgages ((i) of above chart)

In order to enable the offshore SPV to purchase NPLs that maintain their commercial value, it is essential that the offshore SPV be permitted to own LUR mortgages (details are provided in Part III-I, I, 1).

b. Reform Procedure for Registering Foreign Loans with the SBV ((ii) of above chart)

When the NPLs are sold to the offshore entity, these NPLs may be considered "Foreign Loans" under Vietnamese law. Accordingly, the NPLs should be registered with the SBV if the payment term of the transferred NPLs exceeds one year. However, there are no detailed regulations on the registration proceedings in this case (details are provided in Part III-I, I, 7). Therefore, it is essential to clarify several uncertain points in the procedure for registering Foreign Loans with the SBV, so that the Originator can transfer the NPLs to the offshore SPV smoothly.

c. Rationalization of Remittance Procedure (Basic Structure (iii))

When an offshore SPV collects NPLs, the SPV usually entrusts the Servicer to do it. However, it is unclear whether the Servicer may provide a collection service for offshore entities or foreign creditors; further, it is also unclear whether the Servicer may remit money to the offshore creditors on behalf of the debtors. Therefore, it is necessary to clarify several uncertain points in Decree 104/2007/ND-CP or other relevant laws and enable the Servicer to collect NPLs and remit money for the offshore SPV. In addition, if the NPLs transferred to the offshore SPV are considered Foreign Loans, the obligations of debtors will increase, such as the debtors of the Foreign Loans must submit quarterly reports to the SBV. If the debtors fail to fulfill their obligations, there is a risk that they cannot make remittances. Therefore, in the case of the transfer of NPLs due to the securitization of NPLs, it is necessary to consider relaxing the regulations,

such as Circular 09/2004/TT-NHNN, with regard to Foreign Loans in order to minimize the risks.

In addition to the above, just as with Part III-I, I, 4, (1), it is necessary to establish a framework to regulate the parties' conduct (Servicer, Arranger, etc.), establish an appropriate asset valuation system, and establish a legal framework for avoidance of double taxation between Vietnam and foreign countries.

5. Developing Laws for Real Estate Securitization

In addition to the NPL securitization, in order to increase investment and promote the sales of NPLs secured by LUR mortgages, it is recommended to develop laws for securitization of real estate.

(1) Recommendations - Method of Issuing Securities in Vietnam

- The basic structure for issuing securities backed by real estate in Vietnam is basically the same as the Basic Structure for securitization of NPLs, except for Basic Structure (v). For some cases of Basic Structure (v), the SPV entrusts the management of real estate to the Asset Manager/Property Manager (If the trust system will be used for securitization, the SPV will entrust the management of beneficial interests in the trust to the Asset Manager/Property Manager).
- The necessary legal infrastructure for securitization of real estate is basically the same as the legal infrastructure for securitization of NPLs, except for the following points.

a. Establishing a Framework to Set up an SPV (Basic Structure (i))

(a) Set up an Entity

Under the existing system, there is a method to use Real Estate Investment Funds (REIFs) under the Law on Securities (Law 70/2006/QH11). There are two types of REIFs: one is a real estate investment fund ("REIF"); the other is a real estate securities investment company ("RESIC"). Both securities issued by REIF and RESIC must be listed on the Stock Exchange. Circular 228/2012/TT-BTC that provides guidance on the establishment and management of Real Estate Investment Funds (Circular 228/2012/TT-BTC) just came into force as of July 1, 2013, and there is still no actual case of the establishment of REIFs. Therefore, future utilization of REIFs is expected. However, under the current legal framework, investment in REIFs by foreigners is limited to up to 49%[60]. In addition, there are some restrictions, such as that invested real estate must, in principle, be complete constructions[61] and that REIFs must, in principle, hold real estate for a minimum of two (2) years from the date of purchase. Therefore, in order to expand the investment in real estate, it is necessary to reconsider these restrictions.

In addition, in order to carry out the securitization of real estate more flexibly (e.g., issuing securities by private placement), one option is to promote use of an existing joint stock corporation or limited liability corporation as an SPV via a type of special law (including a time-limit law), which provides for limitations on the SPV's business purposes; further, tax reduction or exemption measures, etc., are necessary in order to convert a normal corporation into an SPV. Another option is to make a new and widely useable law, such as a trust law or special purpose company law.

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60 Article 2.2 and 2.3 of Decision 55/2009/QD-TTG

61 Article 9.4 and 26 of Circular 228/2012/TT-BTC

(b) Relaxation of Regulations on Ownership of LURs or Buildings by Foreign Invested Companies

In the case where an SPV is a foreign-invested entity or foreign-owned entity, except where the SPV is a REIFs, in order to enable such an SPV to purchase LURs or buildings, it is essential that such SPV be permitted to own the LUR or building under Vietnamese law (details of regulations on purchasing real estate are provided in Part III-I, I, 1).

In addition, under the current Law on Real Estate Business (Law 63/2006/QH11), foreign-invested companies are not able to purchase LURs or buildings for the purpose of reselling them. Therefore, in order to enable a foreign-invested SPV to purchase or hold real estate, it is essential to relax the regulation against foreign investment companies in the Law on Real Estate Business (Law 63/2006/QH11).

b. Improvement of Real Estate Registration System (Basic Structure (ii))

To promote the securitization of real estate, it is necessary to facilitate the sale and purchase of real estate. Therefore, a database system in relation to the registration of real estate shall be introduced soon (details are provided in Part III-I, I, 6).

(2) Recommendations - Method of Issuing Securities in Foreign Countries

The basic structure for issuing securities backed by real estate in foreign countries is basically the same as the basic structure in Part III-I, I, 4, (2). In addition, in order to enable the offshore SPV to purchase LURs or buildings, it is essential that the offshore SPV be permitted to own LURs or buildings (details of regulations on purchasing real estate are provided in Part III-I, I, 1).

6. Improvement of the Real Estate Registration System

(1) Current Legal System and Issue

Because a transaction of an LUR should be registered and the transaction will become effective with the registration, holders of the LURs are required to be registered at the LUR Registration Office and to receive Land Use Certificates (a so-called "Red Book").

In addition, according to Decree 163/2006/ND-CP, the creation of an LUR mortgage must be registered, and the LUR mortgage will become effective with the registration.

There is a registration system for ownership and security interests of buildings as well as LURs, and these will also become effective with the registration.

In case that the ownership of a building and an LUR belongs to the same person, the Land Use Certificate and registration certificates of the building will be combined into one certificate, and in the case that the ownership of the building and LUR belongs to another person, the Land Use Certificates and registration certificates of buildings will be issued separately.

In addition, according to Decree 88/2009/ND-CP, a registration system was introduced in 2009 in which the ownership of the LUR and the right to use the building are combined into one certificate. Before the introduction of the above new system, residences or building constructions were registered by the construction authorities, while LURs were registered by the land management authorities, and certificates were also separately issued by each authority. After the introduction of this system, all registration of real estate including residences and building constructions are to be integrated at the LUR Registration Office, and Land Use Certificates and registration certificates of buildings are also to be combined into one certificate. However, in fact, other old-form certificates, including separate certificates for LUR and building ownership, are still

permitted to exist and may take a long while until all the old-form certificates are replaced with the new forms.

In this regard, while there is a registration system for LURs and buildings, unlike movable security interests[62], there is no present database system in Vietnam that allows everyone to access and obtain LUR information by internet service. Therefore, people must visit a jurisdictional LUR Registration Office where the land is located if they want to confirm their rights. Survey team has heard that a database system is planned to be introduced, but the timing of the introduction has yet to be determined. For disposing of NPLs, it is necessary to introduce such a system at an early stage.

(2) Recommendation

Under the current real estate registration framework, it is a serious burden for persons and entities who are going to purchase or to receive security interests on real estate to be required to go and refer their matter to the local registration offices in order to view the legal status of the subject real estate. Therefore, it is recommended to introduce a database system that allows everyone to easily access and obtain LUR information through internet service, as in the case of the integrated registration system of movable security interests on the internet.

7. Reforming the System of Registration of Foreign Loans

(1) Current Status and Issue

In order to promote the sales of NPLs, it is necessary to increase the number of candidate purchasers; however, when the NPLs issue develops into a serious problem, domestic financial institutions and other investors become reluctant to invest in NPLs, and it becomes difficult to achieve a large sale of NPLs unless it involves foreign investors as purchasers. However, under the current legal system, in addition to the restrictions on foreigners' holding shares in Vietnamese companies and acquiring LURs, the selling of NPLs to foreign investors faces significant obstacles as discussed below.

In Vietnam, it is not common to assign loans borrowed by domestic organizations (domestic loan) to foreign investors, and Vietnam lacks legal guidelines for the sale and purchase of domestic loans by foreign entities. However, loans borrowed by domestic organizations from foreign lenders are treated as "Foreign Loans" under the foreign exchange regulations, and subject to the relevant regulations, in particular if the payment term of the loan exceeds one year, the debtor is required to register the "Foreign Loan" with the SBV (Article 14.5 of Decree 219/2013/ND-CP, Article 1 of Circular 25/2011/TT-NHNN and Article 3 of Circular 22/2013/TT-NHNN). If a domestic loan becomes NPL and it is sold to a foreign investor, the debt purchaser becomes the "owner of the debts," which, by broad interpretation means the lender of the debt, and therefore, although there are no definite stipulations, there is a possibility that the relationship between the purchaser and a debtor is deemed to be a "Foreign Loan" agreement, and subject to the regulations on Foreign Loans[63]. In particular, if the payment term from the sale exceeds one year, the registration with SBV by a debtor may be necessary.

However, this system requires the cooperation of a debtor who has the duty of registration, and takes significant time for registration, moreover, if a debtor does not cooperate with the registration, it is impossible to register the "Foreign Loan". If the loan of which the payment term exceeds one year is not registered with the SBV, a remittance bank may reject a remittance of interests and principal.

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62 In terms of movable security interests, there is the registration institution; NRAST which is one of the departments of the MOJ in Vietnam. People are able to obtain integrated information about security interest holders by internet service on the computer.

63 Please note, however, that this is a theoretical analysis, and there is no direct legal basis to confirm that such transfer of NPL forms a Foreign Loan relationship.

Additionally, as mentioned above, there are no legal guidelines regarding the registration procedure for the case where a loan claim is transferred to a foreign investor and the procedure is unclear, therefore, making inquiries to the SBV on case-by-case basis is inevitable, which becomes an obstacle when foreign investors purchases NPLs.

Furthermore, current procedures for the registration of Foreign Loans under the prevailing law would be appropriate for the registration of a single Foreign Loan, but not for the package registration of several Foreign Loans. Therefore, if the lender intends to implement a bulk sale of NPLs, the registration procedure of Foreign Loans will not go smoothly, which may be one of the obstacles for the sales of bulk NPLs.

(2) Recommendations

Survey team has heard that the SBV plans to issue specific regulations that includes detailed legal guidelines dealing with the procedures required subsequent to a debt assignment to offshore investors. Under such regulation, in order to facilitate the acquisition of NPLs by foreign investors to activate the selling of NPLs, survey team proposes the following:

- To make clear regulations and rationalize the system of the registration of Foreign Loans required when a domestic loan is sold to a foreign investor.
- In order that a creditor can quickly register Foreign Loans with the SBV, and in order to prevent a situation where the sale of loans is obstructed by the resistance by a debtor, it should be possible for the creditor to process the registration procedure at its discretion without the consent of the debtor.
- To enable registration of several claims as Foreign Loans at once.

II. Promotion of Collection of NPLs

In order to resolve the NPL problems, the legal frameworks for collecting claims swiftly and securely need to be established. Establishment of such legal frameworks will reduce the number of debtors who attempt to avoid paying its debts, despite of its sufficient financial resources, and enable creditors to collect more amount of claims, and hence, NPLs will be reduced. Further, since the lack of such legal frameworks will discourage the purchase of NPLs, in order to promote sales of NPLs, it is necessary to establish such legal frameworks. In the following section, the issues with collecting NPLs in the current legal framework will be clarified, as well as providing recommendations for solving them.

1. Ensuring Effectiveness of Enforcement of Security Interests

(1) Current Legal Frameworks and Issues

a. Outline

A mortgage and a pledge are commonly used as security interests in order to secure a creditor's claim against a debtor in Vietnam. In principle, a mortgage can be created on any property, including LURs and buildings on the land. On the other hand, a pledge is not commonly created on LURs and properties attached to the land. In addition, because a property should be delivered to a creditor at the point of creation of a pledge, a pledgor cannot use the property. Thus, the creation of a pledge on a LURs or properties attached to the land is not common. Therefore, survey team will focus on mortgages hereafter.

To create a mortgage on LURs, a notarized mortgage agreement should be executed separately from a financing agreement, and the mortgage agreement should be registered with a competent LUR registration office. The mortgage becomes effective with the registration of a mortgage agreement.

The legal frameworks regarding the realization of the secured real estate are as follows (Article 64 of Decree 163/2006/ND-CP and Article 64a, and Article 64b of Decree 11/2012/ND-CP).

In Vietnam, the operation of auctions at realization of secured properties is not conducted by the court, instead it is consigned to licensed auction operating organizations, which are enterprises under the supervision of the MOF.

b. Realization of Security Property Upon Agreement

When a debtor and a security interest holder agrees as to how to realize the secured real estate, the security interest holder can exercise its security interest in accordance with an agreement without any involvement of a court. There are three methods to realize the secured property: (i) obtaining of the secured property by the security interest holder at an agreed price or a price to be determined by an appraiser, (ii) selling the secured property to a third party at an agreed price or a price to be determined by an appraiser, or (iii) if the parties agree to dispose of the secured property at an auction, selling the secured property at an auction in accordance with the relevant laws.

c. Realization of Secured Property Not Upon Agreement

If a debtor and a security interest holder fail to agree upon how to realize a secured property or on the price of the secured property, the security interest holder can file a petition for the commencement of an auction procedure.

d. Issues in Auction Procedure

When the security interest holder exercises its security interest under an

auction procedure[64], there are two material issues which becomes obstacles in practice.

First, there is an issue when a debtor refuses to deliver secured property to the security interest holder. The law does not require the delivery of the secured property from the debtor to the security interest holder in order to commence the auction procedure. However, it seems that auction operator organizations do not proceed with auction procedures unless the secured property is delivered to the security interest holder, because the delivery to the winning bidder is not guaranteed under such circumstances.

Therefore, when the debtor rejects vacating the secured real estate, there is a practice of filing a lawsuit with a court in order to obtain a court decision in favor of the security interest holder[65] and claiming for eviction of the secured property by enforcement of civil judgment, has been established.

Further, a security interest holder has a right to petition the Competent People's Committee and the police office, when a debtor does not vacate a secured real estate (Paragraph 5 of Article 63 of Decree 163/2006/ND-CP). However, it seems that the Competent People's Committee and police are not eager to cooperate in these requests, and this legal system does not work well, because there are no laws stipulating the obligation of these organizations to cooperate with the eviction. A Circular which stipulates the ordinance of enforcement of Decree 163/2006/ND-CP, came into effect on an early date, and Article 9 of the draft new Circular stipulates the procedure for requesting an assistance to the Competent People's Committee and the police. However, the obligation of the Competent People's Committee and the police to cooperate with the accomplishment of the eviction is not stipulated, so the Circular does not resolve the issue of the Competent People's Committee and the police not being cooperative.

As mentioned above, a security interest holder is compelled to file a lawsuit when a debtor refuses to vacate a secured real estate. In addition, there are no actual effective measures which can compulsorily remove the debtor from the secured real estate. Therefore, the security interest holder has to spend considerable time and cost in these efforts, and this becomes an obstacle for the effective realization of the secured real property.

Secondly, it is a problematic issue that a debtor's consent is required at the registration of a transfer of a LUR, when a winning bidder goes to register a transfer of a LUR at the LUR registration office after an auction.

Because Paragraph 4 of Article 58 of Decree 163/2006/ND-CP stipulates that "any person realizing security property shall be the secured party," according to the wording, a transfer of LUR can be registered with an application by a security interest holder.

However, it seems that the LUR registration office requests in practice at the time of registering a transfer of a LUR: (i) a power of attorney to sell a secured real property from a debtor to a security interest holder, and (ii) a document issued by a debtor to the LUR registration office, which provides consent to an auction[66]. Therefore, when a debtor does not consent to an auction, a winning bidder cannot register a transfer of a LUR as a matter of fact.

This practice may come from the idea that "an owner of a secured real estate

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64 Auction procedure will be commenced when "the parties agreed on the auction" and where "the parties do not agree on how to realize the secured real estate."

65 The objects of the court order are realizing secured property and collecting principal and interest of the claim.

66 Although, in practice, LUR registration offices in some provinces only require the letter "a document issued by a debtor to the LUR registration office, which provides consent to an auction" among two documents described in this paragraph, it does not make any difference in the point that a winning bitter will not be able to register a transfer of a LUR without obtaining a debtor's consent as to the sale of the secured real estate under the auction procedure.

is still a debtor, a security grantor, even at an exercise of security interests, so consent from an owner is required when a security interest holder exercises its security interests." However, the fundamental purpose of the security interest system is collecting claims by exercising security even against the debtor's will, when the debtor falls into default. So, the practice above achieves the opposite purpose to the fundamental purpose of the security interest system and is extremely unreasonable. In addition, because the current Law on Land (Law 13/2003/QH11) and the amended Law on Land to be effective from July 1, 2014, stipulates that a certificate of a LUR should be issued to "a recipient of LUR upon realization of a contract of security interests for collection of their claim" (Article 49.4 of current Law on Land (Law 13/2003/QH11), Article 99.1.(c) of the amended Law on Land) and Article 58.4 of Decree 163/2006/ND-CP stipulates that security interest holders may dispose of the secured real estate, such a practice also infringes on these provisions.

As long as the LUR registration offices continues this practice, the swift collection of claims by exercising security interests cannot be expected, and claims secured by security interests are not attractive to the potential purchasers. Especially, as long as such practice is maintained, it is difficult for foreign investors to purchase NPLs secured by security interests.

(2) Recommendations

With respect to the first issue concerning the legal frameworks of security interests (debtor's refusal to be evicted), it is recommended to establish new Decrees in order to establish a legal framework to permit a court to issue a delivery order, swiftly, against a person rejecting delivery of a secured real estate.

Specifically, it is recommended to establish a legal system where a court can issue a delivery order against a possessor of secured real estate within approximately two weeks from when a security interest holder or a winning bidder of a real estate submits to a court a written security grant agreement and documents verifying the facts[67] constituting the cause of enforcement of security interests, notarized by a notary public.

In addition, in order to accomplish an actual delivery based on a court's delivery order flexibly and speedily, the following two points are recommended: (a) to establish Decrees stipulating the obligation of a Competent People's Committee and the police to cooperate with the accomplishment of evacuation when an executor, a nongovernmental organization, such as a Bailiff, or VAMC requests, and (b) to permit a security interest holder or winning bidder to consign execution of delivery to a nongovernmental enforcement agency, such as a Bailiff or VAMC, in addition to public institutions performing exclusive enforcement of delivery.

Also in Japan, because an auction procedure had often been delayed in the past, when a security grantor (a debtor) did not vacate a secured real estate even after an asset was sold at an auction, a legal system called the "real estate delivery order" (Article 83 of the Civil Execution Act in Japan) was established, where a winning bidder can swiftly and easily evict a possessor who does not vacate after an auction. (Please refer to Exhibit 4 for more details of this legal system).

With respect to the second issue concerning the legal frameworks of security interests (debtor's consent is required at a registration of transfer of LURs), it is recommended to have LUR registration offices all over Vietnam to ensure to allow a winning bidder of the secured real estate to register the transfer of the LUR, even when a debtor does not consent to the sale of the secured real estate under the auction procedure. While Paragraph 4 of Article 58 of Decree 163/2006/ND-CP exists, it is also recommended to issue a new Circular in order to have LUR registration offices to ensure the registration without a debtor's consent as mentioned above.

In addition, Paragraph 3 of Article 458 of the Civil Code (Law 33/2005/QH11)

[67] The fact of passing the due date for performance of repayment can be assumed.

stipulates that "a sale by auction shall be recorded in writing, signed by the purchaser, the seller and the two witnesses." If the reason why LUR registration offices require a debtor's consent at the registration comes from the wording of this provision, it is also recommended to amend this provision.

2. Strengthening Legal Framework of Enforcement of Civil Judgment

(1) Current Legal Frameworks and Issues

If a debtor does not perform its claims' obligations, a creditor can file a petition with the enforcement agencies to enforce the civil judgment pursuant to the Law on Enforcement of Civil Judgment (Law 26/2008/QH12). A seizure of a debtor's property is one of the methods of enforcement of civil judgment, as in Japan.

a. Revaluation of Reserve Price

Pursuant to the Law on Enforcement of Civil Judgment (Law 26/2008/QH12), in the case of a sale of an asset at an auction, if the involved parties can reach an agreement on a price of the property after the seizure by an enforcer, the price of property agreed by the involved parties serves as a reserve price for auction, and if the involved parties cannot reach an agreement on the price of the property, a valuation organization will evaluate the property. In case of the latter, if a debtor requests a revaluation before public notification of an auction, the revaluation should be conducted (Paragraph 1b of Article 99 of the Law on Enforcement of Civil Judgment (Law 26/2008/QH12)). Article 15a of Decree 58/2012/ND-CP stipulates that when a debtor requests a revaluation, a debtor should prove, from an objective view point, that the initial evaluation is not reasonable.

Because a debtor may request a revaluation of a reserve price, there becomes an issue of delay in the enforcement of civil judgment procedure. Although Article 15a of Decree 58/2012/ND-CP does stipulate a certain restriction on the revaluation system, because it requires a decision on whether the initial evaluation is reasonable or not, from a practical view point, the enforcement of civil judgment is delayed.

b. Debtor's Right to Complain

A debtor has a right to complain about the acts of an enforcer, if the debtor has grounds to believe that the enforcer's acts have infringed upon the debtor's rights and legitimate interests (Article 140 of the Law on Enforcement of Civil Judgment (Law 26/2008/QH12)).

Because there is no restriction on the debtor's right to complain about the acts of an enforcer, the debtor may cause deliberate delays of the enforcement of civil judgment by excessively complaining about the acts of an enforcer, and this becomes an obstacle for the swift enforcement of civil judgment procedure.

c. Postponement of Enforcement of Civil Judgment of Seized Asset Pending Lawsuit

In the case that a dispute over a seized asset occurs and a lawsuit is filed with a court, the enforcement of civil judgment should be postponed (Article 48 of the Law on Enforcement of Civil Judgments (Law 26/2008/QH12)). Therefore, a debtor may postpone the procedures for enforcement of civil judgment by taking advantage of this provision by having a person relating to the debtor file a dummy lawsuit, and this becomes a further obstacle for the swift enforcement of civil judgment.

(2) Recommendations

For resolving the above issues, it is recommended that the Law on Enforcement of Civil Judgments (Law 26/2008/QH12) should be amended as follows;

a. Repealing System of Revaluation of Reserved Price

Reserved price is only a price from which an auction will be started, and successful bid price will be determined by a fair procedure, being an auction. In addition, a reserved price is to some extent reliable because it will be determined by a licensed valuation organization in the case where there is no agreement as to its specific price between the parties, whereas the system of revaluation of a reserved price is not reasonable enough to justify the delay of auction procedure. It is recommended to repeal the system which allows the debtor to request for revaluation of the reserved price.

b. Restriction of Matters With Which a Debtor May File an Objection

Abuse of the debtor's right to complain about the acts of an enforcer becomes one of obstacles for the swift enforcement of civil judgment procedures. In this case, for the swift enforcement of civil judgment, it is reasonable to limit the cases where debtors are permitted to complain about the acts of an enforcer, to procedurally serious ones, and not to all of the cases. Therefore, it is recommended to limit the matters with which a debtor may appeal, to only those complaints which are material in the procedure.

c. Establishment of Legal Frameworks for Prevention of Frivolous Lawsuit

Because enforcement of civil judgments can be postponed by a lawsuit filed by a person related to a debtor, and this becomes an obstacle for the swift enforcement of civil judgment, it is recommended to establish a legal framework which prevents the filing of frivolous lawsuits. Specifically, with respect to the lawsuit over the seized asset, it is recommended to establish legal frameworks; (i) a legal framework where a court may order dismissal of a lawsuit in the case that the court judges that the filing of the lawsuit is an abuse of process, and (ii) a legal framework ordering a plaintiff to deposit money to ensure the performance of liability of damages, in order to ensure that a person who excessively files a lawsuit performs the liability of damages.

3. Strengthening Measures Against Concealing Assets

(1) Current Status and Issue

There are cases where a dishonest debtor attempts to conceal his/her assets to avoid paying its debts, while the debtor has sufficient financial resources. In such cases, it is necessary to find the concealed assets in order to collect the NPLs. In addition, if such concealment of assets by debtors is permitted, a sense of unfairness will arise in society, and other debtors may follow by not paying their debts, thereby it is likely that NPLs will increase.

Therefore, it is necessary to strengthen measures against the concealment of assets, such as developing a legal framework for an investigation of the debtor's assets and penal regulation against a debtor who conceals his/her assets, etc. in order to promote the collection of the NPLs.

(2) Recommendations

a. Expansion of and Grant of Investigative Power to the Relevant Authorities

It is recommended to amend the Law on Enforcement of Civil Judgments (Law 26/2008/QH12) and Decree 53/2013/ND-CP regarding VAMC, in order to authorize the court execution officer, VAMC and Bailiff, who actually engages in collecting debts as its duty, to exercise the power of investigation of debtor's assets.

Specifically, it is recommended to give them a power to conduct the following investigations of the debtor's assets where the debtor is suspected of having concealed his/her assets or where the particular necessity of clarifying the substance of the debtor's assets is recognized.

(a) Written Inquiry and Investigation at Presence

For the purpose of clarifying the existence/non-existence and the substance of a debtor's assets, they should be permitted to first conduct an investigation by sending a written inquiry to government offices or financial institutions. Then, where it is difficult to clarify the substance of a debtor's assets by sending a written inquiry or it is necessary for a person in charge of an investigation to directly examine an objective document, to visit the government offices or financial institutions and conduct an investigation. In these investigations, those being investigated are obligated to cooperate with the investigation (an obligation not to interfere) and be exempt from confidentiality obligation under the relevant laws and regulations.

(b) On-Site Inspection

Where it is difficult to clarify the substance of the debtor's assets or who owns the assets by either written inquiry and investigation at presence, they should be permitted if necessary, to visit the debtor's office and residence for the purpose of requesting the debtor to present the accounting books and documents and to provide an explanation. As is the case for the written inquiry and investigation at presence, those being investigated are obligated to cooperate with the investigation (an obligation not to interfere) and be exempt from confidentiality obligations under the relevant laws and regulations. In order to ensure the effectiveness of investigations, criminal punishment will be imposed where those investigated breach their obligation of cooperation.

In Japan, DICJ is authorized to investigate assets. Specifically, with respect to claims held by RCC, DICJ may exercise power to investigate and find the concealed assets by an unreliable debtor when he/she attempts to avoid paying the claim by concealing his/her assets despite having sufficient financial resources. In this way, DICJ assists RCC's in collecting debts and therefore achieves satisfactory results of debts collection.

b. Strengthening of Punishment

It is recommended to amend the Penal Code (Law 15/1999/QH10) or the Law on Enforcement of Civil Judgments (Law 26/2008/QH12), in order to impose criminal punishment or administrative penalty in cases where the debtor conceals his/her assets for the purpose of escaping form compulsory execution.

In Japan, there is a crime of obstruction of compulsory execution, under which a person who, for the purpose of avoiding compulsory execution conceals, damages or fakes a transfer of the debtor's property to another or disguises a debt, shall be punished. In Vietnam, concealment of assets by debtors may constitute

the crime of abusing trust in order to appropriate property under the Article 140 of the Penal Code (Law 15/1999/QH10). However, since it is not clear whether the typical case of concealment of assets is a crime under the current expression of the provision, it is recommended to add a provision of criminal punishment or administrative penalty that clearly defines the concealment of assets for the purpose of avoiding compulsory execution as a punishable act.

4. Expansion and Improvement of the Legal Framework of the Debt Collection Servicer and Utilizing Servicer

(1) Current Status and Issue

Under the current Vietnamese legal system, a private enterprise is permitted to duly provide a debt collection service (Servicer) pursuant to Decree 104/2007/ND-CP.

Looking at the wording of Decree 104/2007/ND-CP, there is no regulation which restricts foreign invested enterprise to be licensed to do debt collection business. However, debt collection service is not committed by Vietnam for market access to WTO members, and therefore may only be permitted on a case by case basis but survey team has seen no precedent cases so far where foreign investors are licensed.

Furthermore, since there are cases of antisocial forces collecting debt by illegal means, the Vietnamese government is not ready to issue licenses for foreign investors, and therefore, there are not many Servicers in Vietnam.

(2) Recommendation

Where the NPLs are bought by foreign investors, there may be many cases where they will choose foreign invested servicers for collecting their NPLs. Therefore, it is necessary to be ready to issue licenses relating to disposal of NPLs to foreign invested servicers.

III. Enhancement of Business Restructuring

In order to promote the disposal of NPLs, NPLs need to be normalized by restructuring the business of enterprises that owe NPLs, and raising their profitability, and therefore, enhancing their creditworthiness. To that end, it is necessary to enhance the business restructuring. In the following section, the issues with enhancing business restructuring in the current legal framework will be clarified, as well as providing recommendations for solving them.

1. Amendment of LOB

(1) Current Status and Issues

A general outline of Vietnam's bankruptcy procedure as prescribed under the current LOB and Amended Draft is as follows. As described above, please note that this final report consider the third draft of the amended LOB and does not cover the fourth draft.

The Vietnam LOB is comprised of two types of procedures: a rehabilitation procedure and a liquidation procedure. Whether the rehabilitation procedure or the liquidation procedure is applied is decided by a creditors' resolution at a creditors' meeting, and the system is unique in that a petitioner does not get to decide which procedure to apply at the time that a petition is filed to commence bankruptcy proceedings.

(i) When the petition to commence the bankruptcy proceedings is filed, the court first decides whether or not to accept the petition. When the petition is accepted, the execution of judgments, the resolution of court cases, and the realization of secured assets regarding a debtor's assets are all suspended.

(ii) After the court accepts the petition, the court will decide whether or not there are grounds to commence bankruptcy proceedings, and will either give an order to commence or not to commence bankruptcy proceedings. Even after the bankruptcy proceedings are commenced, a debtor may continue to conduct its business activities as usual. In principle, because it is not necessary for the management to resign, the existing management will continue to operate the company. However, the disposal of certain assets is prohibited.

(iii) Under the current LOB, concurrently with the commencement of the bankruptcy proceedings, a committee for the management and liquidation of assets is established, consisting of an executor, an officer of the court, a representative of the creditors, a representative of the debtor and a union representative. Under the Amended Draft, a trustee and an executor are appointed. This committee for management and liquidation of assets and the trustee supervises the disposal of the debtors' assets.

(iv) After the commencement of the bankruptcy proceedings, the creditors must file a proof of claim. The committee for the management and liquidation of assets, and the trustee will prepare a list of creditors.

(v) The first creditors' meeting is held by a judge under the current LOB, and by a trustee under the Amended Draft. At the first creditors' meeting, the committee for the management and liquidation of assets and the trustee will report the current business status and the financial situation of the debtor, the debtor will provide an explanation regarding the proceedings, and the creditors will pass a resolution on whether to choose the rehabilitation procedures or the liquidation procedures. The resolution must be approved by more than half of the number of the unsecured creditors representing at least two thirds of the amount of the unsecured debts present at the creditors' meeting.

(vi) If a resolution passes at the first creditors' meeting for the debtor to take the rehabilitation procedure, the debtor must formulate a rehabilitation plan, and the court (under the current LOB) or the trustee (under the Amended Draft) will call for a second creditors' meeting to consider the proposed plan. The approval requirements for the plan are the same as the requirements for the first creditors' meeting. Measures to recover the business operations and a plan for debt

payment, etc. will be specified in the rehabilitation plan. In principle, the period of implementation of the rehabilitation plan shall be less than three years.

(vii) If the rehabilitation plan is not approved at the creditors' meeting, under the current LOB, a liquidation procedure is commenced, and under the Amended Draft, the debtor will be declared bankrupt and will convert to a liquidation procedure. If it turns out that the debtor's estate is insufficient to make distributions to creditors, under the current LOB, the court will issue an order declaring the debtor bankrupt. Under the Amended Draft, when the debtor is found to have no remaining assets, the head of the enforcement office will suspend the declaration of bankruptcy and its effect will come to an end.

(2) Content of the Amended Draft and Issues

In the Amended Draft, revisions such as changes to the status of bankruptcy, the grounds to file the petition to commence bankruptcy proceedings, replacement of the committee for the management and liquidation of assets by a trustee, changes in the creditors' meeting, and the addition of a provision regarding negotiations between the petitioner and the debtor, are being made.

However, the Amended Draft still has several issues that should be reformed. The major issues with the Amended Draft are as follows: (i) the grounds to file the petition to commence bankruptcy proceedings are ineffective, (ii) factors preventing the filing of a petition to commence bankruptcy proceedings have not been properly removed, and (iii) there are not enough amendments that will accelerate the proceedings.

The major revisions and issues with the Amended Draft are set out below.

a. Jurisdiction

- Regarding the jurisdiction of the courts, district courts will be dropped from the category of courts that have jurisdiction over bankruptcy proceedings (Article 10 of the Amended Draft). The underlying reason for the change is that bankruptcy cases are typically very complicated, and judges who deal with bankruptcy cases are required to have a high level of expertise.

b. Filing of a Petition

- Regarding the state of bankruptcy, the provision will change from "unable to repay their due debts at creditors' requests" (Article 3 of the current LOB) to "do not repay their due unsecured or partly secured debts at creditors' requests" (Article 3 of the Amended Draft).
- Creditors have the right to file a petition to commence bankruptcy proceedings against the debtor in either of the following cases that are now being considered by the drafters (Article 4.1 of the Amended Draft): first, if the debtor has not fulfilled their repayment obligations for due debts within three months since the date of the creditors' request; and second, if the debtor has not fulfilled their repayment obligations for due debts of VND 200 million or more within three months since the date of the creditors' request.
- If an employee files the petition, a flexible procedure in selecting their lawful representative will be provided.
- Legal representatives of joint-stock companies or limited liability companies with two or more members shall be obligated to file a petition to commence bankruptcy proceedings after the General Shareholders' Meeting or when the Members' Council issues the decision to file a petition to commence bankruptcy proceedings (Article 4.2 of the Amended Draft).

- The obligations of a failed credit institution to file a petition to commence bankruptcy proceedings will be expressly provided (Article 4.6 of the Amended Draft).
- A rule regarding voluntary negotiation between the petitioner and the debtor (the bankrupt enterprise) will be added. If the parties reach an agreement regarding the petition to commence bankruptcy proceedings, the Court will return the petition to commence the bankruptcy proceedings (Article 33 of the Amended Draft).
- Reconciliation by participants in the bankruptcy proceedings will be provided. When the participants in the bankruptcy proceedings reach an agreement on the resolution of the petition to commence bankruptcy proceedings and the court recognizes that agreement, the court will issue a decision to suspend the processing of the petition to commence bankruptcy proceedings (Article 83 of the Amended Draft).
- The timing of the bankruptcy declaration will be changed from after the completion of asset liquidation to before the assets are liquidated (Article 104 of the Amended Draft, etc.). Within five business days from the date of the bankruptcy declaration, the director of the Department of Civil Judgment Enforcement will issue a decision to enforce the bankruptcy declaration (Article 114 of the Amended Draft), and the Executor will enforce the declaration (Article 116 of the Amended Draft).

The issues with the above revisions of the Amended Draft regarding filing of a petition are set out below.

- If Article 4.1 of the Amended Draft is adopted, three months in which to pay debts is a long period of time, and problems such as the concealment of the debtor's assets may arise. The requirement for the debtor to have not fulfilled their repayment obligations for due debts amounting to VND 200 million or more within three months after the date of the creditors' request appears to be arbitrary and groundless, and does not seem practical. Moreover, even if Article 4.1 of the Amended Draft is adopted, it may take time to file a petition to commence bankruptcy proceedings, because, according to that article, creditors have the right to file the petition only when the debtors have not fulfilled their repayment obligations for their due debts after the creditors' requests.
- Even if Article 4.2 of the Amended Draft is adopted, it may consequently take more time to file a petition to commence bankruptcy proceedings.
- Owners, major shareholders, and management of enterprises are often required to provide guaranties when obtaining loans from banks. If the principal personal debtor (the enterprise) becomes bankrupt, the guarantor must perform his/her obligations in place of the principal debtor (Article 39.3 of the current LOB, Article 52.3 of the Amended Draft). Therefore, even if filing for bankruptcy is a statutory obligation, it may be difficult for the owners, etc. to file a petition. As there are no bankruptcy proceedings for individual debtors in Vietnam, it is even more difficult for the individual guarantors to file the petition for bankruptcy.
- The Amended Draft stipulates that a trustee will propose a rehabilitation plan to a judge (Article 92 of the Amended Draft), and a creditors' meeting shall decide whether or not to accept such a plan (Article 85 of the Amended Draft). Therefore, even if the petitioner wishes to have a rehabilitation procedure, it does not necessarily mean that the petitioner will get to apply the procedure of his/her choice, and thus there is no incentive for the petitioner to file a petition to commence bankruptcy proceedings. In addition, because one cannot foresee which procedure the company that has filed for bankruptcy will apply, clients will most

likely stop doing business with the company, making it harder for the restructuring of the enterprise.

c. Management, Disposal and Preservation of Assets

- The committee for the management and liquidation of assets will be replaced by a trustee. A lawyer who has been granted a Trustee Certificate may be appointed as the trustee (Article 12 of the Amended Draft). The Trustee has various duties such as managing the debtor's assets, organizing creditors' meetings, preparing a list of creditors and all existing property, etc.
- Regarding transactions considered invalid (equivalent to fraudulent transfer or preferential actions that may be avoided under the Japanese Bankruptcy Act), the current LOB only governs transactions conducted within 3 months before the court accepts the petition to commence bankruptcy proceedings. On the other hand, the Amended Draft covers all transactions effected before the date on which the court commences the bankruptcy proceedings without any time-period limitation (Article 56 of the Amended Draft). The term "transaction" of Article 56 includes (i) transactions violating the effective conditions of civil transactions stipulated in the Civil Code (Law 33/2005/QH11) and relevant legal documents, (ii) transactions aimed at hiding the assets of the enterprise or cooperative falling into bankruptcy, (iii) transactions conducted at a value lower than the market price, and (iv) transactions for the purpose of treating the creditors unfairly.
- Where the representative of the enterprise or cooperative does not cooperate with an asset investigation or intentionally distorts the inventory of assets, he/she shall be administratively fined. Where the representative has been administratively fined but still does not cooperate, he/she shall be investigated for penal liability (Article 63 of the Amended Draft).
- Debts arising after the commencement of bankruptcy proceedings shall be ranked third in the order of priority (Article 50 of the Amended Draft). Therefore, DIP finance may become easier for enterprises.
- There are no significant changes in the rehabilitation procedures between the current LOB and the Amended Draft.

The issues with the above revisions of the Amended Draft regarding management, disposal and preservation of assets are set out below.

- With regards to Article 12 of the Amended Draft, according to our research, education for lawyers to handle bankruptcy proceedings is currently not being sufficiently provided.
- One of the reasons why each bankruptcy proceeding takes a long time is because the Executor may not dispose of the debtor's assets without an order of the court.
- As there are no legal systems to relinquish assets, it could take a long time to dispose of all of the assets, including those that are difficult to dispose of.

d. Creditors' Meeting

- Rules regarding requests to reconsider the conclusions of creditors' meetings (Article 87 of the Amended Draft) and requests to reconsider the decisions regarding the request to reconsider the conclusions of creditors' meetings (Article 88 of the Amended Draft) will be provided.

- Participants in the bankruptcy proceedings will have the right to agree on the location for the creditors' meeting (Article 76 of the Amended Draft).
- Rules regarding creditors who are absent from the creditors' meeting will be provided. Where there are creditors absent, the trustee shall present their statements in writing at the creditors' meeting (Article 80.2 of the Amended Draft). Agreements made at the creditors' meeting shall be made in writing. However, if creditors that are absent have sent documents by way of telegram, etc. consenting to the agreement, such documents will be considered to be an agreement made in writing (Article 84 of the Amended Draft).
- The issue is that there are no provisions concerning bondholders. Where there are a great number of bondholders, or where the debtor has inadequate records of the identities of the bondholders, there is a chance that the proceedings could be delayed.

e. Others

- Involvement of the People's Prosecution Office by way of supervising the law while conducting bankruptcy proceedings (Article 18 of the Amended Draft), will be provided.
- Regarding the prohibition of duties after bankruptcy is declared (Article 94 of the current LOB), in the case of SOEs, there are no significant changes between the current LOB and the Amended Draft. However, in the case of non-SOEs, the scope of the application of the prohibition against holding a post for one to three years from the date that the enterprise is declared bankrupt will be changed from "holders of managerial positions of enterprises" to "holders of managerial positions of enterprises in a conditional business operation or State public utility" (Article 123.2 of the Amended Draft). There are no changes made regarding the prohibition against holding posts not being applied where enterprises or cooperatives are declared bankrupt due to force majeure. A natural disaster is a prime example of a "force majeure," and changes in economic circumstances such as the Lehman Shock are not usually included.
- The issue is that Article 94 of the current LOB (Article 123 of the Amended Draft) places tight regulations on the debtor's management. Management have held fears of being subject to penalties under Article 94, which is one of the reasons why debtors avoid filing for bankruptcy.

(3) Recommendations

Regarding the problems mentioned in Part III-I, III, 1, (2) above, it is recommended to carry out the following improvement plan to provide for a more adequate bankruptcy filing procedure, acceleration of the proceedings, consolidation of the rehabilitation procedures, consolidation of insolvency procedures with a business transfer plan, and prevention of asset concealment, etc.

a. Filing for Bankruptcy

(a) Easing Requirements for Grounds to File for Bankruptcy Proceedings

Regarding the grounds for filing of bankruptcy proceedings by creditors stipulated in the Amended Draft, it is recommended deleting the words "3 months" from "creditors shall have the right to file a petition when enterprises have not fulfilled their repayment obligations for due debts within 3 months after the date of the creditor's request."

To prevent vexatious petitions by creditors, including a provision under Article 38.1 of the Amended Draft for the court to have the right to return the petition if the petitioner files for bankruptcy for unjustifiable purposes should be sufficient. Another recommendation is to add excess debt to the grounds for filing of bankruptcy proceedings where the debtor files for bankruptcy. If excess debt is added to the grounds, the court will be able to determine whether the grounds are met from an objective view point in a swift manner.

Assuming the petitioner is given the right to choose between a rehabilitation procedure and a liquidation procedure, where the debtor files for bankruptcy, the grounds for filing rehabilitation procedures should be when the debtor is "likely" to fall into the status of excess debt or bankruptcy, and should facilitate the determination that the grounds for filing have been met. One of the ways to establish that the debtor is likely to fall into the status of excess debt or bankruptcy, is to require that a statement of cash flow statement be submitted when the petition is filed.

(b) Introduction of a System Where the Petitioner Has the Right to Choose Between a Rehabilitation Procedure and a Liquidation Procedure

A rehabilitation procedure and a liquidation procedure could be considered separate, individual systems, where the petitioner is allowed to choose which procedure to take when filing for bankruptcy.

For instance, in Japan, the Bankruptcy Act provides for a liquidation procedure, whereas the rehabilitation procedure is provided for in the Civil Rehabilitation Act and the Corporate Reorganization Act, and the laws and proceedings of the two procedures are distinct from each other. Therefore, when the debtor is planning a liquidation, the debtor would file for a liquidation procedure, and when planning a rehabilitation, the debtor would file for a rehabilitation procedure. In the United States, although both the liquidation and the rehabilitation procedure are provided for in the United States Bankruptcy Code, the two are considered to be separate procedures. Therefore, if the debtor is planning liquidation, the debtor would file for relief under Chapter 7 (a liquidation procedure), and if the debtor is planning rehabilitation, the debtor would file for relief under Chapter 11 (a rehabilitation procedure). By allowing the petitioner to choose between the rehabilitation procedure and the liquidation procedure when filing for bankruptcy as described above, the parties involved (customers, employees, creditors, etc.) will know what to expect as the procedure progresses, which will ultimately lead to a stable advancement of the procedure. This is especially true for rehabilitation procedures as the debtor will be able to gain the cooperation of the parties involved, making it easier for the debtor to rehabilitate.

b. Acceleration of the Proceedings

(a) Commencement of Bankruptcy Proceedings

The court is currently said to be very cautious when giving orders to commence bankruptcy proceedings out of a concern for vexatious petitions by creditors. In order to accelerate the proceedings, the court could distinguish between a petition filed by a debtor and a petition filed by a creditor, and if the petition is filed by a debtor (who is less likely to abuse the right to file for a petition), the court could promptly hand down commencement orders.

(b) Management and Disposal of Assets

To specify the rules regarding realization of assets by an executor, it is recommended a revision of the rules so that the executor may realize the assets at

his/her own discretion if the value of the assets is less than a certain amount, similar to the Japanese Bankruptcy Act. In addition, because one of the reasons why bankruptcy proceedings are delayed is because of assets that can not be sold, the proceedings may be accelerated by adopting a system where those assets may be waived out of the bankruptcy estate.

(c) Creditors' Meeting

As there are no provisions for the treatment of bondholders in the Amended Draft, if a bond administrator is designated, the administrator should be allowed to exercise his/her voting rights in place of all the bondholders. Also, there should be a revision of the rules so that the court may make a decision regarding the items to be resolved by a creditors' meeting if and when the items are not resolved at a creditors' meeting.

c. Improvement of the Rehabilitation Procedure

First, to allow business to continue, allow repayments of small trade claims resulting from business transactions with the court's approval. In addition, allow creditors and secured creditors to come to a settlement with the debtor.

In order to accelerate the procedures, allow the enterprise to reorganize according to the rehabilitation plan without requiring it to follow the rules of the Law on Enterprises (Law 60/2005/QH11).

Change the implementation of the rehabilitation plan from 3 years to 7 years or more because the period of 3 years stipulated in the current LOB and the Amended Draft is sometimes impractical.

d. Introduction of the Business Transfer Procedure

If a business transfer is necessary to maintain an enterprise's business value, the business transfer should be made possible without the approval of a creditors' meeting or in accordance with a rehabilitation plan, but simply by a court's order.

For instance, under the Japanese Civil Rehabilitation Act, the debtor is allowed to conduct a business transfer after the rehabilitation proceedings commence with the permission of the court without having to wait for a resolution at a creditors' meeting. In the United States, in accordance with Article 363(b) of the United States Bankruptcy Code, General Motors promptly sold its business to a newly established entity with the approval of the Bankruptcy Court after the notice and hearing regarding the transfer.

e. Prevention of Asset Concealment

(a) Specification of Rules regarding the Right of Avoidance

Regarding Article 56 of the Amended Draft (provision on transactions to be considered invalid), it is recommended the following revisions.

- To ensure predictability for counter parties of the transaction, transactions should be valid, if they are made before the debtor enters the state of bankruptcy, or a year before the debtor enters the state of bankruptcy. In addition, transactions conducted 2 years after the commencement day, for example, should be deemed valid.
- If the customers are the debtor's board members, shareholders or their relatives, the burden of proof that they are not concealing assets will be on them.
- Stipulate a rule for when actions are deemed void. For instance, if the debtor still holds an asset of the opposing party, the party may request its

return. If the asset does not exist, the opposing party has the right to claim reimbursement for a loss of the asset in priority to other general creditors. However, if the counterparty to the transaction was aware of the debtor's intentions to conceal its assets, the counterparty will either have the right to claim reimbursement for a loss of the asset at the same time as the general creditors, or will not have the right to claim reimbursement at all.

- As there are no provisions in the Amended Draft for a situation where there is a subsequent acquirer if an action should be deemed invalid, establish a rule for when such an asset may be reclaimed from the subsequent acquirer.

(b) Stricter Penalty for Breach of Duty to Cooperate in Asset Investigations

Put strict administrative penalties and criminal punishments into effect regarding the enterprise representative's breach of duty to cooperate with the inventory of assets stipulated in Article 63.5 of the Amended Draft.

f. Operation

To promote the use of bankruptcy procedures, the court could take measures such as (i) release forms of documents created by the court regarding petitions to commence bankruptcy proceedings to the public, (ii) publish a handbook for insolvency professionals (judges, lawyers and executors) written by the court, and (iii) conduct training sessions held by the court and the bar association for lawyers to become trustees.

g. Others

Other recommendations regarding matters not mentioned above are as follows.

(a) Specifying and Improving the Provision regarding Responsibilities of Management (Article 123 of the Amended Draft)

Ease the restrictions on the prohibition of duties by the management of government-run companies, which is one of the factors preventing the filing of petitions to commence bankruptcy proceedings.

(b) Modification of Phrasing regarding Bankruptcy Proceedings

The Amended Draft uses the phrase "mở thủ tục phá sản" ("opening of bankruptcy proceedings"). However, if a "mở thủ tục phá sản" is to be ordered even when the enterprise has a chance of rehabilitation, the act of filing for bankruptcy in itself will affect the enterprise's credibility and its reorganization will become difficult. Therefore, it is recommended changing the phrase "mở thủ tục phá sản" to another term that will not damage the enterprise's reputation.

(c) Establishment of System regarding Inspection of Court Documents

In order to strengthen the credibility of the procedures, develop a system where the parties involved may have access to the documents regarding the bankruptcy case.

(d) Development of a Guideline regarding Individual Guarantors

Under the current LOB and the Amended Draft, if an enterprise becomes bankrupt, management who are individual guarantors will not be discharged from their debts. Due to this, there is a compelling disincentive for management to file for bankruptcy. As bankruptcy proceedings for individual debtors is not provided for under Vietnamese law, there are no measures for management to be discharged from their obligations as guarantors. Therefore, it is recommended to develop guidelines (upon consultation between national authorities and banks) to discharge management's obligations as guarantor if they truthfully disclose information about personal assets and apply a certain amount of the assets to repaying their obligations when an enterprise goes bankrupt due to external circumstances that are outside management's control.

(e) Adoption of Small Debt Bankruptcy System (Simplify the Procedure for Cases with a Small Amount of Debt)

For cases that the total debts are small, it is recommended to introduce a small debt bankruptcy proceeding that simplifies the procedure, such as putting the investigation of bankruptcy claims on hold, and simplifying the reports at the creditors' meeting.

For instance, in Japan, the Tokyo District Court has a system called the small debt bankruptcy proceedings. The deposit amount is set lower for this procedure, and although the amount of the trustee's compensation will drop compared to regular bankruptcy cases, it aims to reduce the trustee's burden. For instance, if there seems no chance of distribution, the trustee is not required to investigate the bankruptcy claims, and the reports regarding the debtor's status may be given verbally (compared to regular bankruptcy cases where the trustee must submit a written report to the Court) at the creditors' meeting. Approximately 95% of all of the cases at the Tokyo District Court where a trustee is appointed are handled by the small debt bankruptcy system.

(f) Legislate a Special Bankruptcy Law only for SOEs

If it is difficult or will require a great deal of time to make amendments to the LOB as suggested above, it is recommended to enact a special law which reflects the above recommendations regarding the rehabilitation and insolvency proceedings of SOEs.

An insolvency proceedings specialized for SOEs can be managed by an administrative organization, not by the court.

2. Introducing Rules of Out-of-Court Workout Procedures

(1) Current Status and Issues

a. Current Status

In Vietnam, there are currently no rule of out-of-court workout procedures (a procedure where debts of an enterprise in financial difficulties is worked out without resorting to legal insolvency procedures), and reorganization methods such as mergers and asset transfers are used for the rehabilitation of debtors in financial difficulty.

b. Necessity of Out-of-court Workout Procedure

The advantages of out-of-court workout procedures are as follows: (i) compared to rehabilitation procedures under the LOB, out-of-court workout

procedures may prevent the business value from depreciating, (ii) out-of-court workout procedures may be conducted exclusively for financial creditors without involving the general creditors, (iii) the procedure may be carried out without public disclosure, and (iv) the procedure may be conducted promptly and flexibly. In order to conduct the procedure smoothly with transparency and fairness, a set of rules regarding the out-of-court workout procedure is necessary.

Such rules are established in many countries. For example, INSOL International has developed the INSOL 8 Principles as international rules. In Japan, there are the Out-of-Court Workout Procedure Guidelines and the Turnaround ADR procedure. After the Asian currency crisis, out-of-court workout procedure rules were developed in countries such as South Korea, Hong Kong, Thailand and Indonesia to dispose of NPLs. Additionally, India has also adopted an out-of-court workout procedure.

(2) Recommendation

In order for Vietnam to enhance the business restructuring, it is recommended to introduce an out-of-court workout procedure. The survey team's recommendation for the development of out-of-court workout procedures is as follows.

a. Out-of-court Workout Procedures

The basic flow of the out-of-court workout procedure is as follows: When an out-of-court workout procedure is commenced, the financial creditors must refrain from any enforcement action against the debtor, this is referred to as a "standstill" or "moratorium". Meanwhile, the debtor will prepare a workout plan and consult with the financial creditors regarding the workout plan at a financial creditors' meeting. After the approval of the plan by unanimous or majority votes by the financial creditors, the debtor will implement the workout plan to reorganize the company. The workout plan sometimes stipulates that financial creditors shall waive a part of their claims on the debtor. The specifics of the procedural flow are as listed below:

(i)	The debtor will seek a standstill of any prosecution by financial creditors of their claims against the debtor, and send out a notice to convene the first meeting of financial creditors.
(ii)	At the first meeting of financial creditors, creditors will appoint persons out of all the creditors or an individual with expertise in out-of-court workout procedures to manage the coordination committee ("Creditors' Committee"), and pass a resolution on the length of the standstill period.
(iii)	The debtor will prepare a workout plan.
(iv)	The Creditors' Committee will review the debtor's financial information and the restructuring plan.
(v)	At the second meeting of financial creditors, the Creditor's Committee will report the debtor's financial condition as well as the validation results of the restructuring plan to the creditors. Afterwards, the creditors will put the plan to a vote.
(vi)	If the resolution passes, the workout agreement is made, and its terms will then regulate the rights and obligations of the creditors. If the resolution is rejected, the out-of-court workout procedure and the standstill period will end.

b. Ways to Create a Framework for Out-of-court Workout Procedures

There are two ways to create a framework for out-of-court workout procedures: (i) enforce the framework for out-of-court workout procedures by law or decree, or (ii) develop the framework in accordance with an agreement or

guideline between the banks affiliated with the Central Bank. An example of (i) is the Corporate Restructuring Promotion Act of South Korea and Turnaround ADR of Japan, and an example of (ii) is the London Approach of England, the Bangkok Approach of Thailand, Corporate Debt Restructuring of India, and the Guidelines for Out-of-Court Workout procedures of Japan.

If method (i) above is adopted, the creditors shall comply with the regulations and it will also rule out the opposing minority creditors (especially foreign creditors) by the majority. On the other hand, if method (ii) is adopted, as a legislative process is not necessary, the system will be established faster and will be able to formulate and operate the rules in a flexible manner.

c. Recommended Frameworks of Out-of-court Workout Procedures

(a) Overview of the Asia-Pacific Informal Workout Guidelines for Promoting Corporate Restructuring in the Region

Survey team believes that the Asia-Pacific Informal Workout Guidelines for Promoting Corporate Restructuring in the Region and the Model Agreement to Promote Corporate Restructuring ("The Asia-Pacific Informal Workout Guidelines") will serve as a tremendously useful reference when developing an out-of-court workout procedure in Vietnam.

The Asia-Pacific Informal Workout Guidelines were approved at a meeting held by the APEC Business Advisory Council in July 2013 at Kyoto after discussions by top-level practitioners and researchers from Australia, China, South Korea, Hong Kong, and the United States. The Asia-Pacific Informal Workout Guidelines are a revision of the Asian Banker's Association Informal Workout Guidelines Promoting Corporate Restructuring in Asia (GL) and the Model Agreement to Promote Company Restructuring: A Model Adaptable for Use Regionally by a country or for a Particular Debtor by Informal Workout (MA), which were approved by the ABA (an association that many banks in Vietnam[68] are affiliated with) at the November 2005, annual convention in Melbourne.

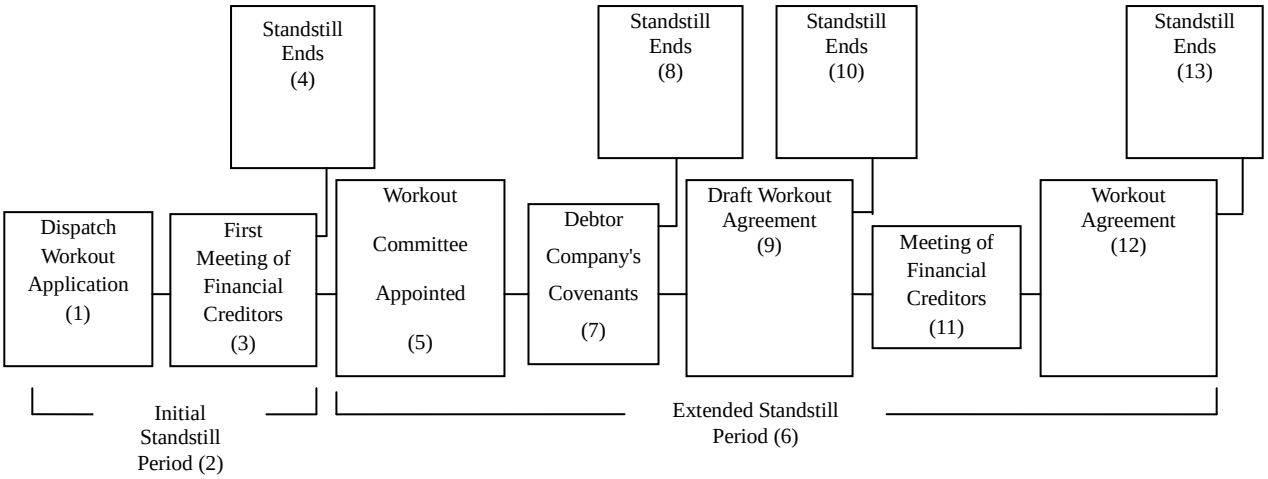
As described above, the Asia-Pacific Informal Workout Guidelines prescribe detailed rules similar to the procedures mentioned in Part III-1, III, 2, (2), a above, and are immediately applicable to present cases. Since the contents of the Asia-Pacific Informal Workout Guidelines were developed through a universal standard by practitioners and researchers from many countries, if adopted in Vietnam, it will ensure easier understanding of the out-of-court workout procedure rules for financial creditors (in particular, overseas financial institutions), rather than developing one's own rules, and will greatly contribute to the development of out-of-court workout procedures in Vietnam.

(b) The Outline of the Asia-Pacific Informal Workout Guidelines for Promoting Corporate Restructuring in the Region

The outline of the Asia-Pacific Informal Workout Guidelines for Promoting Corporate Restructuring in the Region is as follows.

[68] Those banks are as follows: Sai Gon - Ha Noi Commercial Joint Stock Bank, Housing Development Commercial Joint Stock Bank of Ho Chi Minh, Bank for Foreign Trade of Vietnam (Vietcombank), Bank for Investment and Development of Vietnam (VietindeBank), Vietnam Bank for Industry and Trade, Military Commercial Joint Stock Bank, Vietnam Export Import Commercial Joint Bank (Vietnam Eximbank), Vietnam International Bank (VIB Bank), Vietnam MariTime Commercial Stock Bank (MariTime Bank), and Vietnam Bank for Agriculture and Rural Development.

The full text of the Asia-Pacific Informal Workout Guidelines for Promoting Corporate Restructuring in the Region is as per Exhibit 5. Regarding the Model Agreement, please refer to the website of the APEC Business Advisory Council[69].



1.	A Debtor and/or an Eligible Financial Creditor of the Debtor may give a Workout Application to all Financial Creditors of the Debtor.
2.	Dispatch of a Workout Application automatically initiates the Initial Standstill Period during which there is a moratorium on the prosecution by Financial Creditors of their Claims against the Debtor. The moratorium continues until the end of the First Meeting of Financial Creditors.
3.	The First Meeting of Financial Creditors can appoint a Workout Committee. If it does so, there is an extension of the moratorium for 60 days or such other time as the First Meeting of Financial Creditors may determine.
4.	If the First Meeting of Financial Creditors concludes without a Workout Committee having been appointed, the moratorium and the procedure come to an end.
5.	The Workout Committee is made up of an independent chairman, a representative from each of the 3 Financial Creditors with the largest Claims and representatives from 3 other Financial Creditors.
6.	The duration of the extended period if the moratorium is to be extended is agreed at the First Meeting of Financial Creditors. The extended moratorium may terminate at various "decision points" depending on the progress being made towards the formalization of a Workout Agreement.
7.	The first task of the Workout Committee is to undertake negotiations with the Debtor for the purpose of securing its agreement under which: (a) it will provide financial information to the Workout Committee; (b) it will, in effect, maintain its business and not grant any security interests or otherwise prefer the claims of any of its creditors; (c) it will pay the costs of the Workout Committee; and (d) it will indemnify the members of the Workout Committee.
8.	In the event that the Debtor fails to give the abovementioned covenants, the extended moratorium may be brought to an end, and the operation of the Agreement will be otherwise terminated. The same will apply if the Debtor either breaches a material term of any of those covenants or becomes subject to a legal insolvency proceeding.
9.	The Workout Committee, having reviewed the financial and other material provided to it by the Debtor, negotiates the terms of a draft Workout Agreement with the Debtor in terms which the Committee would be prepared to submit to a meeting of Financial Creditors for adoption.
10.	If the Workout Committee forms a unanimous opinion that no purpose is served by continuing the extended moratorium it may convene a meeting of Financial Creditors for consideration to terminate the extended moratorium.
11.	Once a draft Workout Agreement has been settled between the Workout Committee and the Debtor, it is submitted to a meeting of Financial Creditors for consideration and adoption.

69 https://www.abaconline.org/v4/download.php?ContentID=22611283

12.	If the draft Workout Agreement is adopted, its terms will then regulate the rights and obligations of Financial Creditors.
13.	If the Workout Agreement is not adopted, the extended moratorium ends.

3. Clarifying the Legal Framework Regarding Waiver of Claims

(1) Current Status and Issues

Waiver of claims means a voluntary act by the lender/creditor to waive the repayment obligations of the borrower/debtor. Under Article 378 of the Civil Code (Law 33/2005/QH11), it is generally permitted for an obligee to waive the obligation owed to him/her. However, this seems not to be applicable to SOEs as well as credit institutions under the specialized branch laws.

Specifically, Decree 71/2013/ND-CP provides for the method to deal with the disposal of claims that the 100% SOEs own, however it does not provide for the method as to how to waive the claims. In the Decree 53/2013/ND-CP regarding VAMC and Circular 79/2011/TT-BTC regarding DATC, there are provisions regarding the reschedule and reduction of interests of debts. However, there is no provision regarding waiver of claims.

Similarly, under Article 17 of Circular 02/2013/TT-NHNN, credit institutions are permitted to remove said the debts from their off-balance sheet (i.e. writing off the debts) if (i) a minimum 5 years from the date of use of risk reserve to deal with such off-balance-sheet debts has passed and (ii) the credit institution still fails to recover the debts after taking all measures (credit institutions with 50% or more State-owned equity must obtain approvals from the SBV and MOF before writing off the debts). The similar regulation is currently provided for under Article 11.4 of Decision 493/2005/QD-NHNN, as amended. Based on the general rule that banks must strictly comply with regulations on capital preservation as required by Article 6 of the Regulations on lending by credit institutions to clients (issued under Decision 1627/2001/QD-NHNN), it appears that other than carrying out the debt write-off described in those regulations, Vietnam-based commercial banks are not permitted to waiver debts in any other manners.

Meanwhile, regardless of the above, waiver of claims would be somewhat performed or otherwise archived by the following ways:

First, lenders/creditors assign debts at the price lower than their actual value; or

Second, waiver of claims could be archived by way of conducting bankruptcy procedures against the debtor.

(2) Recommendation

There are cases where the creditors need to waive their claims in order to revitalize the enterprise owing excessive debt. If the creditor waives their claims, the enterprise that owes excessive debt will be revitalized and the enterprise may be able to start repaying their outstanding debt after the waiver. In this case, the creditor may be able to collect more claims from the debtor rather than the claims that are not paid. Therefore, it is recommended to establish provisions in Decree 71/2013/ND-CP and Decree 53/2013/ND-CP regarding VAMC, and Circular 79/2011/TT-BTC regarding DATC, which clearly allow the 100% SOEs or the governmental organizations to waive their claims and stipulate a procedure for waiving claims, in order to promote the collection of claims and establishing a structure of business recovery of insolvent enterprises.

By way of example, Article 19.3.a of Decree 71/2013/ND-CP requires that SOEs may actively mobilize capital to serve their business as long as the ratio of debt to equity does not exceed 3:1, including loan guarantees for SOEs contributed by parent companies. Assuming that a SOE which is subject to revitalization has the ratio of debt to equity is in excess of 3:1 and is permitted to waiver of claims by the creditor so that such SOE can maintain the ratio of debt to equity which is not in excess of 3:1, it is likely that such SOE could actively borrow additional funds to facilitate its revitalation.

Part III-II Restructuring of SOEs

The SOEs account for a significant proportion of the enterprises that owe NPLs. SOEs are required to promote the disposal of their Non-core Businesses, such as their finance businesses, insurance businesses and real estate businesses, because a large amount of investments in the past into these businesses have been causing a deterioration of their financial performance. In addition to Non-core Businesses, non-profitable core businesses and factories should be separated and disposed of, and corporate restructuring is required for the improvement of corporate value. Therefore a legal framework that swiftly promotes such restructuring is necessary. In the following section, the issues with the restructuring of SOEs in the current legal framework will be clarified, as well as providing recommendations for solving them.

I. Promotion of Sales of SOEs' Assets such as Non-core Businesses

1. Current Status and Issues

With respect to the restructuring and revitalization of SOEs, Prime Minister's Decision 929/QD-TTg has been promulgated.

Decision 929/QD-TTg stipulates the structural reform and reorganization of SOE's, in order for SOEs to have more reasonable structures, to concentrate on key sectors and areas and to provide public services and products essential for society, national defense, security and thereby for the State to stabilize its macro-economic situation and regulate the economy. Specifically, SOEs are required to (a) terminate their investment in banking, finance, securities, real estate, insurance (Non-core Business) by the specific time limit of 2015; and (b) reorganize their assets by assigning or consolidating their assets that are classified as inefficient and non-urgent investments or projects ("Non-profitable Business") in order to concentrate the management resources into their main business (Section III 3. d.).

According to Decision 929/QD-TTg, SOEs should withdraw from Non-core Business by way of either one of the following three methods:

(i) Sell the shares of their subsidiary companies to third parties other than identical EGs or SOEs;
(ii) Transfer or assign the equity interest to EGs or SOEs with appropriate main business purposes; or
(iii) Assign their ownership in wholly-owned subsidiaries to other enterprises (including SOEs) that are involved in the same business as the wholly-owned subsidiary.

In current practice, only methods (i) and (iii) are commonly used, because a guideline stipulating the details of the transfer or assignment of the equity interest in method (ii) has not yet been established.

(1) Regulation of Selling their Capital Investments

Decree 09/2009/ND-CP contains the provision stating that the divestment must be conducted based on the "principle of preservation of State capital" (Article 12.6). This led to the interpretation that the divestment must not be conducted at a price that is lower than the book value, and the reality that SOEs could not proceed with the divestment. Due to the fear of loss which may give rise to management's responsibility, SOEs could not proceed with the divestment. Decree 71/2013/ND-CP, subsequently issued in 2013, stipulates that SOEs should request owners (of SOEs) to consider, and make the decision as to selling their investments at a price lower than their book value (Article 30.3), which has allowed sales of SOEs' capital investments at a price lower than their book value to be conducted. The Circular 220/2013/TT-BTC guiding Decree 71/2013/ND-CP is already issued and effective as of February 15, 2014.

Regarding Circular 220/2013/TT-BTC, a restriction still remains that sales of SOEs' capital investments below their book value without sufficient compensation of the reserve must be reported to the owner of SOEs. Recently, the Government recently issued Resolution 15/NQ-CP dated March 6, 2014 to promote SOEs reform by way of stipulating

the main following measures: (i) permitting the sale at price below par value in compliance with the withdrawal solutions which was approved by the owners, (ii) requiring SCIC to take over Non-core Business of SOEs, and (iii) pushing SOEs equitization. This has further clarified that SOEs are permitted to sell its capital investments below the book value, but there still requires to the approval by the owners. These may still bar SOEs from sales of its capital investments in its restructuring plan.

Since most of SOEs hold their Non-core Business in the form of capital investments (shares in their subsidiaries), the bar becomes the obstacles to expeditious sales of Non-core Business. Meanwhile, with respect to the sales of fixed assets, unlike sales of capital investments, there is no explicit regulation that prohibits SOEs from selling at a prices lower than their book value (Article 23 of Decree 71/2013/ND-CP).

(2) Proceedings for Auctions of SOEs' Assets

In principle, SOEs should carry out a sale of their assets through an auction procedure, the details of which are stipulated in Decree 17/2010/ND-CP. Foreign-invested private enterprises are generally allowed to participate in the auction of the SOE's assets.

An outline of the auction procedure is as follows:

(i) An applicant is required to pay a deposit in advance, the amount of which is from 1% to 15% of the value of the asset that is the object of the auction, in order to be recorded as a participant. If the participant revokes its offer after it offers a price for the auction object, the deposit should be confiscated;
(ii) Place where the auction held is: The head office of the auction organization, place where the object of the auction exists, or place where the auction organization and the person having the property put up for auction agree;
(iii) If no offered price exceeds the reserved price prescribed, the auction procedure ends in failure;
(iv) The auction procedure is recorded in the minutes, and the organizer of the auction, the author of the minutes, the bidders and the attendees of the auction sign the minutes; and
(v) The result of the auction is recorded, and when the auction ends in success, a written purchase and sale agreement is prepared. The written purchase and sale agreement becomes legal evidence of obtaining the right at the auction, and when the transfer of the right is required to be certified or registered, the written purchase and sale agreement itself will be certified or registered.

The regulation indicates that SOEs should sell their assets through an auction, which requires significant time, and hence discourages investors from purchasing their assets, and therefore, investors who want to conduct the purchase in a speedy manner are unwilling to go through with the above procedure.

For instance, the reserve price for the sale of SOEs' assets governed under Circular 137/2010/TT-BTC (e.g., Article 3.2) shall be decided by a valuation committee, which consists of representatives from interested ministries of the government, or an outside institution that is charged with the valuation process, and there are cases where this process has taken a very long time as a matter of facts.

(3) Schemes to Dispose of the Non-profitable Business

In the case where an Non-profitable Business is structured within the enterprises, and not in the subsidiary, under the current Vietnamese legal framework, there are two possible schemes for "promoting business efficiency through withdrawing from Non-profitable Business." One is a "company split scheme," which means a sale of the newly incorporated company's shares to a sponsor enterprise following an incorporation-type

company split (Article 151 of the Law on Enterprises (Law 60/2005/QH11)). The other is an “asset assignment scheme.”

In current practice, where there is a sale of part of an enterprise’s business, the “asset assignment scheme” is commonly used, while the “company split scheme” is used less frequently. The reasons are as follows:

(i) Since Article 151 of the Law on Enterprises (Law 60/2005/QH11) stipulates only general rules and guidelines, and due to there being no established guidelines of practical principals to coordinate a company split, the enterprises are yet to be familiar with the concept; and

(ii) According to Article 151.3 of the Law on Enterprises (Law 60/2005/QH11), both a split company and a newly incorporated company have joint and several liabilities for the split company’s debt, unless otherwise accepted by the creditors. Therefore, under the current legal framework, even if an enterprise splits their Non-profitable Business into a newly incorporated company, a split company continues to incur their debt obligations to creditors. As a result, an enterprise cannot accomplish the goal of reducing the debt burden through splitting the Non-profitable Business.

In terms of a “company split scheme,” although the Law on Enterprises (Law 60/2005/QH11) does not clearly stipulate who becomes a shareholder of a newly incorporated company after an incorporation-type company split, it is interpreted that the new shareholder will not be the split company itself, but the shareholders of the split company. If this interpretation is correct and the shareholders of the split company do not want to be the shareholders of the newly incorporated company, the company split scheme cannot be utilized.

In terms of an “assets assignment scheme,” it is carried out through the transfer procedure, which is required for respective assets and contractual relationships constituting the specified business. It requires the creditor’s approval to transfer the debt without any further liability through the assignment of assets.

In Japan, when carving out Non-profitable Business, a company split framework is frequently used. Under such company split framework, there is an advantage that an enterprise can transfer or inherit the debt specified in the company split agreement without any further liability, and without the respective creditor’s approval, provided it passes the due creditor protection procedure. On the other hand, in Vietnam, although the company split framework is stipulated in the Law on Enterprises (Law 60/2005/QH11), it is rarely used due to the lack of guidelines providing practical principals for the company split procedure, as well as the disallowance of debt assumption without incurring any further liability. These restrictions limits the choice of business restructuring.

(4) Legal liability of Managers of SOEs

The managers of SOEs have the following legal liabilities:

(i) in the case of a violation of laws, they are liable to a disciplinary punishment (Article 13 of Decree 66/2011/ND-CP);

(ii) in the case of illegally causing losses of national assets, they are liable to incur civil liability to compensate for that loss (Article 19 of Decree 66/2011/ND-CP);

(iii) in the case where a person who manages national assets "neglects responsibility causing serious damage to the State’s property," (Article 144 of the Penal Code (Law 15/1999/QH10)) "deliberately acts against the State’s regulations on economic management and causes serious consequences," (Article 165 of the Penal Code (Law 15/1999/QH10)) or "neglect responsibility and causes serious consequences," (Article 285 of the Penal Code (Law 15/1999/QH10)) he/she will incur criminal liability.

The maximum penalty for the above criminal liabilities is death.

With respect to the legal liability of managers, there seems to be no established concept under the law or judicial precedent as to applying the so-called "business judgment rule," as it is accepted in both Japan and the United States[70] .

In the case where a manager of a SOE disposes of the SOE's assets at a price lower than their book value, there is potential for him/her to incur legal liability as described above. The manager of a SOE is discouraged under this regulation, ensuring that they will refrain from selling Non-profitable Business or capital investments of Non-core Business. Stipulations imposing liability on a manager of a SOE may prevent the business restructuring of SOEs.

(5) DES

To resolve the insolvency of SOEs, DES may be available. DES is carried out by exchanging a creditor's claim, which has a low possibility for repayment, into shares issued by the debtor. It legally takes the form whereby the creditor converts his/her claim into an in-kind contribution and the debtor allocates their issued shares to the creditor. It is possible under the Vietnamese legal system to carry out a DES because the Law on Enterprises in Vietnam (Law 60/2005/QH11) recognizes investments made in the form of non-monetary assets (Article 4.4 of the Law on Enterprises (Law 60/2005/QH11), and Articles 163 and 322 of the Civil Code (Law 33/2005/QH11)) and does not stipulate a prohibition against in-kind contributions of the claim.

A credit institution, however, must obtain an approval from SBV in advance if it wants to contribute capital or purchase shares exceeding the ratios stipulated in Article 16.3 of Circular 13/2010/TT-NHNN. In addition, according to this regulation, a credit institution is permitted to contribute capital or purchase shares only when it maintains its NPL ratio at 3% or less and its business operation has been profitable for the three previous consecutive years, and especially in terms of capital contributions and share purchases in other credit institutions, it is permitted to do that only when it aims to provide financial assistance to such other credit institution in financial difficulty or in danger of insolvency.

Although there are a few actual cases, DES has not taken hold in Vietnam as a commonly used scheme. The reason is considered to be due to the lack of detailed regulations and established practices governing the procedure of carrying out DES and the evaluation approach for claims. A practice of DES in Vietnam needs to be established, since DES is an effective scheme to resolve excessive debts of distressed enterprises.

(6) Disclosure of the Information of the State Property Sale

According to Decree 17/2010/ND-CP, which stipulates the procedure of an auction, when the value of the asset to be the object of the auction exceeds VND 30,000,000 or more, the information (such as the object, date, time and place of the auction) should be disclosed by national or regional (the region in which the auction is conducted) public media. In addition, in practice, a part of the information regarding auctions seems to be disclosed on the Internet.

However, because the source disclosing the auction information is not centralized, it takes time for a person or an enterprise who intends to obtain the auction information of the SOE's assets to comprehensively search such information, and this is one of the points at issue.

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[70] However, the model of the charter (which is applied to public companies), issued on the basis of Circular 121/2010/TT-BTC, stipulates that in the case where a manager faces an indemnity liability action against him or her as a result of an innocent and faithful action, the enterprise will compensate him/her. Based on this concept, there is the potential for applying a similar concept to the so-called "business judgment rule" where the manager of a SOE is facing liability for their actions

2. Recommendations

(1) Regulation of Selling Capital Investments

In terms of selling the capital investments of SOEs, Decree 71/2013/ND-CP makes it possible to sell their assets at a price lower than their book value. On the other hand, Circular 220/2013/TT-BTC guiding Decree 71/2013/ND-CP still requires SOEs to report a sale for where there is not enough compensation, to the competent authorities and ask for their judgment regarding when SOEs sell their assets at a price lower than their book value. In addition, the recently issued Resolution 15/NQ-CP provides that SOEs are permitted to conduct the sale at price below par value in compliance with the withdrawal solutions which was approved by the owners. However, because a policy that Non-core Businesses will be sold on the basis of a restructuring plan, which was approved by the Prime Minister of Vietnam, had been decided, the above procedure which requires SOEs to ask the competent authorities' judgment when a selling price of SOEs' assets is lower than their book value is unreasonable. Additionally, this procedure causes a delay in the selling procedure. Therefore, it is recommended that Circular 220/2013/TT-BTC and Resolution 15/NQ-CP be amended in order for SOEs to permit to sell without the competent authorities' judgment, whether a selling price exceeds a book value or not, for a capital investment which is decided to be sold as a Non-core Business in a restructuring plan formulated in accordance with Decision 929/QD-TTg.

(2) Regulation of the Auction of State Property

The reason why the auction procedures for SOEs' assets take so much time is because a valuation committee and an outside valuation institution delays determining a reserve price. Therefore, it is recommended to amend Decree 17/2010/ND-CP to establish a legally required deadline for the determination of reserve price.

(3) Scheme to Dispose of the Non-profitable Business

It is recommended that the Law on Enterprises (Law 60/2005/QH11) shall be revised in order to make a provision of a company split in Article 151 of the Law on Enterprises (Law 60/2005/QH11) more detailed and easy-to-use.

In Japan, the practice of eliminating part of a business efficiently through the company split framework is an established principle and there are many cases where an enterprise has restructured its business by selling the Non-profitable Business, either its core business or not, to a third party. Therefore, it is recommended to enrich provisions regarding the company split of the Law on Enterprises (Law 60/2005/QH11) (Article 151 of the Law on Enterprises (Law 60/2005/QH11)) in order to make it easy to use.

Specifically, for the enrichment of the provisions regarding the company split of the Law on Enterprises (Law 60/2005/QH11), it is recommended to establish the following provisions; first, a provision that a newly incorporated company undertakes a debt of a split company without incurring any further liability, provided however, in this case, it is also recommended to provide due creditor protection procedures, such as disclosure of information to creditors, procedure for filing an objection by creditors, or lawsuit for nullification of a company split; and second, a provision that allows allotment of shares of a newly incorporated company to a split company at a company split. Though it is interpreted that shares of a newly incorporated company should be allotted to shareholders of a split company at a company split under the current Law on Enterprises (Law 60/2005/QH11), it is recommended to clearly provide additional allowance of allotment of shares to a split company.

(4) Legal Liability of the Managers of SOEs

It is recommended that the legal liability of individual managers of SOEs arising from the sale of the SOE's assets be more moderate in order to not discourage them from

selling the SOE's Non-core Business and Non-profitable Business. In particular, consideration should be given to the fact that, Decree 71/2013/ND-CP be revised in order that managers of SOEs will not be legally liable as mentioned above, provided they sell the SOEs' assets according to the due procedure stipulated under Decree 71/2013/ND-CP (including the detailed regulations to be established). Consideration should also be given to establishing a guideline similar to the "business judgment rule," which stipulates that the managers of SOEs won't be subject to legal liability by making a reasonable business judgment, as it is applied in Japan and the U.S.

(5) DES

In Vietnam, capital participation or the holding of shares by credit institutions is restricted. Therefore, in order to conduct DES flexibly, it is recommended that Circular 13/2010/TT-NHNN should be amended in order to establish a practice that does not require a SBV's prior permission within a certain range, or that the SBV will give a prior permission to DES if the DES satisfies a certain condition. For example, in Japan, while the Banking Act and Antimonopoly Act prohibits banks or banks and insurance companies from obtaining or holding shares exceeding 5% of the total number of voting rights of the enterprise (Paragraph 1 of Article 16-3 of Banking Act and Paragraph 1 of Article 11 of Antimonopoly Act), both restrictions stipulate exceptions that permit the banks or insurance companies to obtain or hold shares exceeding 5%.

Further, in Vietnam, since there has been no detailed guideline providing for procedures for conducting DES, it is recommended to establish such a new guideline under Decrees, etc.

(6) Disclosure of the Information of the State Property Sale

It is recommended to amend Decree 17/2010/ND-CP, in order to stipulate obligations to centrally disclose the auction information of the SOE's assets on a certain website so that a person or an enterprise can obtain the auction information relating to the SOE's assets easily and comprehensively. For example, it could be considered to stipulate obligations to centrally disclose the information through a website of the MOF or MOJ.

II. Developing Disclosure of Corporate Information of SOE

1. Current Status and Issues

(1) Current Status

- In general, SOEs must submit (periodically) audited financial statements and statistic statements (Article 30 Decree 09/2009/ND-CP).

  (i) For enterprises with 100% State-owned capital:

  - Audited annual financial statement which has been approved by the Members' Council (Article 30 of the Law on Accounting (Law 03/2003/QH11), Article 7.4 of Decree 61/2013/ND-CP);
  - Annual auditing statement (Article 34.3 of the Law on Accounting (Law 03/2003/QH11));
  - Annual and long-term (5 years) production and business and development investment plans, and criteria for operational efficiency assessment of the enterprise approved by the competent authorities (Article 7.3 of Decree 61/2013/ND-CP);
  - Results of inspections, examinations and audits carried out by functional agencies (Article 7.5 of Decree 61/2013/ND-CP);
  - Report on evaluation of financial status (Article 6 of Decree 61/2013/ND-CP, Article 4.2 of Circular 158/2013/TT-BTC)

  (ii) For enterprises of which the State owns more than 50% of capital:

  - Annual financial statement (Article 30 of the Law on Accounting (Law 03/2003/QH11))
  - Annual auditing statement (Article 34.3 of the Law on Accounting (Law 03/2003/QH11))
  - Quarterly and annual financial supervision reports (Article 23.1.a of Decree 61/2013/ND-CP)
  - Financial supervision result reports (Article 23.1.b of Decree 61/2013/ND-CP)
  - Report on evaluation of financial status (Article 6 of Decree 61/2013/ND-CP, Article 4.2 of Circular 158/2013/TT-BTC)

  (iii) For enterprises of which the State owns 50% and less of capital:

  - Annual financial statement (Article 30 of the Law on Accounting (Law 03/2003/QH11));
  - Annual auditing statement (Article 34.3 of the Law on Accounting (Law 03/2003/QH11));
  - Annual financial supervision reports (Article 23.2.a of Decree 61/2013/ND-CP);
  - Financial supervision result reports (Article 23.2.b of Decree 61/2013/ND-CP)

SOEs are required to apply Vietnamese accounting standards issued by the MOFvia a number of Decisions and Circulars based on international standards on accounting and provisions of the Law on Accounting (Law 03/2003/QH11) (Article 2.1.c and Article 8.2 of the Law on Accounting (Law 03/2003/QH11)). Annual financial statements of SOEs shall be audited by an auditing enterprise or branch of foreign auditing enterprise in Vietnam (Article 37.2.a of the Law on Independent Auditing (Law 67/2011/QH12) and Article 30.1 of Decree 09/2009/ND-CP). Vietnamese auditing standards issued by the MOF in Circular 214/2012/TT-BTC based on international standards (Article 6.4 of the

Law on Independent Auditing (Law 67/2011/QH12)) are applied for the auditing. Additionally, under Law on State auditing (Law 37/2005/QH11), SOEs are subjects of State auditing and shall apply State auditing standards provided in Decision 06/2010/QD-KTNN (Article 63.11 of the Law on State auditing (Law 37/2005/QH11)).

SOEs shall publicly disclose their financial information under the new Decree 61/2013/ND-CP, the detailed regulations of which are provided in Circular 171/2013/TT-BTC issued November 20, 2013. Under Circular 171/2013/TT-BTC, SOEs are required to publicize its audited financial statements, including balance sheets, cash flow, and explanation of the financial report and thereby it is expected that the transparency of operations of SOEs will be enhanced. Circular 171/2013/TT-BTC became effective as of January 5, 2014. SOEs are required to publicize their audited annual financial statements by April 30 of each year.

Where the SOE is a public company, it needs to be subject to the regulations on disclosure under Chapter 8 of the Law on Securities (Law 70/2006/QH11), and the Circular 52/2012/TT-BTC.

It should be noted that accounting standards and auditing standards, that are out of scope of the survey team's research and hence will not be mentioned herein, are essential conditions for ensuring accuracy of disclosed information.

(2) Issues

It is unclear at this time how the new Decree 61/2013/ND-CP and Circular 171/2013/TT-BTC will be operated.

It is necessary to improve accuracy and transparency of financial statements of SOEs. Additionally, financial statements of SOEs need to be prepared within a reasonable period of time.

2. Recommendations

Accuracy of financial information is necessary for SOE's in order to grasp their own business situation and improve their management. It is difficult for purchasers of a SOE's Non-core Business to buy out the SOE whose financial information is inaccurate. In addition, even if carrying out a buy-out, unreliable financial information will have a purchaser scrutinize financial information, then the selling procedure will be delayed and the purchaser will propose only a low purchase price to the SOE.

Therefore, in order to promote management improvement of SOEs and sales of their assets, including their capital investments, such as Non-core Businesses, it is necessary for SOEs to prepare accurate financial information promptly and secure the accuracy of their financial information.

Since the new Decree 61/2013/ND-CP and Circular 171/2013/TT-BTC are expected to improve transparency of operations of SOEs and promote investments in SOEs, their implementation must be ensured. Therefore, it is recommended that SOEs thoroughly implement Decree 61/2013/ND-CP and Circular 171/2013/TT-BTC, and to establish guidelines governing the operation of these.

In addition, it is necessary to improve the quality of audit by auditor and State Audit for securing accuracy of financial information of SOEs as well as to ensure financial statements to be submitted quickly and punctually. Therefore, it is recommended to implement an education system for expanding and developing auditors and State Audits, and to establish detailed rules relevant to the preparation and audit of financial statements.

Part III-III Reform of Banking Sector

I. Improving the System of Classification and disclosure on NPLs

In order to deal with the NPLs problems, a legal framework that enables the banking sector holding NPLs to adequately manage NPLs is needed. In addition, a legal system that quickly resolves failed credit institutions and maintains an orderly financial system also needs to be established for the cases of bankruptcy of credit institutions, occuring as a result of holding a large number of NPLs. Further, a deposit insurance system to protect depositors and maintain an orderly financial system needs to be introduced. In the following section, the issues concerning the reform of the banking sector in the current legal framework will be clarified, as well as providing recommendations for solving them.

1. Current Status and Issues

(1) Current Status

a. Current Status regarding Classification and Disclosure of Information on NPLs

The current regulations on the classification and disclosure of information on NPLs are provided for under Decision 493/2005/QD-NHNN (including amendment by Decision 18/2007/TT-NHNN. The same shall apply hereafter).

Under Decision 493/2005/QD-NHNN, debts owned by credit institutions operating in Vietnam should be classified into five (5) Groups, that is, Group 1 (standard debts), Group 2 (special-mention debts), Group 3 (sub-standard debts), Group 4 (doubtful debts), and Group 5 (possible capital loss debts). Groups 3, 4 and 5 are collectively referred to as the NPLs as defined in Article 2.6 of Decision 493/2005/QD-NHNN.

The criteria for the classification of debts is defined in Article 6.2 and 6.3 of Decision 493/2005/QD-NHNN. Specifically, the classification criteria for debts under Group 3 (NPL) are all formal criteria, such as the number of overdue days, presence or absence of reschedule, frequency of reschedule, and presence or absence of payment of interest.

Credit institutions are required to classify debts pursuant to the criteria set forth above and to establish a Specific Reserve, aside from the General Reserve[71]. The amount of each Specific Reserve to be set aside for each debt is calculated in accordance with the following formula:

$$R = \max \{0, (A - C)\} \times r$$

In which:

R = the total amount of the specific reserve to be set aside for each debt;
A = the total principal balance of the debt;
C = the deductible value of the security property; and
r = the specific ratio for establishing a Specific Reserve for each Group.

The specific ratio is 20% (Group 3), 50% (Group 4) or 100% (Group 5).

b. Outline of Circular 02/2013/TT-NHNN

SBV issued Circular 02/2013/TT-NHNN (including amendment by Circular 12/2013/TT-NHNN. The same shall apply hereafter). as a new regulation for the classification and disclosure of information on NPLs.

Circular 02/2013/TT-NHNN also stipulates that debts owned by Credit institutions operating in Vietnam should be classified into five (5) Groups (from

[71] An amount equal to 0.75% of the total balance of loans in Groups 1, 2, 3 and 4 (Article 9 of Decision 493/2005/QD-NHNN)

Group 1 to Group 5) and Groups 3, 4 and 5 are collectively referred to as NPL. However, the definition and classification of the Groups are revised under Circular 02/2013/TT-NHNN. Further, Circular 02/2013/TT-NHNN broadens the definition of loans and now covers debts/loans including investments in unlisted corporate bonds, entrusted extension of credit and deposits at other credit institutions. In addition, after the implementation of Circular 02/2013/TT-NHNN, credit institutions must use the client classification categories as provided by CIC to amend their own classifications. If any credit institution makes a classification of a client at a risk level lower than that provided by CIC, then the credit institution in question must amend its own classification to correspond to that provided by CIC.

It is expected that the ratio of bad debts in a number of commercial banks will be increased from the current ratio of 3 – 4% to the new ratio of 10 – 20%, or potentially an even higher ratio with the application of Circular 02/2013/TT-NHNN.

Circular 02/2013/TT-NHNN was initially scheduled to be implemented from June 1, 2013, however, the effective date of Circular 02/2013/TT-NHNN was delayed until June 1, 2014. As a result, presently, Circular 02/2013/TT-NHNN is yet to be executed.

Additionally, it is expected that Circular 02/2013/TT-NHNN will be revised in the near future. Provided, however, because survey team has not examined the contents of revised Circular 02/2013/TT-NHNN yet at this time, survey team cannot comment about the revised draft. (Survey team will describe about Circular 02/2013/TT-NHNN before the revision hereafter.).

Just for information, according to news reports, the SBV confirmed in a press conference in February 2014 that Circular 02/2013/TT-NHNN will be applied as schedule with 4 major amendments as below[72]:

- First, to stipulate that special bonds issued by VAMC for purchasing NPLs from original creditors shall not be subject to debt classifications and setting aside risk reserves because Circular 19/2013/TT-NHNN provides that, annually, original creditors must set aside risk reserves at 20% of face value of the special bonds.
- Second, to add a new stipulation that rescheduled loans may be kept in the same group (i.e. not moving to higher risk groups) based on stricter conditions, and the credit institutions must ensure control of such rescheduled-but-kept-in-the-same-group loans, control of credit quality and avoid/limit abuses for concealing NPLs. This stipulation shall be effective from the effective date of the Amendment Circular until 01 April 2015, and Decision 780/2012/QD-NHNN will expire (probably on the effective date of the Amendment Circular).
- Third, to amend stipulations that the illegal loans and the loans which violate internal regulations of credit institutions (including foreign banks' branches in Vietnam) must be classified in the following manner: the violating loans may only be classified into NPL groups based on inspectors' conclusions and illegal loans as specified in Clauses 1, 2, 3, 4, 5, 6 of Article 126 and Clauses 1, 3 of Article 127 and Clauses 1, 2, 7 of Article 128 of the Law on Credit Institutions (Law 47/2010/QH12) (which are regulations on prohibition, restriction, limit cases of credit supply).
- Fourth, to amend the stipulation that credit institutions must adjust their debt classifications based on the classifications of CIC as follows: the effective date of this stipulation will be delayed until December 31, 2014. However, in the meantime, credit institutions (including foreign banks' branches in Vietnam) must still perform classifications and send their

[72] http://tinnhanhchungkhoan.vn/tien-te/sua-thong-tu-02-van-con-do-nhung-nghi-ngai-90306.html

results to CIC for consolidation. CIC will provide the consolidated classifications to the credit institutions for their risk control, credit quality control and to the SBV's Inspection and Supervision Department for supervision. In necessary cases, on case-by-case basis, the SBV may request credit institutions to adjust their classifications based on CIC's results. This stipulation will be effective until the end of 31 December 2014.

(2) Issues

Proper grasp, classification and disclosure of NPL is absolutely imperative for finding credit institutions lacking in financial strength promptly and tackling its problem, and also for maintaining the confidence of credit institutions and to maintain an orderly financial system. In light of this, the implementation of Circular 02/2013/TT-NHNN is preferable since it will require credit institutions of using the client classification categories as provided by the CIC that reflect the actual situation and broadens the definition of loans subject to classification. However, the effective date of Circular 02/2013/TT-NHNN was delayed and it is yet to be executed.

Further, after the application of Circular 02/2013/TT-NHNN, the definition of loans will be broadened. In order to corresponding to it, the supervising authority must strengthen the functions of banking supervision and inspection in order to inspect the adequateness of debt classification taking place by each credit institution.

2. Recommendations

Executing an accurate classification of loans at credit institutions will be a prerequisite for disposing of NPLs. Therefore, it is necessary to ensure the steady implementation of Circular 02/2013/TT-NHNN as well as to strengthen the functions of banking supervision and inspection, specifically, to establish a manual for the supervising authority to conduct appropriate inspections on credit institutions' classification of loans, and to develop human resources.

In particular, it is recommended the following solutions:

(1) To Ensure the Implementation of Circular 02/2013/TT-NHNN

The stipulation under Circular 02/2013/TT-NHNN is preferable to that of Decision 493/2005/QD-NHNN, in light of the proper grasp, classification and disclosure of NPL. Therefore, to ensure the implementation of Circular 02/2013/TT-NHNN, which has already been delayed, it is necessary to prepare the preconditions for impelling bad-loan disposal in order to ensure there are no more delays.

On this point, as mentioned above, it is said that the SBV confirmed that Circular 02/2013/TT-NHNN will be applied from June 1, 2014 as schedule with 4 major amendments.

(2) To Strengthen the Supervising Authority's Functions of Banking Supervision and Inspection

After the application of Circular 02/2013/TT-NHNN, loans that should be classified will be increased and the business volume of the supervising authority will be increased as well.

Also, while Circular 02/2013/TT-NHNN will allow the classification of debt pursuant to a substantive criteria (criteria that asks for value judgement)[73], determining the adequateness of debt classification pursuant to a substantive criteria is far more difficult than determining pursuant to a formal criteria (criteria that can be judged by quantitative comparison). In addition, to prevent the division of auditors' judgments and to prevent

[73] .Article 11 of Circular 02/2013/TT-NHNN

credit institutions from classifying debts too conservatively, the supervising authority shall draw up an audit policy for classifying debts pursuant to a substantive criteria.

Therefore, in combination with the implementation of Circular 02/2013/TT-NHNN, it is necessary to improve the banking supervision and inspection system, so that a supervising authority can conduct an audit appropriately and effectively, and to strengthen the supervising authority's functions of banking supervision and inspection. In particular, it is recommended to conduct the following solutions:

- To draw up an audit policy for classifying debts pursuant to a substantive criteria (Financial Inspections Manual) and further publish this policy.
- To improve and strengthen the training provided to staff of the supervising authority.

II. Developing a Bankruptcy System for Credit Institutions

1. Current Status and Issues

(1) Current Status

a. Bankruptcy System for Credit Institutions under the "Banking Restructuring Plan"

In Vietnam, the Banking Restructuring Plan approved by Decision 254/2012/QD-TTg stipulates the process of resolving credit institutions with problems.

Pursuant to the Banking Restructuring Plan, credit institutions being joint stock commercial banks, finance companies and finance lease companies of Vietnam will be classified into 3 categories, comprising: (i) healthy credit institutions, (ii) temporarily insolvent credit institutions, and (iii) weak credit institutions. The bailout plans stated below are applicable to weak credit institutions.

(i) Refinancing:

The SBV refinances failing credit institutions which are at risk of insolvency, but have not been placed under special control, up to the maximum amount equivalent to the charter capital of the refinanced credit institution, if other statutory conditions are fulfilled.

(ii) Special Control:

Where necessary, weak credit institutions may be subject to special control by the SBV, pursuant to Articles 145 to 152 of the Law on Credit Institutions (Law 47/2010/QH12). There are two (2) types of Special Control mechanisms; one is "special supervision," where the SBV applies measures for the supervision of the daily operations of the bank, and the other is "total control," where the SBV exercises direct and total control of the daily operations of the bank.

(iii) Special Loans:

The SBV or other credit institutions may provide special loans to failing weak credit institutions, which are under special control threatening the stability of the banking system, or which are at risk of becoming insolvent due to a serious breakdown, but have not yet been subject to special control. As a general rule, the borrowing bank is only permitted to use the special loan to pay out deposits with such bank of individual depositors.

After applying bailout plans under the Banking Restructuring Plan, as discussed above, a weak credit institution may, voluntarily or compulsorily, be merged or consolidated into another credit institution, or acquired by another credit institution or the SBV. Note that "Merge", "Consolidation" and "Acquisition of a credit institution" are, according to the text of the law, all assume comprehensive transfer of insolvent credit institutions' business. Therefore, it is unclear whether insolvent credit institutions can transfer a part of their business or not.

In addition, SBV may directly purchase, or designate another credit institution to purchase, shares in a specially controlled credit institution in the case where the ceasing of the operation of such credit institution may cause harm to the banking system[74].

As seen above, self-resuscitation under the supervision of SBV or eliminating the credit impairment by forming a merger etc. with other credit institutions, after securing the solvency of credit institutions under the direct or

[74] Decision 48/2013/QD-TTg

indirect supervision of SBV, is assumed to be the basic bankruptcy system for credit institutions under the Banking Restructuring Plan. In fact, the restructuring of insolvent credit institutions has been carried out on a voluntary basis mainly in the form of M&A.

b. The Procedures for Bankruptcy of Credit Institutions

If a credit institution enters into bankruptcy, the special provision for the procedures for bankruptcy of credit institutions under Decree 05/2010/ND-CP, in addition to the current LOB, will be applied to the process.

Decree 05/2010/ND-CP stipulates the special provision regarding the conditions to start the bankruptcy procedure for credit institutions, as well as the business management of credit institutions after the beginning of the bankruptcy procedure and so on.

However, under Decree 05/2010/ND-CP, a court can initiate the bankruptcy procedure for credit institutions only after the SBV has decided not to apply or to terminate the application of measures to recover solvency or to terminate the special control. Therefore, it appears that a legal system which combines a bankruptcy procedure which is both quick, and attempts to maintain the insolvent credit institutions' financial system is yet to be developed.

(2) Issues

a. Non-existence of a System Enabling Expeditious and Orderly Restructuring

As stated above, restructuring of insolvent credit institutions in Vietnam has been undertaken mainly by way of M&A by other credit institutions in good financial condition. This method is effective, as a method of restructuring, so long as the bad-debt problem of the insolvent credit institution is not so serious, and credit institutions in good financial condition can be found.

However, going forward, there may be cases where no credit institutions having sufficient financial resources to succeed the insolvent credit institutions can be found. In such cases, it happens that the strategy of restructuring insolvent credit institutions may become difficult, because no acquiring credit institutions may be found, despite the fact that the bad-debt problem of the credit institutions is quite serious.

As a countermeasure for such a situation, nationalization of the insolvent credit institution by acquisition of all its shares, in accordance with Decision 48/2013/QD-TTg, may be considered. However, the spending of public funds may cause a substantial financial burden to the state.

Furthermore, spending public funds may cause a moral hazard with respect to the management and depositors of the credit institutions. Namely, from the viewpoint of the management of the credit institutions, they may come to expect that public funds will be injected to save credit institutions, in the end, even if there will be considerable losses in the future. Therefore, the management of credit institutions will tend to proactively carry out higher-risk transactions, to obtain higher profits. Also, from the viewpoint of depositors, they may come to expect that public funds will be injected to protect the entirety of their deposits in credit institutions. Therefore, the creditors may tend to make deposits into credit institutions providing higher interest rates, even if the financial condition of the credit institution bears considerable problems. This kind of moral hazard may substantially undermine self-control by the management or depositors of credit institutions, and may harm the soundness of finance.

In order to reduce the costs for resolution of a credit institution, and prevent the moral hazard problem from arising at credit institutions, it is a possible scenario that a credit institution whose financial condition is significantly bad could be allowed to go bankrupt. In such a case, in order to avoid any confusion

on the part of creditors and borrowers, it would be desirable to establish a restructuring system, under which some transfers of the business of the insolvent credit institutions to other credit institutions are enabled. However, under the current laws and regulations, there are no provisions for such resolution, and the system enabling the expeditious and orderly bankruptcy procedures is insufficient.

b. System-derived Problems in the Bankruptcy Procedures for Credit Institutions

In a resolution of credit institutions, in addition to transfers of business to other credit institutions, bankruptcy procedures could be used, in order to treat creditors equally. The bankruptcy procedures for credit institutions have a special aspect, in that special knowledge with respect to converting financial instruments and other assets owned by credit institutions into cash is necessary. Another special aspect of bankruptcy procedures of credit institutions over a certain size is the existence of a large number of creditors, as the depositors will become creditors. However, the current LOB, and Decree 05/2010/ND-CP, a special regulation thereof, do not stipulate any provisions considering such special aspects of the bankruptcy procedures for credit institutions over a certain size. Therefore, there is a concern that a swift and orderly resolution of credit institutions will not be able to be undertaken.

2. Recommendations

(1) Establishment of an Expeditious and Orderly Resolution System for Credit Institutions

As stated above, for the resolution of credit institutions, the expeditious and orderly resolution is necessary in order to avoid confusion on the part of depositors and borrowers. In Vietnam, a system for providing public funds at an early stage has been established to some extent, but the system for the resolution of credit institutions has not been sufficiently developed. Therefore, through development of such systems, it is recommended to enable to conduct of expeditious and orderly restructuring of credit institutions[75]. Specifically, it is recommended to introduce the below-mentioned systems:

a. Establishment of a Financial Administrator System

In order to carry out a swift resolution of credit institutions under public supervision, it is recommended to establish a system under which an appropriate public organization will execute the operation of insolvent credit institutions (a financial administrator system). With a financial administrator, it is expected that insolvent credit institutions will swiftly transfer their business to other credit institutions, and sell their remaining property, etc.

For reference, there is a similar system called “total control,” under which an SBV will directly control the day-to-day operations of weak credit institutions. The financial administrator system is different from the total control system, in that the financial administrator system will grant all execution rights of operation of an insolvent credit institution, and disposition of its property, to an appropriate public organization, in addition to the rights to conduct day-to-day operations.

b. Establishment of a Bridge-bank System

In the case of the resolution of credit institutions, swift transfers of the business of the insolvent credit institution to other credit institutions may be a

[75] The Financial Stability Board (FSB), an international body that monitors and makes recommendations about the global financial system, published the “Key Attributes of Effective Resolution Regimes for Financial Institutions”(https://www.financialstabilityboard.org/publications/r_111104cc.pdf).

desirable choice, in order to avoid confusion on the part of depositors and borrowers. However, there is a possibility that a credit institution which would like to succeed as the business of the insolvent credit institution may not be found immediately.

Therefore, it is recommended to establish a system under which a temporary credit institution, whose sole purpose is to temporarily succeed as the business of the insolvent credit institutions, can be incorporated as a subsidiary of an appropriate public organization (the bridge-bank system). As a bridge-bank is a temporary successor, during the term wherein the business of the insolvent credit institution continues under the bridge-bank, it is anticipated that an acquiring credit institution will be found, and all of the business will eventually be succeeded to by the other credit institution.

In the case of a business transfer to a bridge-bank, it is considered that the business transfer will be undertaken swiftly, without conducting any bailout plan as stipulated in the Banking Restructuring Plan. However, the provision of a Banking Restructuring Plan may be interpreted to mean that the business transfers of the insolvent credit institutions should be undertaken after the bailout plan is conducted. Therefore, it is unclear as to whether such business transfers and other measure can be undertaken immediately. Also, in the case of a business transfer by an insolvent credit institution, it is preferable that a transfer of a part of the business will be undertaken, and bad debts and unprotected deposits will be left to the insolvent credit institution. However, the provision of a Banking Restructuring Plan may be interpreted to mean that a business transfer of an insolvent credit institution should be undertaken as a whole.

Therefore, such provisions should be amended so that an immediate business transfer, without conducting any bailout plan under the Banking Restructuring Plan, can be undertaken, and a part of the business of the insolvent credit institution can be transferred to other credit institutions.

c. Introduction of the Financial Assistance Method

In addition to the method that the deposit insurance agency pays insured deposits directly to depositors, , the payment of insurance proceeds, by the financial assistance method, should be enabled in order to minimize the costs of resolution of credit institutions.

The “financial assistance method” means the method that the deposit insurance agency provides financial assistance, equivalent to the balance between the value of the business owned by the insolvent credit institution and debt to be succeeded, up to the amount of the expected insurance proceeds by a credit institution that succeeds the deposits of the insolvent credit institution[76]. If the value of the business to be succeeded is lower than the amount of debt (including deposits), no credit institution will accede to succeed the business owned by the insolvent credit institution. Therefore, such financial assistance is needed to have other credit institution succeed the deposits of the insolvent credit institution with its business. The deposits of depositors deposited in an insolvent credit institution will be protected, by way of acquisition by a credit institution having sufficient financial resources to succeed the deposits.

Using the financial assistance method, as the deposits will be succeeded by an acquiring credit institution, and the depositors of an insolvent credit institution can continuously use their deposited money, confusion of the depositors can be minimized. Further, the payer of the deposit insurance (deposit insurance agency) can ensure the payment of all the deposits regarding which insurance proceeds have been paid, by paying the balance between the total amount of debt

[76] If all the deposits will be protected, all the deposits will be within the scope of succession. On the other hand, if the protection will be up to a fixed amount (in other word, the deposit proceeds are lower than the whole amount of the deposits), then only deposits equivalent to the expected insurance proceeds will be succeeded.

to be succeded and the value of the business owned by the insolvent credit institution to the acquiring credit institution. Therefore, if there is any remaining value in the business of the insolvent credit institution, restructuring of the credit institution can be undertaken at a lower cost than by paying insurance proceeds to depositors directly.

Under the Japanese deposit insurance system, the payment of insurance proceeds is permitted by two methods; namely, the method of paying insurance proceeds directly to depositors (the pay-off method), and the financial assistance method. However, in principle, insurance proceeds should be paid by the financial assistance method, in order to minimize the confusion caused by the restructuring of a credit institution and the costs for restructuring. Also, under the deposit insurance system in the U.S., there are three payment methods; namely, the pay-off method, the closed financial assistance method[77], and the non-closed financial assistance method[78]. The closed financial assistance method, that can minimize costs, is the most commonly used, under the principles of a "below pay-off cost" policy (i.e., the policy of a restructuring method whose cost is below the pay-off costs is adopted for the restructuring of a credit institution.).

(2) Amendment to the current LOB Relevant to Credit Institutions

As stated in Part III-III, II, 1, (2), b above, there is a concern that, under the current LOB and their special regulations, Decree 05/2010/ND-CP does not have any provisions based on special aspects of restructuring credit institutions of a certain size or larger, and therefore, a swift restructuring of credit institutions may not be able to be undertaken. Therefore, it is recommended to make the below amendment, in order that swift and appropriate resolution of credit institutions will be enabled.

a. Granting the Right to File for Bankruptcy of Credit Institutions to an Appropriate Public Organization

In addition to a resolution of credit institutions, as stated in Part III-III, II, 1, item (1) above, it is recommended that the right to file for bankruptcy of credit institutions should be granted to an appropriate public organization, in order to enable the swift resolution of an insolvent credit institution.

In this regard, Article 4.6, of the third draft of the amendment to the LOB, stipulates an obligation of a credit institution to file for bankruptcy. However, such obligation applies only to the limited situation where the SBV provides written notice of the termination or non-application of a special control, and the credit institution is insolvent. In addition, difficulties can be anticipated if the credit institution does not fulfill such an obligation. Therefore, more comprehensively, the right to file for bankruptcy procedures should be granted to an appropriate public organization.

b. Establishment of a Provision under Which an Appropriate Public Organization will be Appointed as an Administrator Group

In addition to the resolution method of credit institutions as stipulated in Part III-III, II, 1, item (1) above, an appropriate public organization, or a person from such a public organization, should be appointed as an administrator group so that an appropriate public organization can lead the regulation of credit institutions.

Further, as stated above, special knowledge is required to convert financial instruments and other assets owned by credit institutions into cash. Therefore, if

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77 A method under which financial assistance will be provided to the credit institution which succeeds the insolvent credit institution

78 A method that provides financial assistance to credit institutions which are close to insolvency

an appropriate public institution or a person from such institution will be appointed as an administrator group, the right to convert assets into cash and dispose of them should be granted to the administrator group. As long as a public organization, or a person from such an organization, will be appointed as an administrator group, there is no threat that an improper disposal of assets will be made by such an administrator group.

c. Provisions for Conducting Bankruptcy Proceedings Efficiently

In bankruptcy proceedings for credit institutions, since all the depositors of the bankrupt credit institution will be the bankruptcy creditor, the bankruptcy of credit institutions above a certain size ensures that there are dozens of bankrupt creditors. If all of those creditors are required to be involved in the proceedings, the proceedings will require a lot of time and costs, and as a result, it will be impossible to conduct the proceedings efficiently.

Therefore, in order to efficiently conduct bankruptcy proceedings for credit institutions, the following provisions should be added:

- With regard to the notice of decision on commencement of bankruptcy proceedings (Article 29.2 of the current LOB), it is recommended to provide that a notice to an appropriate official institution (Assumed DIV), the same shall apply hereinafter) representing depositors shall replace the notice to each depositor.
- With regard to the filing of notices requesting payment of debts (Article 51 of the current LOB), it is recommended to provide that an appropriate official institution may make and file notices requesting payment of debts for and on behalf of depositors. For example, in Japan, the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions of Japan provides that the filing of claims by creditors may be substituted by the development and submission of lists of depositors by DICJ to the failed credit institution.
- With respect to the appeal regarding the list of creditors (Article 52 of the current LOB), it is recommended to provide that in the case of a denial of claims filed by an appropriate public institution on behalf of the creditors, the notice of denial of claims may be served to the official institution and the official institution may convey the notice to the depositor whose deposit has been denied in the notice. Further, pursuant to Article 52 of the current LOB, the depositors need to confirm the list of creditors and file appeals within a short period (i.e., ten (10) days). However, since it appears to be difficult for each depositor to confirm the list of creditors, it is recommended to adopt system in which the creditor may receive a notice of denial.
- With respect to the meeting of creditors (Article 61 of the current LOB), it is recommended to provide that an appropriate public institution may attend the meeting on behalf of creditors who have not shown his/her intention to attend the meeting, in order to ensure the constitution of a quorum (1/2 of 2/3 of unsecured creditors, Article 65.1 of the current LOB) is achieved, which may be difficult under the condition that requires dozens of depositors to attend the meeting.

III. Development of Deposit Insurance System

1. Current Status and Issues

(1) Current Status

a. Outline of Deposit Insurance System in Vietnam

In Vietnam, DIV, which is a financial institution wholly owned by the State and controlled by SBV, implements a deposit insurance policy. DIV shall pay insurance proceeds to depositors in the case where (i) the SBV sends a document to terminate the special control or a document to terminate the application, or documents not to apply the measures to restore solvency, but the credit organization that is a deposit insurance participating organization still falls into bankruptcy, or (ii) the SBV has documents to identify a foreign bank branch that is a deposit insurance participating organization, losing its ability to make payments of deposits to its depositors. The scope of deposits to be insured under the Vietnamese deposit insurance system is described in Part III-III, III, 1, (1), b.

Under the Law on Deposit Insurance (Law 06/2012/QH13), the purposes of deposit insurance in Vietnam are protecting the legitimate rights and interests of depositors and contributing to the stability of the banking system as well as ensuring the safe and healthy development of banking operations (Article 3 of the Law on Deposit Insurance (Law 06/2012/QH13)).

b. The Scope of Deposits to be Insured

Pursuant to Article 25 of the Law on Deposit Insurance (Law 06/2012/QH13), insurance proceeds are payable in respect of all insured deposits of one individual at one organization participating in deposit insurance. However, there is a limit on the maximum amount of insurance proceeds. The maximum amount of insurance proceeds payable for all deposits (including principal and interest) is currently VND 50 million in accordance with Article 4 of Decree 89/1999/ND-CP. Any amount of insured deposits in excess of the limit will be dealt with in the process of liquidation of assets of the relevant deposit insurance participating organization in accordance with the laws.

In the case where a depositor has separate deposits at one bank, those amounts are inclusively insured to the limit of VND 50 million. As a result, if a credit institution participating in deposit insurance goes bankrupt, then DIV needs to conduct work for determining the scope of the insured deposits by identifying depositors and the amount of their deposits (“name based aggregation”). Currently, on the occurrence of an ensured event, DIV will conduct name based aggregation by using systems owned by failed credit institutions. DIV does not have its own system for name based aggregation, and a system to quickly determine the insured deposits has not yet been established.

In addition in Vietnam, insured deposits are those of individuals, and any deposits of legal entities are out of the scope of insured deposits.

c. Insurance Proceeds Payment Method

Under the Law on Deposit Insurance (Law 06/2012/QH13), the insurance proceeds shall be directly paid to the depositors.

(2) Issues

a. Less Focus on Ensuring the Stability of Banking Operations

As can be seen from the fact that insured deposits are limited to those of individuals and not those of enterprises, the Vietnamese deposit insurance system focuses more on protecting the weak than ensuring the stability of the banking system. Therefore, the current deposit insurance system is not able to sufficiently respond to liquidations of credit institutions in a timely manner while maintaining its financial function.

b. The Scope of Insured Deposits is Limited

DIV is currently reviewing the scope of insured deposits but is not considering including deposits of legal entities to the scope. The purposes of the Vietnamese deposit insurance system are protecting the legitimate rights and interests of depositors, as well as contributing to maintaining the stability of the financial system. Despite DIV's review, the scope of insured deposits is not wide enough from the viewpoint of ensuring the liability to the credit institutions.

c. High Possibility of Not Being Able to Respond to the Bankruptcy of Major Credit Institutions

In past cases, the credit institutions subject to the payment of insurance proceeds were minor credit institutions having just a few hundreds depositors. However, in the future, cases of major credit institutions becoming bankrupt may arise.

In such bankruptcy cases, it appears that under the current system, DIV will not be able to quickly conduct name-based aggregation to determine the insured deposits and to pay insurance proceeds.

d. The Limitations of the Insurance Proceeds Payment Method

The payment of insurance proceeds as financial assistance, that many countries have adapted, is not provided under the relevant laws of Vietnam. Therefore, DIV may not be able to quickly respond to the bankruptcy process of a credit institution based on transferring its business. Additionally, since DIV needs to directly pay insurance proceeds to each depositor, DIV may not be able to quickly pay the insurance proceeds, as well as pay an enormous expense for the payment of proceeds.

2. Recommendations

The essential purpose of a deposit insurance system is to prevent systemic risk from arising. However, in the current Vietnamese deposit insurance system, there has been much emphasis placed on protecting depositors and not enough emphasis on preventing systemic risk. Therefore, the scope of deposit to be insured is limited to individual deposits. However, as stated, it is also important to prevent systemic risk from arising, and based on this perspective, the scope covered by the deposit insurance needs to be reviewed. In addition, the amount insured under the deposit insurance is relatively low in light of the economic development of Vietnam.

Further, since the enhanced name-based aggregation system for cases of an occurrence of insured events has not been developed, such a system needs to be established in order to quickly conduct name-based aggregation.

Specifically, it is recommended to take following measures:

(1) To Review the Scope of Deposits to be Insured

In past cases, since failed credit institutions have been resolved through M&A, all deposits of depositors have not been actually impaired in the cases of failure resolution of a certain size of credit institutions. However, in the case of resolving failed credit institutions through systems as prescribed in Part III-III, II, 2, as deposits will be insured within the limit in actuality, it is recommended to review the scope of insured deposits in order to maintain the reliability of the credit system.

Specifically, it is recommended to include the deposits of legal entities, and as an exception, all deposits in the deposit accounts for the sole purpose of funding the settlement[79] to insured deposits. In addition, in some cases where it is necessary to prevent an expansion of the credit insecurity or occurrence of material risk in the stability of banking operations, all deposits should be considered to be insured as a temporary measure.

Further, the current upper limit of insured deposits is not appropriate or consistent with the level of economic development in Vietnam. As DIV has been reviewing the limit, apart from the perspective of maintaining the reliability of the credit system, it is necessary to review the upper limit of the deposit amount to be insured in consistency with the level of economic development in Vietnam.

In addition, in conjunction with the review of the upper limit of the deposit amount, it is necessary to review the deposit insurance rate with the aim of securing of financing for insurance payment. On this point, it is also recommended to change the deposit insurance rate depending on credit rating of credit institutions to ensure the fairness among credit institutions.

(2) To Develop a Name-based Aggregation System

In the case of adapting the credit institution bankruptcy scheme where the insurance proceeds will be paid to the succeeding credit institution as financial assistance, in order to shorten the period during which the bankrupt credit institution will be closed down, it is necessary to quickly determine the range of insured deposits. To that end, it is recommended to develop an enhanced name-based aggregation system for the case of bankruptcy of major credit institutions in the future.

Specifically, the following measures are required:

- To establish a system in which each credit institution is required to provide the data of its depositors to DIV;
- To develop a system based on the data provided by each credit institution that enables DIV to check an account holder of each account; and
- To establish a manual on name-based aggregation for the case of the bankruptcy of a major credit institution and to conduct actual training based on the manual.

(3) To Introduce a System to Pay Insurance Proceeds as Financial Assistance

As mentioned in Part III-III, II, 2, (1), c, it is recommended to amend the relevant laws and regulations in order for DIV to pay insurance proceeds as financial assistance.

[79] For example, under the Deposit Insurance Act of Japan, in order to protect fund settlement systems through credit institutions, deposit accounts which meet 3 conditions including (i) earning no interest; (ii) withdrawal at any time, and (iii) providing fund settlement service, will be subject to full protection.

Part III-IV Enhancement of Function of VAMC, DATC and SCIC

I. Strengthening of Functions of VAMC

In this part, recommendations based on all of the recommendations so far, will be provided on utilizing and strengthening the functions of VAMC, DATC and SCIC, for the disposal of NPLs and restructuring of SOEs.

1. Current Status and Issues

(1) Current Status

a. The Outline of Information about VAMC

The outline of information about VAMC is as follows:

Full Vietnamese Name:	CÔNG TY TRÁCH NHIỆM HỮU HẠN MỘT THÀNH VIÊN QUẢN LÝ TÀI SẢN CỦA CÁC TỔ CHỨC TÍN DỤNG VIỆT NAM
Date of Foundation:	July 22, 2013
Related Legislations:	Decision 1590/2013/QD-NHNN, Decision843/2013/QD-TTg, Decree 53/2013/ND-CP, Circular 19/2013/TT-NHNN
Competent Authorities:	SBV
Form of Enterprise:	One Member LLC owned by the State
Charter Capital:	VND 500 billion (Applying for an increase to VND 2 trillion)
The Number of Person:	Approximately 65
Main Business Lines:	As stated below (Article 11 of Decision 1590/2013/QD-NHNN)

- To purchase NPLs from credit institutions;
- To recover, collect, dispose of and sell debts and security property;
- To re-structure the debts, adjust the repayment conditions, convert debts into capital contribution, and shares of the borrowers;
- To invest, repair, upgrade, exploit, use, lease the security property as collected by VAMC;
- To manage the purchased NPLs and inspect and supervise the security property related to the NPLs, including materials and documents related to the NPLs and loan security;
- To advise, act as a broker for sale and purchase of debts and assets;
- To make financial investments, capital contributions, share purchases;
- To hold auctions for selling assets;
- To provide a guarantee to borrowers of credit institutions; and
- To engage in other activities in compliance with the functions and missions of VAMC upon permission by the SBV's Governor.

b. Schemes to Purchase NPLs

VAMC is permitted to purchase credit institutions' NPLs through two schemes: (i) purchase at book value (i.e., face value of the principal balance of the purchased NPLs minus the amount of specific risk reserve which has not been

used), with "special bonds"[80], and (ii) purchase at market value, without "special bonds[81]. " However, VAMC has not purchased any NPLs at market value so far.

Credit institutions with an NPL ratio of 3% or more of total loans must sell NPLs to VAMC unless otherwise permitted by the SBV[82].

"Special bonds" are issued by VAMC in VND, with a maximum term of 5 years and interest of 0%, and can be used as a basis for obtaining refinancing loans from the SBV[83]. During the term of the special bonds, any recovered debt is (i) quarterly retained by, and directly paid to, the SBV by VAMC to repay the refinancing loans, or (ii) if the creditor has not obtained refinancing loans from the SBV, deposited by VAMC into a deposit account opened by the creditor (i.e., the credit institution selling the NPLs), and such funds cannot be withdrawn prior to the maturity of the special bonds[84].

Upon the maturity of the special bonds[85], provided that the refinancing loans obtained from the SBV by using such special bonds (if any) have been fully repaid (so that the special bonds are unfrozen by the SBV), if NPLs have not been fully recovered by VAMC from debtors, the original creditor must (i) "re-purchase" (but no monetary payment will be made) the unrecovered balance of the principal of the NPLs at book value, and (ii) return the relevant special bonds to VAMC. After such re-purchase, the original creditor will receive the amounts of the NPLs collected by VAMC (after deduction of the amount payable to VAMC as a "collection fee")[86].

A credit institution selling NPLs must annually set aside specific reserves (which must be equal to the amount of the face value of the special bond devided by the number of years of the special bond's term. For example, if the face value of a Special Bond is 100 and the term of the special bond is 5 years, the amount of the specific reserve is 20) for special bonds[87]. The specific reserves for the relevant special bonds is used for dealing with NPLs that are re-purchased from VAMC.

There are two schemes as follows:

(i) To purchase NPLs at book value (i.e., face value of the principal balance of the purchased NPLs minus the amount of specific risk reserve which has not been used), with "special bonds,"
(ii) To purchase NPLs at market value, without "special bonds."

Only the former scheme is used so far. A maximum term of special bonds is 5 years and a credit institution selling NPLs must annually set aside specific reserves which is equal to the book value for special bonds within a maximum of 5 years.

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80 Paragraph 1 of Article 7 of Decree 53/2013/ND-CP

81 Paragraph 2 of Article 7 of Decree 53/2013/ND-CP

82 Article 21 of Circular 19/2013/TT-NHNN and Paragraph 5 of Article 14 of Decree 53/2013/ND-CP

83 Paragraph 1 of Article 20 of Decree 53/2013/ND-CP

84 Article 43 of Circular 19/2013/TT-NHNN

85 Special bonds become payable (1) when the specific reserves reach full face value of the principal balance of the relevant NPLs recorded in VAMC, including (1-1) the NPLs are sold to organizations and individuals including the selling credit institution in accordance with the market price or agreed price, or (1-2) NPLs are converted into charter capital or shareholding capital of borrowers, being enterprises, or (2) upon the due date of the special bonds.

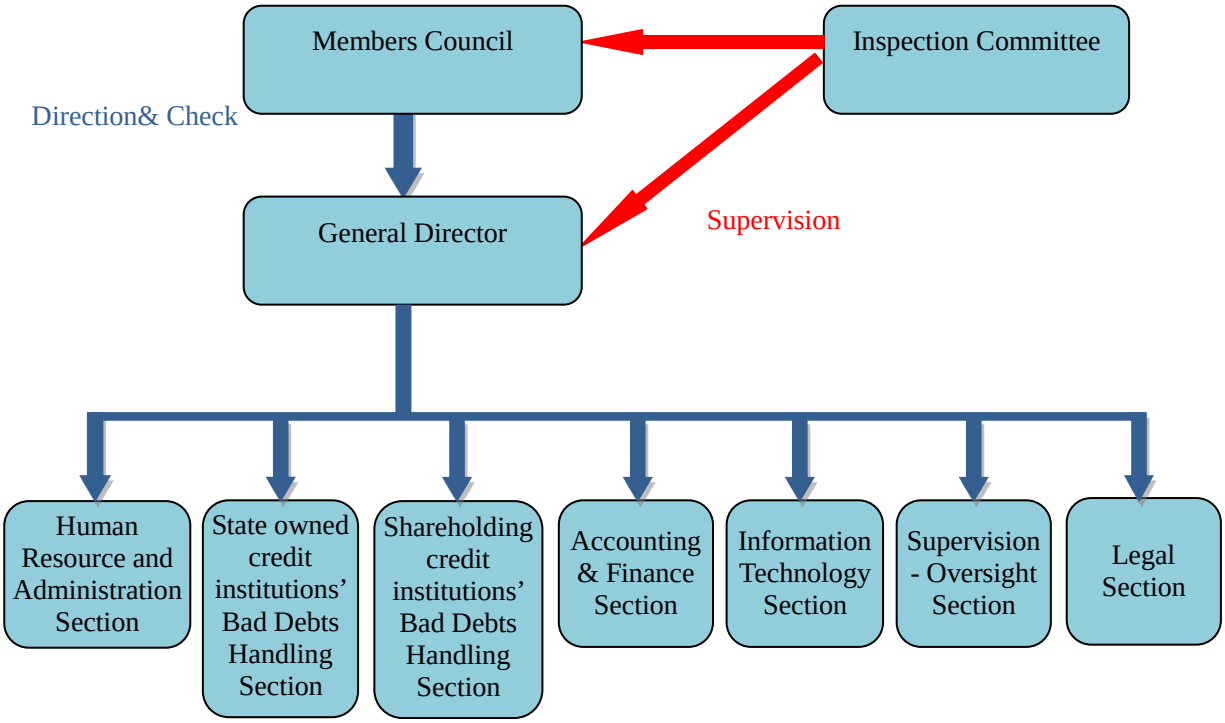
86 Item b of Paragraph 1 of Article 22 of Decree 53/2013/ND-CP and Item a of Paragraph 2 of Article 44 of Circular 19/2013/TT-NHNN

87 Paragraph 2 of Article 46 of Circular 19/2013/TT-NHNN

c. Performance in 2013 and Target in 2014

Since its establishment in July 2013, VAMC has purchased NPLs in total worth VND 38.9 trillion (USD 1.9 billion) from 35 enterprises as of December 2013, and it will purchase another VND 70～100 trillion (USD 3.3 billion～4.7billion) in 2014[88]. VAMC will implement the purchase of NPLs at market value, for which VAMC is drafting its internal processes to proceed further and has requested the SBV to increase VAMC's equity capital to VND 2 trillion. With respect to the selling of NPLs, VAMC is drafting its relevant internal rules, and will start selling NPLs shortly.

< Organization chart of VAMC >



(2) Issues

a. The Problems Regarding the Function to Sell NPLs

When VAMC sells NPLs to third parties, it will face the following issues:

(a) VAMC is Required to Agree with the Original Creditor on the Conditions that Govern the Sale of NPLs

The sale of loans shall be made through an auction or by competitive offers from at least three potential purchasers that are not related each other. In case neither option is feasible, VAMC can sell the loans directly to a potential purchaser through negotiation. However, if VAMC sells NPLs that it purchased by issuing special bonds, to third parties, VAMC is required to agree with the

88 It is reported that VAMC plans to purchase VND 100～150 trillion in total (approximately USD 4.7～7.1 billion) in 2014. The source of information is major newspapers in Vietnam.

original creditor on the conditions that govern the sale of the NPLs, including starting price (in the case of auctioning) and selling price (in the case of direct negotiation with the purchaser). This may adversely affect the rapid sales of NPLs (Paragraph 3 of Article 38 of Circular 19/2013/TT-NHNN).

(b) The System for Disclosure of Information Is Not Developed Sufficiently

The information about NPLs and debtors is indispensable when a purchaser makes investment decisions. In this regard, it has been regulated that VAMC has a special authority to request credit institutions (i.e., the original creditors), debtors, guarantors and others concerned, to provide and release the relevant information and documents regarding themselves, NPLs and security assets (Paragraph 1 of Article 13 of Decree 53/2013/ND-CP). An ordinary creditor does not have such authority. However, in reality, the information disclosure is required only by the assignment agreement of NPLs and the special authority of VAMC is not being utilized effectively.

Moreover, the procedure of information disclosure from VAMC to potential purchasers has not been established, and it seems that in reality, VAMC does not disclose information that is unfavorable for the original creditor or debtor without obtaining their consent. If there is insufficient information on NPLs and security interests that are subject to the transaction, the valuation of the NPLs is difficult to calculate for the candidate purchaser, and thus, they would not decide to purchase NPLs, or the price of NPLs would decline.

(c) Enforcement of Security Interest Is Not Easy.

The enforcement of security interests faces many difficulties. Therefore, the NPLs with security interests which VAMC owns may not be attractive to possible purchasers who may decide not to purchase them, or the value of security interests is not properly reflected in the sales price, and the sales price may become lower than the reasonable price.

(d) Foreign Investment Restrictions Cause Obstacles to the Sale of NPLs by VAMC.

There are no direct legal restrictions regarding the sale of NPLs to foreign investors by VAMC. However, there are some obstacles for foreign investors in purchasing NPLs under the current laws and regulations, and it is difficult for foreign investors to invest in NPLs owned by VAMC.

(e) There Are No NPLs Exchange Markets.

There are no NPLs exchange markets established in Vietnam today, and there are no markets available to allow VAMC to sell NPLs actively. In addition, since no price formation mechanism for NPLs is established in Vietnam, it may take significant time to evaluate NPLs for their sale, and therefore, quick transactions of NPLs are hindered.

(f) Securitization of NPLs Is Not Developed.

Since the securitization of NPLs has not been implemented in Vietnam, VAMC cannot sell NPLs in accordance with the various needs of investors.

b. The Issues Regarding the Function to Collect NPLs

When VAMC collects NPLs, the following issues arise:

(a) It Is Difficult to Implement Auctions Without the Cooperation of the Owner of Security Property with Which There Is a Registration System.

It appears VAMC will collect NPLs mainly by disposing of the security assets, which consists mainly of real properties. It is provided for that after implementing custody and receipt of collateral from the party keeping such collateral, VAMC may implement the asset auction without obtaining the consents of the owners of the security assets (Paragraph 3 of Article 18 of Decree 53/2013/ND-CP). However, in the case of security assets subject to the registration system, the consent of the owner is required by the registration office in practice to complete the registration of the assignment. Therefore, if VAMC cannot obtain the owner's consent, VAMC cannot sell the security assets through an auction, and needs to sell using the ordinary enforcement procedure for civil judgments.

In addition, in cases where a debtor does not deliver the secured asset voluntarily, because there is no choice other than the ordinary enforcement of civil judgment under the current law, it will take time to sell the security assets.

(b) It Is Difficult in Practice for VAMC to Implement the Auction by Itself.

It is regulated that VAMC may execute the auction by itself (Item b of Paragraph 2 of Article 18 of Decree 53/2013/ND-CP), but there are no detailed provisions which regulate the execution of the auction by itself. If VAMC sells the security property by ordinary auction procedure, it is considered that it will take significant time, and VAMC cannot dispose of the security interests and collect NPLs quickly.

(c) It Is Unclear Whether VAMC can Rely on the Cooperation from the Police and Enforcement Agencies.

In the case of concealing property and obstruction of compulsory execution by debtors, VAMC can request the cooperation of the police and enforcement agencies (Item e of Paragraph 1 of Article 13 of Decree 53/2013/ND-CP); however, there is no regulation that obliges these institutions requested by VAMC to cooperate, and it is not clear whether VAMC can indeed receive the cooperation of the police and enforcement agencies to accomplish the enforcement at this time.

(d) VAMC Does Not Make Good Use of the Special Authority for Collecting Loans.

VAMC does not have any special sections for debt collection of NPLs. Under the supervision of the NPLs sectors of financial institutions, VAMC entrusts the collection of NPLs to the financial institutions that were the original creditors, which is supervised by the State owned credit institutions' Bad Debts Handling Section and Shareholding credit institutions' Bad Debts Handling Section. VAMC does not utilize their special authorities in collecting NPLs.

2. Recommendations

(1) Strengthening the Function of Selling NPLs

a. Planning of the Strategy of Selling NPLs

In order to sell a number of NPLs quickly and at higher prices, it is recommended that VAMC plans a strategy to sell NPLs. Specifically, the strategy may include formulating the basic policy regarding the methods of

evaluation, the sales target, whether to sell in bulk or in single, the combination of NPLs sold in bulk, the selection of potential buyers, the selection of NPLs sold preferentially, whether to sell bilaterally or by auction, and whether to execute securitization, and so on.

Additionally, in order to serve for due diligence procedures by investors, it is necessary to collect information about loan claims (e.g., enterprise information, guarantee, payment history, security interests, backgrounds of negotiation, and so on) and provide accurate information to the investors in a timely manner. Moreover, given that most of the information regarding loan claims should be handled carefully, disclosure of such information is not likely to be made unless the scope and method of information to be disclosed are clearly prescribed. Therefore, it is recommended that the SBV takes lead to establish laws and regulations to introduce the rules and systems of information disclosure (e.g., to establish a website providing the information regarding loan claims).

b. Leading the Creation of the NPLs Exchange Market

It is important to create the NPLs exchange market for the promotion of selling NPLs. It is recommended that VAMC leads the preparation of the NPLs exchange market by building a transaction system and providing information to the market, which will activate the transactions in the NPLs exchange market. For more detail, please refer to Part III-I, I, 3.

c. Leading the Securitization Scheme of NPLs and Real Estate

It is recommended that VAMC promotes the sales of NPLs by composing the scheme of securitization in which VAMC plays a central role. If the scheme of securitization is composed successfully, foreign investors will be able to invest in NPLs through securitized products. For more detail, please refer to Part III-I, I, 4 and 5.

In the case of RCC in Japan, they bought a large amount of NPLs from financial institutions and implemented the business of selling and collecting NPLs and had the record of composing the scheme of securitization and contributed to the securitization of the NPLs exchange market. The following is the sample scheme and history of RCC.

[An Outline of the RCC Securitization Scheme]

(i) The Process of Securitization

Several investors participate in the bidding for the NPLs owned by RCC.

As a result of the bidding, a bidder is selected, and establishes a special purpose company (the SPC), and RCC (and/or the financial institutions) sells the NPLs to the SPC.

In order to securitize the NPLs that the SPC has purchased, SPC entrusts the NPLs to RCC (acting as a trustee), and the beneficial interests in trust are divided into (i) the senior portion, and (ii) the subordinate portion. After the ratings are assigned by the rating agencies, the senior beneficial interests are sold broadly to investors, and the subordinate beneficial interests are sold to the investor who established the SPC (i.e., the originator), and RCC.

(ii) Loan Collections

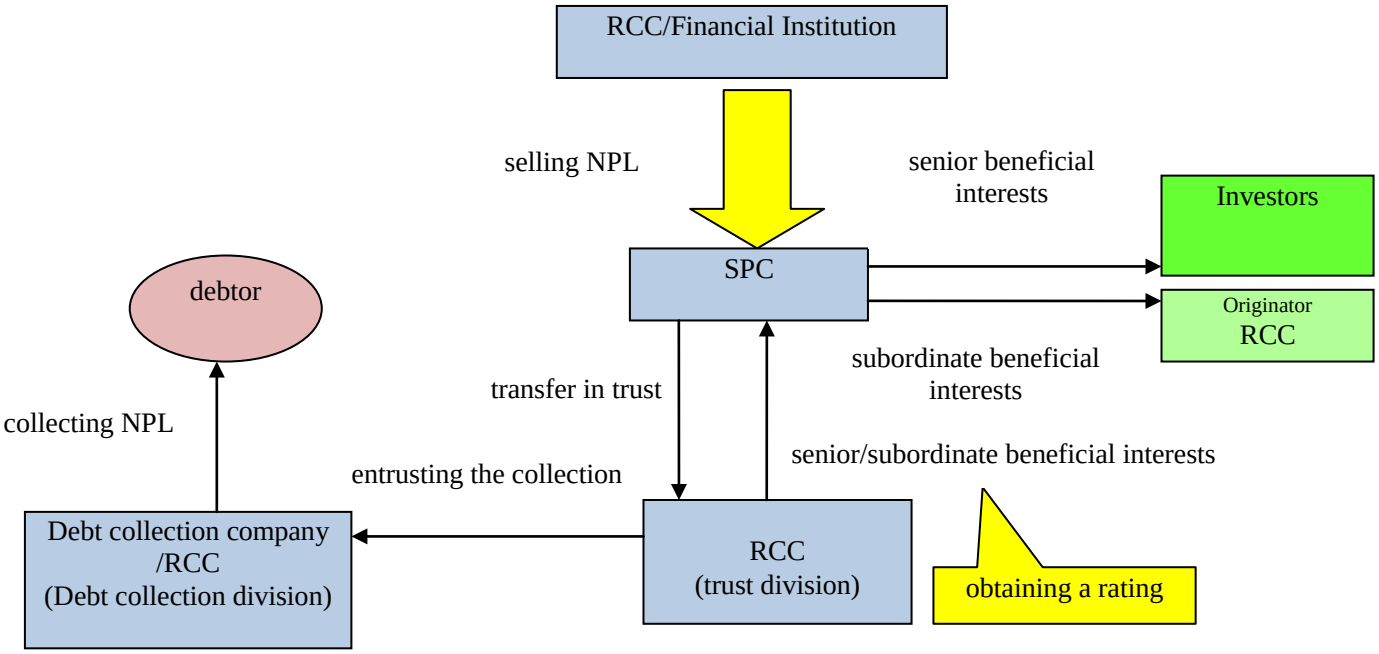
RCC (the trustee) outsources the loan collections, mainly to the debt collection service company which has a business relationship with the originator of the SPC, but the debt collection section of RCC sometimes also takes charge of collecting loans. The debt collection section of

RCC can work in close cooperation with the trust section of RCC, and the collection fee is lower than the fees of other private collection service companies.

(iii) Actual achievement

For over 11 years from 1999 to 2010, 661.5 billion yen of NPLs (the total sale amount during this term was 9.1347 trillion yen) owned by RCC were securitized.

<RCC scheme[89]>



d. Authorizing the Function of Debt Collection Service

It is recommended that by amending Decree 53/2013/ND-CP and Circular 19/2013/TT-NHNN, VAMC has the function of debt collection service for the NPL purchasers (including, especially foreign investors) so that they can entrust VAMC to collect NPLs, which provides the purchaser of NPLs with the method to collect NPLs they purchased. Especially, the enhancement of the ability of VAMC to collect NPLs by the establishment of their own debt collection section or strengthening the authority of collecting NPLs is recommended.

For reference, in the case of RCC in Japan, RCC was granted the function of debt collection service, and were entrusted to collect NPLs that RCC sold.

(2) Strengthening the Function of Collecting NPLs

a. Enactment of Special Provisions about Auction Procedure

In order to collect NPLs quickly, it is necessary to dispose of real property security interests quickly.

Although VAMC has the authority to conduct an auction by itself, there are no detailed provisions which regulate the execution of the auction by itself. However, since it may be difficult to execute the auction quickly by using the ordinary procedure, as described in the above, it is necessary to revise laws

89 This scheme chart quotes from website of RCC.

regarding security interests and enforcement of the judgment, and it may take significant time for completing the revisions. Therefore in order to actualize the effective auction procedure promptly, an alternative solution is to enact a special law applicable only to the security interests whose securer is VAMC, and realize the same purpose of the revisions of laws by special laws. Survey team has heard that MOF and the SBV plans to issue a circular to regulate the detail for the auction executed by VAMC, and such regulation should overcome the issues in auction procedure. For details of the issues in auction procedure and survey team's recommendations, please refer to Part III-1, II, 1.

b. Strengthening the Authority to Execute the Security Interests

It is recommended to amend Decree 53/2013/ND-CP and Circular 19/2013/TT-NHNN in order to authorize VAMC to execute the judgments, so that VAMC can enforce security interests more quickly and flexibly.

The enforcement of laws is implemented mainly by the official national organization. Within a limited area, however, the Bailiff system is used tentatively and the Bailiff, which is a nongovernmental organization, plays a role in executing the judgments. It is recommended to vest VAMC with the same authority as Bailiff, so that VAMC can execute judgments and deliver orders by itself.

Additionally, it is recommended that VAMC hires people from Bailiff, enforcement agencies, police and so on, in the debt collection section, and conduct efficient collection through the use of their special authority.

c. Strengthening the Authority to Deal with the Debtors Act of Concealing Property

In enforcing security interests, a debtor often attempts to conceal their assets and it is recommended to strengthen the authority of VAMC to deal with the behavior of debtors in order to maximize the collection of NPLs by amending Decree 53/2013/ND-CP and Circular 19/2013/TT-NHNN or issuing a joint circular between the relevant State authorities.

Specifically, the inspection of books, cooperation with police and public security may be possible measures.

As for RCC of Japan, it has the special authority to inspect debtor's property, ask for the support of police, and so on, and they have succeeded in achieving a high performance in collecting NPLs by making good use of the above methods.

(3) Strengthening the Function of Revitalizing Enterprises

VAMC has the authority to be involved in the revitalization of Enterprises under Item c of Paragraph 1 of Article 13 of Decree 53/2013/ND-CP.

In some of the NPLs that VAMC purchases from credit institutions, debtors have ceased their business and it may be better for VAMC to collect the NPLs quickly by enforcing security interests. In other NPLs, it may better to support the revitalization of enterprises and receive the payment from their business profit for the maximization of NPLs.

Therefore, it is recommended that VAMC put the function of revitalizing Enterprises into practice by expanding human resources and improving their skills, considering the status of the business of debtors and the contents of the security interests.

As for RCC, they supported the business revitalizations of the enterprises in addition to selling and collecting NPLs. RCC utilized legal insolvency proceedings, out-of-court workouts, reschedule of debts and so on, to achieve the business revitalizations. Since RCC has started the revitalization of Enterprises in November 2001, it has been involved in 689 cases (88 cases are legal procedures) of making a restructuring plan as of

September 2013[90]. In particular, RCC took a lead or cooperated in establishing restructuring plans, persuaded other major creditors to consent to the restructuring plans and in some cases, purchased the relevant claims from other creditors so that the restructuring plan can be approved by all creditors including RCC. It is recommended that VAMC implements the similar activities proactively.

(4) Amendment of Business Lines

Finally, in accordance with the expansion of its powers as described above, the business lines of VAMC should be amended.

In particular, the following purposes should be added to the business lines of VAMC, which are currently stipulated in Article 11 of Decision 1590/2013/QD-NHNN:

- To collect and disclose information on NPLs;
- To lead securitization scheme of NPLs and real estate;
- To work on the development of the NPLs exchange market;
- To provide debt collection service; and
- To execute civil judgments and delivery orders.

(5) Demonstration of a Model Case

The model case below explains how the disposal of NPLs will be carried out if survey team's recommended measures are implemented.

a. Purchase of NPLs

VAMC purchased NPLs (the total principal amount was VND 1 trillion) that was owned by a state owned bank ("Bank A") and secured by land and buildings of the area where real estate transactions were active, at a price of the book value, VND 800 billion (the face value of the principal amount of the purchased NPLs minus the amount of specific risk reserve which had not used). In addition, VAMC purchased NPLs (the total principal amount was VND 1 trillion) that was owned by another state owned bank ("Bank B") and secured by land and buildings of the area where real estate transactions were not active, at a price of the book value, VND 800 billion (the face value of the principal amount of the purchased NPLs minus the amount of specific risk reserve which had not used). VAMC purchased those NPLs by issuing special bonds. The financial conditions of some debtors were relatively good (such NPLs, "claims a" and "claims b") while the financial conditions of other debtors were seriously very bad (such NPLs, "claims aa" and "claim bb"). None of the special bonds were used as a basis for obtaining refinancing loans from SBV.

Areas of security interests / Business conditions of debtors	Transactions of real estates were active (security interests of Bank A)		Transactions of real estates were not active (security interests of Bank B) (in VND 100 million)	
Relatively good	claim a	5000 (3500)	claim b	5000 (3500)
Very bad	claim aa	5000 (3500)	claim bb	5000 (3500)

b. Sales of NPLs

(a) VAMC disclosed information of all the NPLs purchased by VAMC, to domestic and foreign investors (i.e., potential purchasers of NPLs) through the newly developed disclosure system on the website in accordance with the new rules regarding collection and disclosure of information. These investors made

[90] Source: The official site of RCC.(http://www.kaisyukikou.co.jp/intro/intro_006_24.html)

confidentiality agreements with VAMC and were registered as potential purchasers of NPLs.

(b) Although many investors accessed the disclosed data, there were few players in the NPLs market in Vietnam due to the various legal issues including the difficulty in exercising security interests and foreign investment restrictions. As a result, the total amount of NPLs that VAMC sold in the first year was only VND 100 billion consisting of "claims a" only. There were some candidate purchasers for "claims b", however, due to the difference in the views of valuation of security assets among purchasers and sellers (and original creditors), VAMC could not sell the "claims b".

(c) The legal issues regarding the difficulty of exercising security interests and foreign investment restrictions were resolved. VAMC was authorized the function of debt collection service, and human resources in the debt collection service sector of VAMC was reinforced, which enabled VAMC to provide debt collection service to third parties. Then, foreign investors, who had had the anxiety in exercising real estate security assets and collecting loan claims in Vietnam, gradually entered the NPL market in Vietnam, and the number of players in the market increased. As a result, the market prices of the NPLs other than "claims a" were also formed based on the actual transaction, and it became easier for purchasers and sellers (plus original creditors) to agree on the purchase price of such NPLs. The transactions of NPLs got more active than before by the development of the NPL exchange market. By the end of the fifth year, VAMC sold VND 500 billion of the NPLs in total by bulk sale of NPLs consisting of "claims aa" and/or "claims b" and "claims a" using the NPL exchange market. Moreover, VAMC implemented securitization of the NPLs (VND 200 billion in total consisting of "claims a" and "claims b"), which enabled VAMC to use these claims as a fund as well as effected the entry to the NPLs market of foreign investors who had not been interested in the NPL exchange market by making an investment unit smaller.

(d) The proceeds from sale described in items (b) and (c) above were deposited in the relevant account of VAMC opened in Bank A or Bank B who was the original creditor. As the book value of the original principal of the NPLs that was recorded on the book of VAMC (the "Book Value of the NPLs on the Book of VAMC") was reduced, the risk provision amount of Bank A and Bank B made for the relevant special bond became larger than the Book Value of the NPLs on the Book of VAMC. As a result, the relevant special bonds came to maturity, and the relevant special bonds were returned to VAMC, the relevant proceeds deposited in the VAMC's account were delivered to Bank A and Bank B, and VAMC received a certain ratio in the proceeds as a fee.

c. Collection of NPLs

(a) As "claims aa" and "claims bb" needed to be collected immediately, in order to exercise the relevant security interests, VAMC implemented the auction procedure, which had been newly developed specifically for VAMC. Since some real estate security assets were occupied by the tenant who did not agree to move out, VAMC filed a newly established motion to deliver the real estate to the court, obtained the delivery order, and executed the delivery order by itself to remove the tenants. By obtaining the cooperation with police and the Competent People's Committee in accordance with the new guideline, VAMC collected claims more efficiently than before. Moreover, VAMC actively used the power of investigation of debtor's assets and succeeded in collecting the relevant NPLs from the concealed assets of the debtors. As a result, VAMC collected VND 600 billion of NPLs in total.

(b) VAMC issued securities backed by the real estates that were security assets of the NPLs (VND 300 billion in total) consisting of "claims a" and "claims bb", and appropriated the proceeds of the sale to the unpaid debts of the NPLs.

(c) The proceeds of collection described in items (a) and (b) above were deposited in the relevant account of VAMC opened in Bank A or Bank B who was the original creditor. As the Book Value of the NPLs on the Book of VAMC was reduced by the collection of the NPLs, the risk provision amount of Bank A and bank B made for the relevant special bond became larger than the Book Value of the NPLs on the Book of VAMC. As a result, the relevant special bonds came to maturity, and the relevant special bonds were returned to VAMC, the relevant proceeds deposited in the VAMC's account were delivered to Bank A and Bank B, and VAMC received a certain ratio in the proceeds as a fee.

d. Revitalization of Borrowers of NPLs

(a) The revitalizing enterprises section in VAMC considered that the businesses of an debtor ("Company X") of some "claims a" (the total principal amount of such claims was VND 100 billion) and an debtor ("Company Y") of some "claims b" (the total principal amount of such claims was VND 200 billion) were promising. VAMC implemented the reschedule, reduction of interests, and/or waiver of some unpaid interests and principals for the NPLs of such debtors. Moreover, the section guaranteed the additional finance of Company X and Company Y from credit institutions, and reformed their businesses by sending specialists and other measures. As a result, Company X accomplished a remarkable revitalization in the first 4 years, and, with the consent of Bank A, VAMC implemented DES for the remaining NPLs to obtain the shares of Company X and sold all of the shares at a price of VND 200 billion. The financial condition of Company Y was also improved significantly.

(b) The proceeds of collection described in items (a) were deposited in the relevant account of VAMC opened in Bank A or Bank B. As the remaining NPLs against Company X was converted into equity, the relevant special bonds came to maturity. The relevant special bonds were returned to VAMC, the relevant proceeds deposited in the VAMC's account were delivered to Bank A, and VAMC delivered to Bank A the proceeds of the sale of shares of Company X (VND 200 billion) deducting the collection fee.

(c) Special bonds related to the NPLs of Company Y came to maturity for payment, and Bank B obtained the remaining NPLs from VAMC, returned the special bonds to VAMC, received the relevant proceeds deposited in the VAMC's account opened in Bank B, and paid the collection fee. In consideration of the improved financial condition of Company Y, Bank B decided to provide additional loan to Company Y to expand the business.

II. Strengthening of Functions of DATC

1. Current Status and Issues

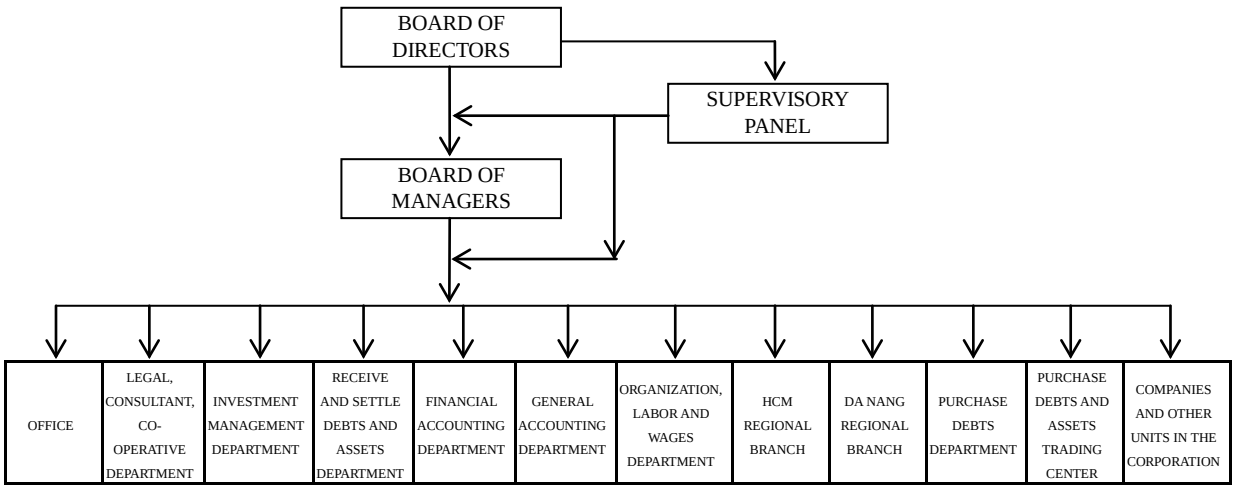
(1) Current Status

a. Outline of DATC

The outline of DATC is as follows:

Formal Name:	Viet Nam Debt and Asset Trading Corporation. (Công ty Mua bán nợ Việt Nam.)
Date of Establishment:	December 12, 2003
Governing Law:	Prime Ministerial Decision 109/2003/QD-TTg, Circular No. 38/2006/TT-BTC and Circular 79/2011/TT-BTC.
Competent Authority:	MOF
Corporate Form:	One Member LLC owned by the State.
Total Charter Capital:	VND 2,481,000,000,000
Main Business Lines:	As stated below (Article 4 and Article 8 of Circular 79/2011/TT-BTC.)

- Purchasing loans and assets (including assets and LURs which secure the loans) from creditors and asset owners.
- Receiving and dealing with loans and assets which have been excluded from the value of SOEs upon their restructuring or conversion.
- Receiving and dealing with loans and assets assigned by the Prime Minister.
- Dealing with loans and assets after the purchase or receipt thereof.
- Consulting and brokering for settlement of debts and assets.
- Other activities under the laws.
- Personnel: As stated below. Approximately 150 employees at present.



b. Outline of Loan Purchase by DATC

There are, at present, three types of loan purchase patterns conducted by DATC as listed below. Type (ii) was supposed to be the main function of DATC when it was established, however, in the future, type (i) will be the main business function according to governmental policy.

(i) Purchase of loans and assets from individuals or enterprises[91] ("Normal Asset Purchase").

(ii) Purchase of loans and assets which have been excluded from the value of SOEs upon their restructuring or conversion ("Excluded Asset Receipt").

(iii) Purchase of loans and assets assigned by the Prime Minister ("Assigned Asset Purchase").

From 2004 to 2012, DATC had purchased loans and assets worth VND 3,378 billion from 2410 SOEs under the category of Excluded Asset Receipt. During the same period, under the category of "Normal Asset Purchase" and "Assigned Asset Purchase," it purchased the loans of VND 2,506 billion (their total face value was VND 8,579 billion)[92].

In addition, DATC has implemented restructurings for 79 SOEs, of which 54 SOEs (28 out of 54 are 100% SOEs, the other 26 are state-invested joint stock companies) have completed their restructuring[93].

c. Regarding Normal Asset Purchase

(a) Workflow up to Normal Asset Purchase

First of all, DATC conducts due diligence on the enterprises it plans to assist by purchasing their loans and assets (the "target enterprises"), and checks their status of debts. In particular, DATC shall collect and verify documents of the debts and assets, basically including, but not limited to: (i) ownership/title-related documents of the debts and assets; and (ii) information about debts, debtors, status of assets[94].

After the verifying, DATC makes initial plan[95] for purchasing debts and assets. The authorized units of DATC shall make decision or report to DATC's General Director for approval of the plan. For the plan exceeding the power of the General Director, the plan shall be submitted to competent authority for guideline.

After that, DATC negotiates loan purchases with credit institutions which hold the loans against target enterprises one by one. Under the current law, there are no restrictions or standards for DATC to decide the purchase price of loans and assets[96].

At the time of agreement with all credit institutions which hold the loans against a certain target enterprise, DATC will purchase the loans. Where there is a credit institution which does not agree to sell the loans, DATC will individually negotiate in favor of the target enterprise, where they may reschedule and change the interest rate of the loans with the credit institution, however, if the credit

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91 DATC is, however, obliged to allocate at least 70% of its investment amount for purchasing loans to and assets of SOEs in financially difficult situations.

92 http://www.tapchitaichinh.vn/Tai-chinh-Kinh-doanh/Cong-ty-Mua-ban-no-Viet-Nam-Ghi-nhieu-dau-an-vuot-kho/19977.tctc

93 http://infopub.sgx.com/FileOpen/DATC%20%20Final%20Listing%20Particulars.ashx?App=Prospectus&FileID=19536

94 DATC is not permitted to purchase debts and assets with an insufficient legal dossier proving the debts and assets.

95 Plans for restructuring target company are involved in the debt purchase plan. It appears to be DATC's obligation to develop the restructuring plan as part of its debt purchase plan. However, DATC is not granted any special privilege or power regarding development of the plan.

96 DATC, however, should purchase loan claims classified as group-1 debts at a price which is not less than their value at the time of debt purchase and sale (Article 7.1 of Decision 59/2006/QD-NHNN).

institution refuses to cooperate on the restructuring of the target enterprise, DATC will not purchase the loans and assets.

The standard period of the loan purchase negotiation with credit institutions is from six months to one year.

(b) Financial Restructuring to Target Enterprises

After the purchase, DATC will provide financial restructuring to the target enterprises, such as a rescheduling of due dates and DES, and attempt their revitalization. Please note that there is a restriction of law on DES, that DATC may only conduct DES to the extent of resolving the insolvency of the target enterprises. In addition, according to survey team's interview with DATC, it may waive its loans without DES, however it is not clear under the current provisions of law, whether it is possible for DATC to conduct such waiver or not.

According to survey team's interview with DATC, in order to supply new money into target enterprises, DATC may request credit institutions to make new loans on the condition that DATC guarantees them, but DATC itself cannot make new loans to target enterprises[97]. In addition, Circular 79/2011/TT-BTC permits DATC to make capital investment (Article8.4c of Circular 79/2011/TT-BTC). However, there is a decision of the Government which requires SOEs to withdraw capital from Non-core Businesses by the end of 2015, and whether DATC's investment in the target enterprises is regarded as an investment in Non-Core Business or not is unclear. For this reason, it is not clear whether it is possible for DATC to continue investment after 2016 or not.

(c) Involvement in the Restructuring Process of Target Enterprises

DATC, is also supporting target enterprises to improve their business. Specifically, DATC assists by introducing target enterprises to potential business partners, and attempts their restructuring. In addition, DATC's staff also provides business consultation, but it does not send its staff into target enterprises.

DATC is permitted to re-structure a target company for a maximum of 5 years.

(2) Issues

a. The Long Time Required to Purchase Debts

To revitalize the enterprises that are in financial difficulty quickly and effectively, it is preferable that DATC begins the support of these enterprises as soon as possible. However, in practice, it takes a long time, from six months to one year, until DATC decides to purchase claims.

DATC does not decide to purchase claims unless DATC can obtain the consent of all of the credit institutions which provide financing with the target enterprises upon consultation with the credit institutions. This is one of the reasons why DATC takes a significant time to purchase debts.

b. Insufficient Capacity for Supporting Target Enterprises

DATC usually provides financial support with target enterprises in the manner of a DES, however, DES is restricted to resolving the insolvency status purely based on a balance sheet. The asset value of enterprises which are in financial difficulty often declines, and the actual deficit (after revaluation of the assets) becomes worse than the deficit on a book value of a balance sheet. Therefore, survey team believes that the range in which a DES can be conducted

[97] In this regard, according to DATC, it is requesting MOF to amend Circular 79/2011/TT-BTC.

under the current law is insufficient for the recovery of the credit of the enterprises which are in financial difficulty.

In addition, although waving claims is one of the efficient methods for the revitalization of the target enterprises, it is not clearly stipulated whether it is possible for DATC to waive their claims or not.

Further, while new money as a source for the restructuring or improving of business, is necessary to revitalize enterprises which are in financial difficulty, DATC is not allowed to invest in or to provide financing with the enterprise by itself under the current law. The current law allows DATC to insure the credit of the target enterprise by means to guarantee the financing provided by credit institutions, however, unless the credit of the target enterprises is fully recovered, the target enterprises cannot obtain loans from credit institutions. In this regard, the current legal system is not sufficient.

c. Active Support by DATC is Required for Revitalization of the Target Enterprises

Many enterprises which are in financial difficulty should reform their business thoroughly for its revitalization, because the management capacity of its managers declines. In these cases, revitalization should be conducted by a revitalization specialist who comes from outside of the enterprise and is able to provide an external view point.

Although it is said that DATC has already begun to introduce enterprises which can be a partner for their revitalization or to provide the insolvent enterprises with consultation services by a person belonging to DATC, it is preferable that DATC supports the management of the enterprises which are in financial difficulty more actively and deeply.

2. Recommendations

(1) Strengthening the Function of Adjusting Debts (to Apply the Out-of-court Workout Rule)

Currently, DATC approaches and negotiates with individual creditors as to the purchasing of debts, which requires a long period of time to reach settlements. It is recommended that DATC restructures debts of tangent companies fairly and quickly by applying the out-of-court workout rule recommended in this report, which harmonizes views among creditors through fair and transparent proceedings.

Specifically, it is recommended that DATC plays a role as a possible purchaser of claims (a possible sponsor) in the out-of court workout procedure as one of the methods for DATC to be involved in the procedure. In this case, DATC shall purchase claims pursuant to a workout plan approved by the creditors in the out-of-court workout procedure. In addition, it is also recommended that DATC supports a debtor at their preparation of the workout plan.

In addition, it is also recommended that DATC plays a role as a committee that restructures debt as a fair and independent institution utilizing their know-how of restructuring. In this case, DATC does not purchase claims, but plays a role as a mediator that restructures claims among creditors.

In either case above, it is necessary to train or educate a person in order to make use of the out-of-court workout procedure, and to strengthen a function of restructuring debts. Specifically, it is necessary to train or educate a specialist of restructuring who can verify the appropriateness of a proposed recovery plan.

DATC seems to purchase claims only when all creditors agree on a sale of their claims in principal. However, if certain credit institutions agree on their financial support but do not expect to sell their claims (such as in the case that the credit institution prefers to continue a transaction with the target enterprise), as an option, it is recommended to allow such credit institutions to stay as a creditor if the credit institution accepts providing financial support (such as a waiver of part of their claims) equivalent to agreeing to the

sale of their claims. Under this method, DATC can save money for purchasing claims from the credit institution.

In order to promote the method, it is important to provide an incentive for credit institutions for their waiver of claims, such as allowing them to classify the outstanding debt after debt exemption as "standard debts."

(2) Strengthening the Function of Capital Injection and Financing

Although new investment is necessary for the development of enterprises, credit institutions will generally not provide financing with enterprises that are in financial difficulty. So, there are cases that DATC should invest in or provide financing with enterprises for their revitalization. Therefore, it is recommended to enhance DATC's functions of capital injection and financing in order to promote revitalization of enterprises.

Specifically, the following measures are recommended:

a. Amending Laws in order to Permit DATC to Provide New Money by Itself.

New money is necessary for the revitalization of the insolvent enterprises. However, under the current scheme, DATC is prohibited to provide financing by itself and only asks the credit institutions for financing under the guarantee of DATC. It is therefore expected that supplying new money does not ensure good progress if the credit institutions do not cooperate with DATC.

Therefore, the Circular 79/2011/TT-BTC should be amended to permit DATC to provide financing with, and to make additional investment in the target enterprises, in order to supply new money for the purposes of quickly revitalizing the enterprises.

b. Easing the Regulation on Financial Support Aiming to Resolve the Actual State of Insolvency of the Target Enterprise

There are many cases, where the value of assets of enterprises which are in financial difficulty often declines and the actual state of insolvency becomes worse than the state of insolvency based on a balance sheet. In order to fully revitalize the businesses of the target enterprises, credit of the enterprises should be recovered so that they can obtain new credit from the credit institutions. However, because the enterprises which are in an actual insolvency state cannot obtain credit from credit institutions, it is recommended to permit DATC to conduct financial support which can resolve the actual state of insolvency of the target enterprise.

Specifically, it is recommended to clearly stipulate by amending the Circular 79/2011/TT-BTC, that DATC may waive their claims within the limits of the balance, which is an amount equal to the value of deducting the purchase price (market value) of claims when DATC purchases claims from each credit institution, from the face value of the claims which DATC purchases.

In addition, together with the above point, the Circular 79/2011/TT-BTC should be amended in order to permit DATC to conduct a DES within a required range for not only resolving deficit on a balance sheet, but also resolving the actual deficit.

(3) Strengthening the Function of Supporting Business of Debtors

It is an effective strategy to provide external management support to distressed debtors, since their management competence has been weakened. Therefore, it is recommended to enhance DATC's function of supporting the management of debtors by strengthening and developing its human resources for supporting management in order to promote revitalization of debtors.

In particular, it should be a principle that DATC aggressively provides business support by itself. Currently, it appears that business support to target enterprises are mainly provided under the cooperation with sponsor enterprises which DATC manages to find, but suitable sponsor enterprises for management restructuring of target enterprises are not always found on a timely basis. Instead, in order to conduct prompt and efficient corporate restructuring, it is recommended that DATC should aggressively provide, in principle, business support by itself and should promptly embark on business support to target enterprises whether there are any sponsor enterprises or not.

In addition, on providing business support, DATC should not only provide target enterprises with advice for management restructuring from the outside, but also send an expert team of business restructuring to target enterprises from DATC in order to fully engage them in the business restructuring process. Since the management competence of distressed enterprises is weak, it is extremely difficult to thoroughly reform their business using only exiting human resources. Therefore, DATC is required to send human resources who have professional knowledge of business restructuring in order to strongly promote business reforms of target enterprises.

Further, it is essential to strengthen the function of business support of DATC in order to ensure that DATC can play a central and aggressive role in the business restructuring of target enterprises as described above. In particular, the following measures should be implemented.

- Preparing efficient organization models and internal management procedure by using examples from private investment fund and similar organization abroad.
- Increasing the numbers of the experts who have experience in the practical work of business restructuring in and out of target enterprises. Specifically, active recruitment from private sector[98] should be considered.
- Acquiring a broad range of technical know-how on business restructuring by providing training programs for DATC staff.

In order to implement above mentioned measures, consideration should be given to the idea of accepting assistance from foreign countries.

(4) Amendment of the Business Lines of DATC in Accordance with the Expansion of Its Powers

Finally, in accordance with the expansion of its powers as described above, the business lines of DATC should be amended.

In particular, the following purposes should be added to the business lines of DATC, which are currently stipulated in Article 4 and 8 of Circular 79/2011/TT-BTC:

- Playing a leading role in restructuring debts among creditors, including leading the out-of-court procedure of target enterprises,
- Providing a wide range of financial support to target enterprises including providing new money and waiving claims for management restructuring of target enterprises,
- Providing proactive business support for business restructuring of target enterprises by sending an team of business restructuring experts.

(5) Demonstration of a Model Case

The model case below explains how the restructuring of enterprises by DATC will be carried out if survey team's recommended measures are implemented, by demonstrating a model case.

[98] Examples of candidate are as follows; persons who have worked for investment banks or investment funds, banker, attorney at laws, accountants, persons from consulting firms, former business managers.

[Target Enterprise]

- A manufacturing enterprise whose manufacturing capacity is in excess due to a surplus capital investment in the past boom days. Additionally, through the hiring of many inessential employees, it cannot embark on a fundamental downsizing because it does not have the financial ability to prepare a retirement allowance for them.
- New investment is required for the manufacture of attractive products because its manufacturing facilities have become decrepit. However, it cannot embark on a dynamic capital investment since it does not have the financial ability for such investment.
- It borrowed funds from five credit institutions and the total amount of loans has reached VND 200 billion. The total amount of debts including the above loans and accounts payable has reached VND 250 billion.
- On the other hand, though the total amount of the assets is VND 150 billion, its true value is no more than approximately VND 100 billion at market value. The reasons for this is that its machinery equipment has become decrepit and that part of the claims against their customers have become NPLs.

[Assumed Restructuring Proceedings of a Target Enterprise]

- DATC, upon investigating a target enterprise (i.e., a debtor), will file for the application of the out-of-court procedure with a debtor in order to restructure debts among credit institutions (i.e., creditors). DATC will be engaged in the out-of-court workout procedure in the position of candidate for purchaser of claims. DATC will then negotiate with each credit institution at and outside the creditors' meeting and promptly formulate a business restructuring plan that DATC will purchase the claims at an appropriate market value. By using the out-of-court workout procedure, the negotiation for purchasing the claims from each credit institution and the acquisition of agreement for a turnaround plan were completed in 3 months.
- After establishment of the above turnaround plan, DATC will purchase the claims at an appropriate market value (in this case, totaling VND 80 billion) and waive the claims totaling VND 120 billion which is a different amount to their book value. In addition, with respect to the remaining claims, DATC will purchase the shares by the DES method, in order to make the target enterprises' assets in excess on the actual balance sheet.
- Further, DATC will promptly provide new money to a target enterprise by way of a loan or additional investment for the development of its human resources and additional capital investment. For recovering its business competitive power, a target enterprise will promptly develop its human resources and invest in additional facilities by use of funds which are provided by DATC. In the case where a target enterprise resolves an actual deficit (after revaluation of the assets) as a result of the above support, it can anticipate receiving new loans from credit institutions.
- Combined with the above financial support, DATC will send experts who will work in practical business restructuring to a target enterprise and have them be engaged in business reform of the enterprise. It will enable a target enterprise to improve its management competence and to recover its ability in formulating and implementing a business strategy which is capable of exercising its competitive power in the market with experts from the outside.
- As a result of the above support, management business restructuring of a target enterprise is accomplished, and DATC can earn profits by selling its shares which DATC obtained through the DES method to a third party. In this case, DATC can sell target company's shares to a third party at VND 150 billion and earn profits of VND 70 billion, which is the difference between the purchase price and selling price.

(6) An Outline of IRCJ

In Japan, for the purposes of maintaining an orderly financial system by promoting financial institutions' disposal of NPLs as well as industrial revitalization, IRCJ was established on April 16, 2003.

IRCJ was an enterprise which purchased claims or shares of distressed enterprises held by financial institutions in order to support the turnaround of management of those enterprises. IRCJ was capitalized at 50 billion and 507 million yen, of which 98.5% of that or 40 billion and 757 million yen, was invested by DICJ, which was invested by the Japanese government, and the remaining 750 million yen was invested by The Norinchukin Bank[99] [100].

The enterprises which IRCJ would provide support to, was limited to enterprises which incurred excessive debt though having useful management resources. IRCJ aimed to provide support to a distressed enterprise only if IRCJ concluded that an enterprise satisfied the above conditions after conducting due diligence and examining whether it satisfied the conditions or not. After determination, IRCJ adjusted the debts with the financial institutions which provide loans to the targeted enterprise for support, and requested the main financing banks[101] to waive part of their claims, and purchase claims from the non-main financing banks[102] at market value.

After purchasing the claims, IRCJ sent its staff to be engaged in management in order to improve business of a targeted enterprise by providing so-called "hands-on support," and provided required funds by way of a loan or investment or guaranty of debts incurred from loans from financial institutions. IRCJ had to revitalize the business of a targeted enterprise for support and to transfer their holding claims and shares to a third party within 3 years as this was the time period allowed for the revitalizing supports by IRCJ to be completed.

IRCJ was an organization established temporarily and required to complete their operation and to dissolve within 5 years after its establishment. Until its dissolution on March 15, 2007, IRCJ provided business revitalizing support to a total of 41 corporate groups. As a result, IRCJ was required to pay 31.2 billion yen in tax and in total pay 43 billion, 282 million, 618 thousand and 887 yen, which IRCJ had earned as investment profit, to the national treasury[103]. It follows that the burden on the public funds did not accrue with respect to IRCJ's operation.

Further, it is pointed out as the characteristic of IRCJ that while the proportion of public officers to its entire staff was only 10 percent, most of its staff had originally worked at private enterprises such as financial institutions or consulting firms. Most of the people who were engaged in the practice of corporate revitalizing at IRCJ continue to work in the field of corporate restructuring at public corporate restructuring funds after the dissolution of IRCJ.

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99 According to Paragraph 2 of Article 52 of the Industrial Revitalization Corporation Act, investments of IRCJ were funded from domestic financial institutions' contributions and profits earned by IRCJ were to be distributed to contributors based on the amount of their contributions.

100 http://www.dic.go.jp/shiryo/nenpo/h19/shiryo03.html (Japanese)

101 It means financial institutions which play a central role in support of a distressed enterprise and whose amount of loans is the largest among financial institutions providing it with loans.

102 It means financial institutions providing a distressed enterprise with loans other than main financing banks.

103 http://www.dic.go.jp/IRCJ/ja/pdf/sonota_news_2007060501.pdf (Japanese)

III. Strengthening of Functions of SCIC

1. Current Status and Issues

(1) Current Status

a. Outline of SCIC

Outline of SCIC is as follows:

Name:	Tổng công ty Đầu tư và Kinh doanh vốn nhà nước (STATE CAPITAL INVESTMENT CORPORATION)
Establishment:	Established under Decision 151/2005/QD-TTg dated June 20, 2005
Governing Law:	Decision 151/2005/QD-TTg and amended by Decision 183/2007/QD-TTg of the Prime Minister dated 27 November 2007 in accordance with the Law on State Enterprise 2003 (Law 14/2003/QH11), with the Charter as issued under Decision 152/2005/QD-TTg of the Prime Minister, Decision 992/QD-TTg, Decision 21/2012/QD-TTg, Circular 184/2012/TT-BTC, Decision 2344/QD-TTg and Decree 151/2013/ND-CP
Supervisory Agency:	SCIC is uniformly managed by the Government (a.k.a. the Cabinet) in relation to the performance of rights and obligations of a State owner[104]. Most of the management decisions are within the authority of the Prime Minister; while the MOF holds numerous consulting functions to the Prime Minister, in accordance with Articles 46, 47 and 48 of current Decision 152/2005/QD-TTg and Article 37 of Decree 151/2013/ND-CP.
Corporate Form:	Single Member Limited Liability Company Owned by the State
Charter Capital:	VND 19,000 (nineteen thousand) billion[105]

Primary Business Lines:

- To invest and manage investment capital in sectors as assigned by the Prime Minister,
- To receive and act as the owner's representative for the State capital in the enterprises in accordance with the regulations of the Prime Minister,
- To manage and make use of the Fund for Enterprise Structuring in accordance with the regulations of the Prime Minister, and
- To perform international co-operation in capital investment

Organizational Structure:

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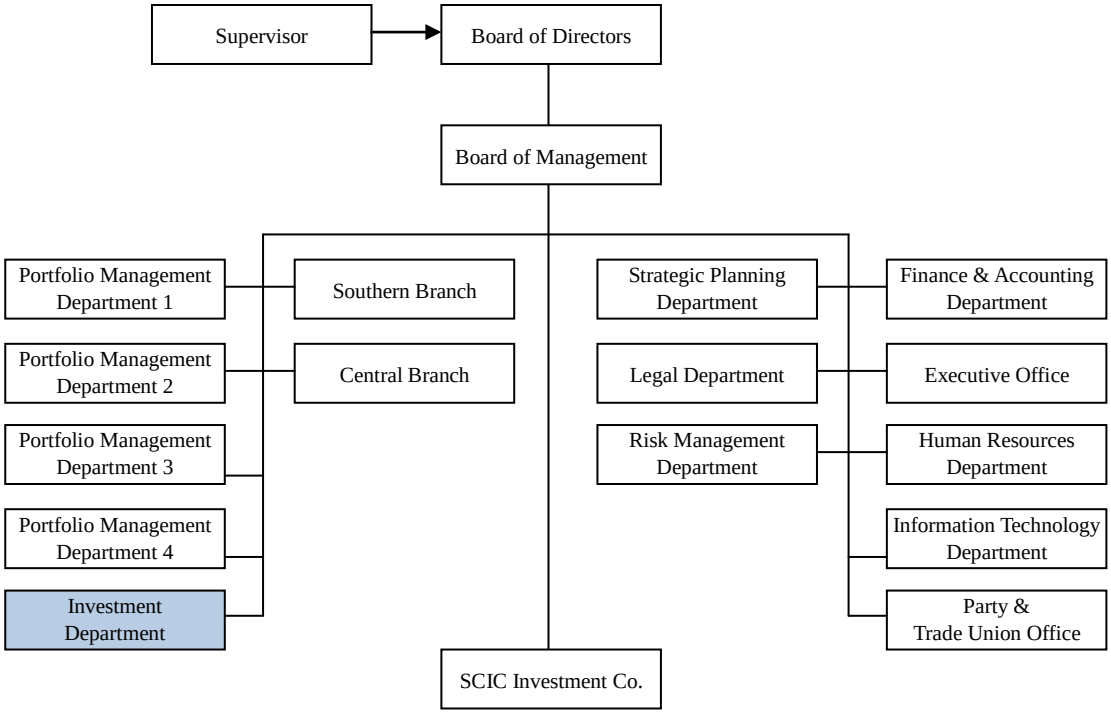
104 Article 45 of Charter attached to Decision 152/2005/QD-TTg and Article 37 of Decree 151/2013/ND-CP.

105 Under Article 14 of Decree 25/2010/ND-CP, the charter capital should be equal to the net owner's equity of the converted company after financial settlement in accordance with the regulations thereunder.



(Source: SCIC website, http://www.scic.vn/english/index.php?option=com_content&view=category&layout=blog&id=41%3Aorganization-chart&Itemid=7)

(2) Issues Already Addressed by New Decree 151/2013/ND-CP, etc.

Some of the issues regarding SCIC had already been addressed by new Decree 151/2013/ND-CP, etc. and as such, survey team do not include those issues into survey team's recommendations below. Please note, however, that currently no document guiding Decree 151/2013/ND-CP has been issued yet. According to survey team's interview with SCIC, it is intended that around 17 documents guiding the Decree will be issued. It is advisable that these guiding documents will be issued soon and will effectively solve those existing issues.

a. Taking over of GCs and EGs

Some of the GCs and EGs may need the structural reform and reorganization due to their weak financial situation and SCIC may have to play a role as manager of State capital in the reform and reorganization. However, it was unclear whether SCIC can take over GCs with special importance and EGs, because laws and regulations provide that those SOEs are under the control of the Prime Minister[106].

This issue was addressed by new Decree 151/2013/ND-CP, which made it clear that the Prime Minister can decide to take over the EG and GCs to SCIC. It is desirable that further guidance with this decision shall be issued as soon as possible and such decisions are actually made in a timely manner to solve huge

106 Decree 132/2005/ND-CP, Decree 86/2006/ND-CP and Decree 99/2012/ND-CP.

losses of the EGs or GCs with weak financial situations by utilizing SCIC's functions[107].

b. Price for taking over

Formerly, it was not clear how to determine the price for taking over state capital.

New Decree 151/2013/ND-CP requires SCIC to conduct or hire specialized organizations to value the state capital to be taken over based on the market price which will then serve as a base to manage, supervise and evaluate the capital management efficiency of SCIC, and to reward performances in line with the new Decree. The valuation of state capital to be transferred to the SCIC shall be made within 30 working days from the date on which SCIC signs minutes of capital transfer. With regards to the state capital transferred prior to the effective date of the Decree (i.e., December 20, 2013), the valuation shall be made no later than 90 working days since the effective date of the Decree, and the time of valuation shall be the effective date of the Decree. Therefore, early issuance of the document guiding the evaluation is required.

c. Additional Capital Injection

Previous regulations were silent on whether SCIC has the power to inject additional capital in enterprises in which it holds capital.

Decree 151/2013/ND-CP now expressly provides that SCIC has the power to inject additional capital in enterprises in which it holds capital.

d. Future Direction of SCIC

It has been pointed out that the direction for SCIC is unclear on whether it continues to grow as a financial investor and the single representative of the Government for state capital in the future.

On this matter, it can be said that SCIC shows its direction by establishing its subsidiary, SCIC Investment Company, which undertakes investment activities to separate its investment activities and state capital management function in January 2013[108].

(3) Remaining Issues

According to a published report, it appears that most of SCIC's revenue comes from dividends (62%, of which 26% was from a single corporation, i.e., Vinamilk) and bank deposit interests (34%), whereas only 4% of its total revenue comes from the sale of State capital[109]. It implies the possibility that SCIC did not enhance the value of State capital so much through its taking over or investment. As such, it is necessary to strengthen SCIC's function of improving the business value of its portfolios.

It is expected for SCIC to improve the business value of its portfolios basically through establishing sound corporate governance system of SOEs as an owner of the SOEs by exercising its shareholder's (owner's) rights etc. If SCIC improves the corporate

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107 It should be noted that there are some actual cases where the transfers to SCIC have delayed. For the case of the delays in handing over of Hanoi Alcohol Beer and Beverage Company (Habeco) and Sai Gon Alcohol Beer and Beverage Company (Sabeco) from Ministry of Industory and Trade to SCIC, please see BOX 8 in page 58 of JICA's final report in 2012 named "Review on legal and institutional framework on SOEs and SOE reform in Vietnam" submitted by QUANG MINH INVESTMENT AND DEVELOPMENT CONSULTING JSC.

108 http://www.scic.vn/english/index.php?option=com_content&view=article&id=165:scic-launching-scic-investment-company-sic&catid=46:press-release&Itemid=9

109 http://m.cafef.vn/thi-truong-chung-khoan/suong-nhu-scic-20130301061858423ca31.chn

governance of its portfolio SOEs more, then the more revenues from the sale of State capital should be expected. However, currently revenues from the sale of State capital are not so significant compared to other revenue sources of SCIC. In addition, some of the companies that SCIC has invested into, pointed out that SCIC's decision making is not fast enough and is sometimes inconsistent[110]. Survey team discusses the possible ways for SCIC to overcome these issues and to raise more revenue coming from the sale of State capital in this part.

Business support function is not always necessary for shareholders (owners) to provide, but it becomes necessary if the management of the target company does not have enough ability to enhance its business efficiency and to heighten its corporate values. Since SCIC is explicitly vested the function to provide consultancy services of investment, finance, equitization (privatization), corporate management, enterprise ownership conversion, merger and acquisition and other supporting services in accordance with the laws and regulations[111], SCIC is expected to improve the business value of its portfolios through this function. However, some of the target companies seem to be unsatisfactory with SCIC's consultation function.

Considering the current economic environment surrounding SOEs, investments for revitalizing the distressed SOEs are definitely in need. Additionally, if SCIC engages in, and contributes to the restructuring of EG and GC, it will provide a greater effect to the Vietnamese economy. However, according to survey team's interview with SCIC, SCIC has not taken an important role on such type of investments especially for large scale EGs or GCs so far. As such, if the government of Vietnam desires SCIC to play an important role in revitalizing the distressed SOEs including EGs and GCs, strengthening SCIC's function in this area is also necessary.

2. Recommendations

It is recommended to strengthen the following functions of SCIC in order to promote business restructuring of SOEs by SCIC.

(1) Strengthening of Function of Corporate Governance

It is essential for the restructuring of SOEs to improve their business efficiency. As discussed above, the first choice for SCIC to achieve this goal is to establish sound corporate governance systems of SOEs as an owner through the exercise of its shareholder's (owner's) rights, etc. In order for SCIC to establish sound corporate governance systems in its portfolio SOEs and to improve such SOEs' business efficiency and promote their business restructuring effectively, it is recommended that SCIC establishes and publishes its capital management policy including its approach to corporate governance principles and a standard or guideline for exercising its shareholder's (owner's) right. Establishing and publicly disclosing such capital management policy will increase the transparency of SCIC's exercise of its rights as State owner and urge SOEs' voluntary changes. According to survey team's interview to SCIC, SCIC has already established internal rules about the exercise of its shareholder's (owner's) rights, etc, but they are not disclosed. The management members of SOEs have no knowledge and access to the rules, so the rules do not guide and discipline the management members.

For example, if SCIC's guideline provides and discloses the standards/conditions for approving the appointment of management members, candidates for SOEs' management members will put in effort to meet the standards. In addition, such standard or guideline for exercising its shareholder's (owner's) right will help SCIC in making its decisions promptly, effectively and consistently. Considering the purpose of urging SOEs' voluntary efforts in enhancing their corporate governance, more information should be publicly disclosed. For example, SCIC should establish and disclose its approach to

110 http://english.vietnamnet.vn/fms/business/68372/scic-s-role-in-state-invested-enterprises-dim-and-unclear.html

111 Article 4 of Decree 151/2013/ND-CP

corporate governance principles which should be implemented in SOEs into which SCIC invests.

Capital management policies of sovereign wealth funds[112] may be of help to SCIC in considering what information should be externally published, while it shall be noted that SCIC is not necessarily the same with these sovereign wealth funds due to its political tasks. Proxy advice guidelines of world famous proxy adviser companies, such as ISS, and Glass, Lewis & Co., LLC may be of help to SCIC in considering the contents of standarda or guidelines for exercising its shareholder's (owner's) rights[113].

(2) Strengthening of Function of Business Support

If SCIC decides that the current management team of SOEs itself are not enough to improve their business efficiency and to heighten their corporate values, SCIC should give management support to the current management team or replace the management members by sending new management members who can contribute to improve their business efficiency and to heighten their corporate values.

SCIC has already provided some management support to SOEs but only to limited numbers of SOEs that SCIC are investing in[114]. Therefore, it is recommended to expand and develop the human resources of SCIC and to strengthen its function of business support in order to support more numbers of SOEs and to promote business restructuring of SOEs.

(3) Strengthening of Function of Distressed Investment for Corporate Restructuring

Distressed investment for corporate restructuring is an investment method for distressed enterprises, improving and restructuring their business value and achieving a higher return on investment by sending experts to the enterprises at corporate restructuring, and implementing a development of marketing strategy, an improvement of operation and a business integration with other enterprises after investors acquire shares or equity interests of these distressed enterprises.

According to survey team's interview with SCIC, SCIC has not been involved profoundly on such type of investments especially for large scale EGs or GCs so far. However, the restructuring of large scale EG and GC will provide a large positive influence to the Vietnamese economy if it gets success. Therefore, it is recommended that SCIC will be involved in investments and restructuring of large scale EGs or GCs.

Considering the current economic environments surrounding SOEs, investments for revitalizing the distressed SOEs are definitely in need. It is recommended that SCIC will develop human resources who are able to carry out such distressed investment to promote restructuring of distressed enterprises in which they have taken over/invested as well as achieve a higher return on investment by undertaking the distressed investment actively.

In particular, SCIC should have more expertise to provide business support proactively by itself. According to survey team's interview to SCIC, it appears that business support to targeted enterprises is mainly provided by external experts. However, it is recommended that SCIC itself should have more expertise to provide higher-quality business support and should promptly embark on business support to targeted enterprises whether there are any external experts available or not.

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112 For example, Statement of Investment Policies of Future Fund of Australia can be found at http://www.futurefund.gov.au/investment/investment_policies.

113 For example, Asia-Pacific Regional Proxy Voting Summary Guidelines of Institutional Shareholder Services Inc. can be found at http://www.issgovernance.com/policy/2014/policy_information and policy guidelines of Glass, Lewis & Co., LLC can be found at http://www.glasslewis.com/resource/guidelines/.

114 For example, according to the page 56 of JICA's final report in 2012 named "Review on legal and institutional framework on SOEs and SOE reform in Vietnam" submitted by QUANG MINH INVESTMENT AND DEVELOPMENT CONSULTING JSC, SCIC assigned its representatives to about 20 companies out of more than 500 companies in its portfolio.

In addition, on providing business support, SCIC should not only provide targeted enterprises with advice for management restructuring from the outside, but also send experts of business restructuring to targeted enterprises in order to fully engage them in the business restructuring process. Since the management competence of distressed enterprises is weak, it is extremely difficult to thoroughly reform their business using only exiting human resources. Therefore, SCIC is required to send human resources who have professional knowledge on business restructuring in order to strongly promote business reforms of targeted enterprises.

For above reasons, it is required for SCIC to increase the numbers of the experts who have professional knowledge of business restructuring and to acquire a broad range of professional knowledge on business restructuring. In order to develop these human resources and acquire such professional knowledge, consideration should be given to the idea of accepting assistance from foreign countries.

As you may be aware, this function of SCIC may overlap, to some extent, with the same function of DATC. To facilitate effective restructuring of SOEs as whole, it may be beneficial for Vietnam as whole to clarify the role-sharing and cooperation arrangement between DATC and SCIC in this area.

(4) Demonstration of a Model Case

The demonstration below explains how the restructuring of enterprises by SCIC will be carried out if survey team's recommended measures are implemented.

[Targeted Enterprise]

- SCIC took over 100% of a SOE X whose main business is manufacturing from a Ministry. The X has a lot of related companies most of which conduct businesses not related to the X's business, such as real property business, investment business.
- New investment is required for the X to manufacture attractive products because its manufacturing facilities have become decrepit. However, it cannot embark on a dynamic capital investment since its related companies are posting huge losses and banks do not provide additional loans to the X.
- The X posted a loss for recent three consecutive fiscal years. During the term, the general director of the X was the same person.
- The X proposes to its annual shareholders meeting to reelect its board members and to continue its related companies businesses as they are.

[Assumed Restructuring Proceedings of a Targeted Enterprise]

- SCIC voted against the re-election of the general director who was responsible for the three term consecutive losses, pursuant to the voting guideline at the annual shareholders meeting.
- Additionally, SCIC sent experts who would work on practical business restructuring to X, and had them engage in the business reform of X. It enabled X to improve its management competence, and to recover its ability in formulating and implementing a business strategy which is capable of exercising its competitive power in the market with experts from the outside, including the selling of the SOE's Non-core Business, and utilizing the fund obtained through the sales to new investment to manufacture attractive products.
- As a result of the above support, business restructuring of X was accomplished, which led to the revenue and the profit of X rising, and SCIC could earn profits by selling its shares.

[Exhibit 1] Experience of the Disposal of NPLs and Restructuring of SOEs in Japan

(1) Experience of the Disposal of NPLs

a. Outbreak of NPLs

(a) Outbreak of Numerous NPLs after the Collapse of the "Real Estate Bubble"

In the late 1980s, with the rise in the real estate price which became known as the "real estate bubble," there was an investment boom in real estate and financial institutions aggressively invested in real estate. Especially, specialized housing loan companies ("HLC") which had been originally established in order to lend housing loans for individuals, started investing in the business real estate market. However, in the early 1990s, the real estate bubble collapsed and the price of real estate fell sharply, leading to the falling into arrears of repayments of a lot of loan claims of real property security interests owned by the HLCs and other financial institutions, instantly turning the claims into NPLs.

(b) Outbreak of Financial Instability to Financial Institutions

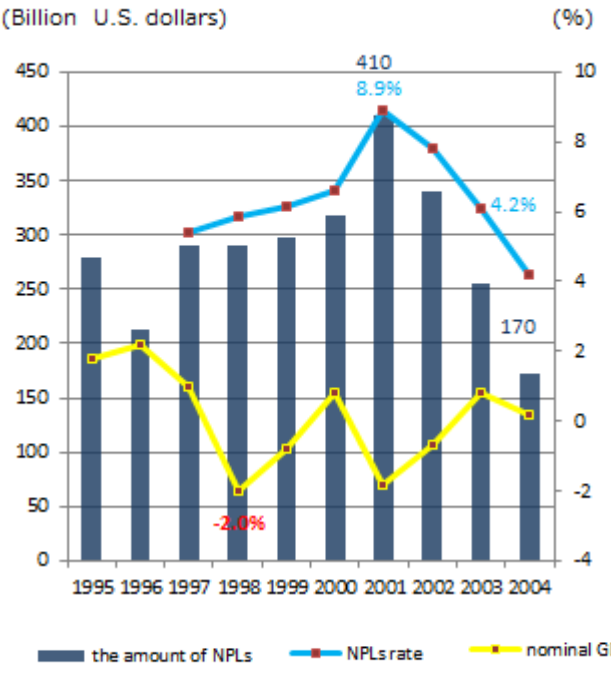
In accordance with the sudden drop of the real estate value, equity capital of financial institutions decreased, leading to further financial instability.

As a result, the bankruptcy of financial institutions started with credit cooperatives and second-tier regional banks which were dealing with vulnerable economic conditions, and this problem led to the failures of major financial institutions and brokerages such as Hokkaido Takushoku Bank, Yamaichi Securities, Long-Term Credit Bank of Japan, and Nippon Credit Bank. As a result, no less than 173 financial institutions failed in ten years during 1995 to 2004.

This situation degraded the ratings of Japanese banks in the global financial market, and additional interest called a "Japan Premium" was imposed when Japanese banks raised currency in dollars, making it incredibly difficult for Japanese banks to raise funds. Moreover, financial institutions became very reluctant to provide new finance or additional finance, in order to avoid the increase of NPLs (This situation became known as the "credit crunch"). Thereby, the economic activities of enterprises stagnated and Japanese economic growth slumped[115].

[115] The sources of the chart are the official web sites of Financial Services Agency and Cabinet Office.

<The amount of NPLs and the NPLs rate>



<The number of failed financial institutions>

95	96	97	98	99	00	01	02	03	04	Total
6	5	17	30	44	14	56	0	1	0	173

b. Implementation of Various Policies for the Disposal of NPLs

(a) Enhancement of Supervision of Financial Institutions

The Financial Supervisory Agency, which was established in 1998, tackled the disposal of NPLs under the Act concerning Emergency Measures for the Revitalization of the Financial Functions, and the Act concerning Emergency Measures. In cooperation with the Bank of Japan, the Financial Supervisory Agency implemented intensive inspections of major financial institutions and published the “Financial Inspection Manual” which regulated the standards governing the inspections of financial institutions by the Financial Supervisory Agency. In 2000, the Financial Service Agency was established to take over the role of the Financial Supervisory Agency.

(b) Establishment of an Asset Management Company to Purchase NPLs

In order to promote the disposal of NPLs and improve the business conditions of financial institutions, an asset management company, whose role is to purchase and collect NPLs was established.

Firstly, in order to purchase NPLs owned by housing loan companies (“HLCs”), the Housing Loan Administration Corporation ("HLAC") was established in 1996, and the assets owned by HLCs were transferred to HLAC. Afterwards, RCC was established in 1999 by a merger between HLAC and the Resolution and Collection Bank ("RCB"). The main business operation of RCC was to improve the business conditions of financial institutions by purchasing NPLs. RCC has purchased a total of 10 trillion yen worth of NPLs from HLCs and financial institutions and played a major role in the improvement of business conditions of financial institutions.

Moreover, RCC implemented the collection of NPLs by utilizing the power to investigate the property. Additionally, RCC led the bulk sale and securitization of NPLs and promoted the liquidation of the transaction of NPLs.

	Claims transferred from the seven former HLCs (in billions of yen)			Claims purchased from failed financial institutions and sound financial institutions (in billions of yen)		
Year	Cumulative total book value when transferred	Cumulative amount collected (B)	Collection ratio (B/A)	Cumulative total book value when transferred (A)	Cumulative amount collected (B)	Collection ratio (B/A)
96		244.5	5.30%	384.1	34.3	8.9%
97		899.9	19.30%	596.0	85.7	14.4%
98		1,550.4	33.30%	2,016.7	347.5	17.2%
99		1,976.4	42.40%	3,140.1	953.2	30.4%
00		2,298.1	49.40%	3,794.9	1,893.5	49.9%
01		2,548.7	54.70%	4,127.9	2,729.2	66.1%
02		2,718.7	58.40%	4,918.3	3,483.5	70.8%
03		2,858.1	61.40%	4,982.4	4,255.9	85.4%
04		2,975.7	63.90%	5,042.8	4,961.6	98.4%
05		3,076.0	66.10%	5,060.2	5,491.9	108.5%
06		3,163.0	67.90%	5,060.2	5,815.7	114.9%
07		3,233.1	69.40%	5,067.0	6,010.6	118.6%
08		3,294.5	70.80%	5,067.5	6,119.8	120.8%
09		3,342.2	71.80%	5,067.5	6,193.2	122.2%
10		3,381.2	72.60%	5,067.5	6,254.7	123.4%
11	4,665.8	3,405.8	73.20%	5,363.8	6,340.6	118.2%
12				5,363.9	6,447.2	120.2%
Source: DICJ Annual Report 2012/2013						

(c) IRCJ

In 2003, IRCJ was established as a temporary institution that adjusts debts of enterprises which had prospects of revitalizing. Many private turnaround experts such as lawyers, accountants, consultants and managers participated and supported 41 enterprises until its dissolution 4 years later[116]. Please refer to Part III-IV, II, 2, (6) for detailed information about IRCJ.

(d) Amendment of Bankruptcy Law

In order to promote the early revitalization of enterprises, bankruptcy laws were revised one after the other. Initially in 2000, the Civil Rehabilitation Act was prescribed as a rehabilitation proceeding, in which a debtor maintains the power to administer and dispose of property and implement business, which became known as DIP (Debtor in possession). Under this law, the proceeding was designed to enable early revitalization, and it worked in practice, with the people involved making efforts to ensure early revitalization, for example, setting the time period from the commencement of the rehabilitation proceeding to the confirmation of the rehabilitation plan to five months. Further, the Corporate Reorganization Act was revised in 2003, and early filing was promoted by easing the conditions for the commencement of proceedings. Moreover, the Bankruptcy Act was revised in 2005, and the procedure of filing and investigation of claims was developed.

116 Source: The official web site of IRCJ

(e) Introduction of Out-of-court Workout

Apart from the legal bankruptcy proceedings above, rules in order to advance out-of-court workout procedures (please refer to Part III-I, III, 2 for detailed information) were developed.

In 2001, a committee which consisted of financial institutions, government agencies and turnaround experts prepared and publicized the Out-of-Court Workout Procedure Guidelines. The Out-of-Court Workout Procedure Guidelines contributed to developing common awareness of methods for conducting the procedure and the workout plan between the parties involved. Additionally, the Turnaround ADR procedure was developed in 2007 as a development of the Out-of-Court Workout Procedure Guidelines in which a neutral organization comprising of attorneys and accountants assisted in the procedure. Please refer to Exhibit 6 for detailed information of both procedures.

(f) Development of the Enforcement System in order to Ensure the Effectiveness of Collecting NPLs

Because of the difficulty in exercising security interests and enforcing civil judgments swiftly due to debtors' resistance, the Civil Execution Act was revised three times in 1996, 1998 and 2003, in order to collect NPLs swiftly, in which there were developments to enhance measures against obstruction of compulsory execution.

c. Implementation of Various Policies to Financial Institutions

(a) Injection of Public Funds

In order to reassure the anxiety concerning financial instability of capital adequacy, a large number of public funds were injected into the financial institutions by governments, and the total amount of financial support during ten years from 1997 to 2006 was 12 trillion yen.

(b) Development of Bankruptcy System for Financial Institutions

In case financial institutions did fail, a system was developed in order to implement the prompt and orderly resolution of the bankruptcy.

Specifically, a bridge bank system was developed to establish a temporary acquirer in order to succeed the business of the failed financial institutions, and the development of a system of a financial administrator who executes businesses of failed banks instead of the former managers. Moreover, in order to control financial instability, measures such as the full protection of deposits as a temporary action (suspension of payoff arrangement) were implemented (full protection of deposits finished in 2005).

(c) Implementation of the Financial Revitalization Program

In 2002, in order to accelerate the disposal of NPLs, the Government of Japan started to implement the "Financial Revitalization Program." This program established 4 basic principles such as the tightening of asset evaluation (e.g., adoption of the DCF method), capital adequacy, enhancement of governance, utilizing RCC and demonstrating a change to a hard line approach. By implementing this strict program, the NPLs rate fell dramatically in several years from 8.9% in 2001 to 4.2% in 2004.

(2) The Experience of Restructuring of SOEs

In Japan, although SOEs used to exist, most of them were privatized before the issues of NPLs arose[117], thus the issues of SOEs were not related to above mentioned NPLs. However, just like the problem of disposal of NPLs, Japan faced difficulty in establishing early turnaround of enterprises in difficult situations, and in order to accomplish such a purpose, various policies described above such as the establishment of IRCJ and the introduction of the Out-of-Court Workout Procedure Guidelines were implemented. Moreover, although there have not been many cases, Japan does have experiences in the restructuring of SOEs' in difficulty through the court-involved insolvency procedures[118]. These policies and experiences may be a good reference for the restructuring of SOEs in difficulty in Vietnam.

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117 For example, the Japanese National Railways (latter "JR group"), which posted a large deficit every day and finally incurred a debt of about 37 trillion 100 billion yen, was break up and privatized in April 1997. After the privatization, JR group's traffic volume has grown and its performance has been improved by the improvement of its service. For reference, to realize meticulous management, the Japanese National Railways was broken up into 6 passenger rail companies (3 companies of it are now listed on the stock exchanges), 1 Freight Railway Company and other organizations by privatization. 14 trillion 500 billion yen of debt that had been incurred by the Japanese National Railways was inherited by 3 passenger rail companies and the remaining was inherited by the JNR Settlement Corporation which succeeded to the shares of each company after privatization and the assets not required for the continuation of the business.

118 For example, as for Japan National Oil Corporation(JNOC) which was a SOE, the plan to consolidate and cooperate its core subordinate enterprises, list its stocks, and sell non-core assets outside was adopted and implemented. Japan Oil Development Co.,Ltd(JODCO), 90% of shares of which was owned by JNOC, was a core enterprise of JNOC which performed the development of oil field. However, in 2003, it filed for civil rehabilitation proceedings to the Tokyo District Court because JODCO owed the total 307.6 billion yen of debts and was unlikely to repay them. After that,under the civil rehabilitation proceedings, JODCO implemented DES on the debt of JNOC, became a 100% owned subsidiary of JNOC and consolidated with other core subordinate enterprises of JNOC, which were INPEX Corporation and Sakhalin Oil and Gas Development Co., Ltd. After further consolidation, INPEX Corporation became a listed company in 2006, and the largest stockholder is still the Japanese Government.

[Exhibit 2] Outline of Amendment of the "Land Law" and "Condominium Law" in Thailand

- Background

  The government of Thailand received international financial assistance from the IMF and others in 1997 when the Asian Currency Crisis occurred, and dealt with economic revitalization including financial structural reform under the leadership of IMF and so on. With such effort, there was an introduction to examine the easing of the foreign investment restriction in order to promote the disposal of NPLs and expand the measures to improve the financial situation of enterprises. With respect to the real estate business which was hit hardest by the economic depression, the Land Law was amended as follows to increase purchasing power and flexibility.

- Amendment of the Land Law in 1999

  Under the Land Law before the amendment, foreigners (including locally-incorporated companies in Thailand, who had more than 49% capital that were owned by foreigners, or more than half of the shareholders were foreigners) are, in principle, prohibited from owning land except in the case of acquiring Investment Promotion from the Board of Investment of Thailand. After the amendment of the Land Law in 1999, however, (i) Foreigners who invest more than 40 million Thai baht (for more than three years) into designated projects may obtain land from others, (ii) in the areas designated as residential areas under the Urban Planning Act, including Bangkok, (iii) for residential purposes, (iv) up to a maximum of 1 rai (1600 ㎡), (v) with the permission of the Ministry of Home Affairs. "Investments in designated projects" includes purchases of bonds issued by the government of Thailand, the national bank and SOEs, investments into the funds established under the Securities Exchange Act for the resolution of financial crisis, and equity investments into enterprises approved under the Investments Promotion Act, etc.

- Amendment of the Condominium Law in 1999

  Before the amendment, under the Condominium Law, foreigners were able to obtain unit-ownerships up to a maximum of 40% of the total space of a certain condominium. After the amendment of the Condominium Law in 1999, however, foreigners are able to, in principle, obtain unit-ownerships up to a maximum of 49% of the total space of a certain condominium. In addition, foreigners may obtain over 49% (i) of condominiums in Bangkok and other areas designated by ministry order, (ii) in the case that the building site, including common space, is not more than 5 rai, (iii) within the period of 5 years from the enforcement of this amended law (foreigners may keep their unit-ownerships which they obtained in this 5 year term even after the term).

[Exhibit 3] Reference Information regarding Securitization

1. Securitization of NPLs and Real Estate in Japan

Because Japan was faced with a financial crisis (Please refer to Exhibit 1 for further information), for the purpose of promoting the disposal of NPLs by securitization of NPLs and activating real estate transactions by securitization of real estate, etc., the "Act on Securitization of Specified Assets by a Special Purpose Company" was enacted in 1998. In addition, with respect to the transfers of monetary claims that corporations perform, the "Act on Special Provisions of the Civil Code in Relation to Requirements for Assertion of Assignment of Claims" (1998) which institutionalized the provision of third party perfection by registration, and the "Act on Special Measures Concerning Claim Management and Collection Businesses" which was called the Servicer Act (1999), were enacted. After this, the amount of issuance of securitized products which stood at 1 trillion Japanese Yen ("JPY") at that time, in 1998, increased to 2 trillion JPY in 1999, and became more than 3 trillion JPY in 2000[119], and the Securitization market in Japan has undergone rapid expansion.

(1) Securitization of NPLs

a. The RCC has as its primary purpose to dispose of NPLs, securitized NPLs (Please refer to PART III-IV, I, 2, (1), c for further information). From 1999 to 2010, 661.5 billion JPY of the NPLs owned by the RCC were securitized. Disposal of NPLs by securitization amounts to about 7% of the total, because the total sale amount of NPLs owned by the RCC during this term was 9.147 trillion JPY[120].

b. As in the case of securitization of NPLs which was conducted by a private company as an investment, Morgan Stanley purchased NPLs from financial institutions in Japan through a Special Purpose Corporation in the Cayman Islands, and issued Eurobonds backed by such NPLs in 1999. The amount issued of the Eurobond at this time was 21 billion JPY. Morgan Stanley securitized NPLs in the same way in 2000 and 2001, and the amount issued in 2000 was 31 billion JPY and the amount issued in 2001 was 31.5 billion JPY. Just for informational purposes, the case in 1999 was a case where NPLs secured by real estate were securitized for the first time in Japan[121].

(2) Securitization of Real Estate

a. The changes in the amounts of real estate which were purchased for securitization are as shown in the figure below[122]. The amount of real estate which was securitized in 2012 was 3.3 trillion JPY.

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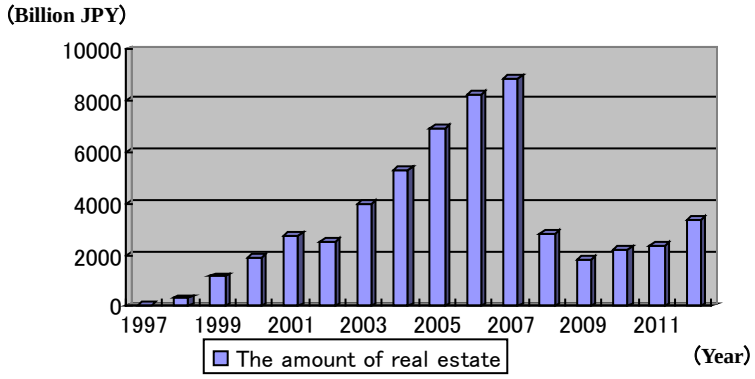
119 Based on "Securitization Market Forum / Report" (in Japanese) (April 22, 2004) (Secretariat: Financial Markets Department of Bank of Japan

120 Based on the public information published by the DICJ

121 Based on the public information published by Morgan Stanley

122 Based on the Survey materials regarding real estate securitization in 2012 of the Ministry of Land, Infrastructure, and Transport and Tourism



b. Among the 3.3 trillion JPY above, the amount of real estate which was purchased for securitization by J-REITs (Japanese Real Estate Investment Trusts) was 1,550 billion JPY, which accounted for about 46% of the total.

The general situation of REIT (Real Estate Investment Trusts) in Japan, the United States of America (the "U.S.") and the Republic of Korea ("Korea") is as shown in the table below[123].

(as of March 31, 2013)	Japan	U.S.	Korea
The number of listed REIT	39	186	8
Market cap	7.4 Trillion JPY	62.9 Trillion JPY	18.9 Billion JPY

2. Examples of Securitization of NPLs in the U.S.

For the purpose of disposal of NPLs owned by S&Ls and the liquidation of S&Ls (Savings and Loan Associations), the Resolution Trust Corporation (the "RTC") was established as a temporary federal agency. The RTC securitized assets of S&Ls in addition to sale or other disposal of them. In particular, the RTC's transactions of securitization backed by NPLs were called "N Series," and the RTC consummated six (6) N Series transactions starting with the 1992 series. In the six N Series transactions, RTC re-evaluated 1.3 billion USD of more than 2,600 loans with book value of about 2.8 billion USD, and transferred such loans to SPV. A toal of about 970 million USD in bonds backed by such assets was issued for the six N Series transactions. As a result, about 1.5 billion USD was recovered through the N Series.

The RTC managed the liquidation of 402.6 billion USD (book value) in assets. More than 10% of all of the RTC's assets were sold through the RTC's securitization program[124].

The securitization by the RTC allowed the CMBS (Commercial Mortgage-Backed Securities) market in the U.S. to grow, and the amount of CMBSs outstanding issued in the U.S. by a non-Agency, which was 204 million USD in 1980, increased to 624.7 billion USD as of the end of 2013[125].

3. Examples of Securitization of NPLs in Korea

In 1998, in the Asian currency crisis, for the purpose of promoting the disposal of

123 Based on "Real Estate Securitization Hand Book 2013" (The Association For Real Estate Securitization)

124 Based on "Managing the Crisis: The FDIC and RTC Experience" published by Federal Deposit Insurance Corporation

125 Based on public material published by Securities Industry and Financial Markets Association (SIFMA)

NPLs, the "Act on Asset Backed Securities" was established. After this, the Korea Asset Management Corporation (the "KAMCO"), which was an NPL-purchasing organization, securitized NPLs as one of the disposal methods of NPLs. In the period from November 1997 to December 2012, the KAMCO disposed of NPLs with a book value of 64.6 trillion won. In this, the amount of issuance of the asset-backed securities (the "ABSs") by securitization of such NPLs was 8 trillion won. In other words, therefore, 12% of all NPLs disposed by the KAMCO were disposed of through securitization[126].

The securitization by the KAMCO allowed the ABS market in Korea to grow, and the amount of issuance of ABSs, which was 6.8 trillion won in 1998, increased to 49 trillion won in 2000, and to 51 trillion won in 2001. The amount of the issuance of ABSs as of 2012 was 48 trillion won[127].

126 Based on IMF Working Paper " The Role of KAMCO in Resolving Nonperforming Loans in the Republic of Korea"

127 Based on "2013 Capital Market in Korea" published by Korea Financial Investment Association

[Exhibit 4] Summary of a Legal System of Real Estate Delivery Order Under the Enforcement of Real Estate Security Interests in Japan

Measures which prevent a debtor's or an illegal possessor from disturbing enforcement should be ensured under the auction procedure, which is one of the measures for disposal of mass NPLs to be required after the collapse of the bubble economy in Japan.

A winning bidder can obtain ownership of a secured real estate if the bidder pays a purchase price under the auction procedure. However, obtaining ownership and securing possession of the real estate are different matters. These are a case where a possessor refuses to deliver the real estate, because the auction procedure forcibly disposes of the real estate against the owner's will. If the winning bidder always needs to file a lawsuit for delivery of the real estate, it takes considerable time, labor and cost, and the selling price will decrease and bidding at a fair price cannot be expected.

Therefore, a legal system of a "real estate delivery order" has been established aimed at protecting a winning bidder and to realize a fair disposition procedure, a legal system in which the winning bidder can easily and swiftly receive delivery of the secured real estate.

If a winning bidder uses the real property delivery order, the bidder can obtain a title of obligation by a simple court decision and forcibly remove an illegal possessor and his/her movables (Article 83 of the Civil Execution Act in Japan).

Article 83 of the Civil Execution Act is following;

(Delivery Order)
Article 83
(1) An execution court may, upon petition by a purchaser who has paid the price, order an obligor or a possessor of real property to deliver the real property to the purchaser; provided, however, that this shall not apply to a person who is recognized, under the record of the case, to possess the real property based on a title that may be duly asserted against the purchaser.
(2) A purchaser may not file the petition set forth in the preceding paragraph when six months (or, for a purchaser of a building that had been possessed by the mortgaged building user prescribed in Article 395(1) of the Civil Code at the time of the purchase, nine months) have elapsed from the day of payment of the price.
(3) An execution court shall, in the case of issuing an order under the provisions of paragraph (1) to a possessor other than the obligor, interrogate such person; provided, however, that this shall not apply when it is clear, under the record of the case, that such person does not possess the real property based on a title that may be duly asserted against the purchaser or if the execution court has already interrogated such person.
(4) An appeal against a disposition of execution may be filed against a judicial decision on the petition set forth in paragraph (1).
(5) An order under the provisions of paragraph (1) shall not be effective until it becomes final and binding.

[Exhibit 5] Asia-Pacific Informal Workout Guidelines for Promoting Corporate Restructuring in the Region[128]

Introduction

This document contains principles which should guide financial creditors as to how they should deal with debtors in difficulty in circumstances where the debtor is dealing with multiple financial creditors as creditors (Financial Creditors).

It is in the interest of all stakeholders that the business of a debtor in financial difficulty should survive as a going concern if it appears that it is possible to resolve those financial difficulties and to achieve the long-term viability of that debtor's business.

A coordinated response by Financial Creditors to a debtor's financial difficulty provides time to manage the impact of defaults by that customer and creates an opportunity to explore and evaluate the options for consensual agreement outside a formal process.

Advantages of pursuing an informal workout (as opposed to a formal court process) in most cases include:

- cost savings
- simplicity
- certainty
- efficiency
- confidentiality
- flexibility
- contractually based sustainable solution to a debtor's financial affairs

In recognition of the advantages of informal workouts, the APEC Business Advisory Council (ABAC) has endorsed the principles below and encourages relevant institutions and firms in its member economies to apply them whenever and wherever they are seeking to resolve the financial difficulties of a debtor owing to multiple Financial Creditors.

In addition to those principles, a Model Agreement to Promote Corporate Restructuring (the Model Agreement) is attached. The Model Agreement can be used to facilitate an informal workout and is capable of both adaptation and adoption by institutions and firms in some or all members economies, regionally or in a particular jurisdiction or on a case by case basis. The Model Agreement is annotated and can be tailored to fit particular circumstances.

The Principles

Cooperation

Where a debtor is found to be in financial difficulty, all relevant Financial Creditors (whether they are secured or unsecured creditors) should be prepared to cooperate with each other. The initial attitude of Financial Creditors should be one of support. Workouts need cooperation. Whilst Financial Creditors are likely to be reluctant to permit an increase in their exposure to a customer so that other facilities of financial creditors can be salvaged, they should be aware that, if they fail to cooperate in the workout, the same approach may be taken against them should roles be reversed.

Breathing Space for Debtor Required

Financial Creditors should not withdraw facilities or be hasty to put the debtor in a formal insolvency administration or issue Court proceeding.

Fully Informed Creditors

Decisions should only be made based on reliable information which is shared fully with all Financial Creditors.

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128 Reference: 99-100 pages of No. 142 of the Turnaround & Credit Management

Involvement of all Financial Creditors in the Workout Process

All Financial Creditors (other than those whose exposure is negligible) should be eligible to participate in an informal workout process. Creditors such as trade creditors, trade financiers, insurance institutions and bondholders may also participate in a work-out.

Implementation

Meeting of Financial Creditors Desirable

Where it has become apparent that an informal workout process may be applicable to a debtor, Financial Creditors should meet to consider whether or not to implement an informal workout process. All Financial Creditors (other than those whose exposure is negligible) should be invited to participate in such a meeting.

Standstill Prior to Meeting

Prior to the meeting of creditors, the status quo in relation to the debtor should be maintained. Financial Creditors should not take any enforcement action, other action, or reduce their exposure to the debtor until a meeting is held.

Eligibility for Workout Process

An informal workout process should only apply to a debtor where it appears possible to resolve its financial difficulties and where its business is viable in the long term.

Experienced representatives required

Financial Creditors participating in an informal workout should take an active role by appointing an experienced and competent representative. That representative should ensure that appropriate levels of management within the creditor organization are informed of the progress of the workout at all important stages and that the prospective and likely outcome of the workout is expected to be acceptable to the decision makers within the creditor organization.

Appointment of Representative Committee

The interests of relevant creditors are best served by coordinating their response to a debtor in financial difficulty. Such coordination will be facilitated by the selection of one or more representative coordination committees and by the appointment of professional advisers to advise and assist such committees, and where appropriate, the relevant creditors participating as a whole.

Creditors should agree to appoint one creditor (usually the creditor with the largest exposure to the debtor or with particular expertise in managing informal workout negotiations) to chair the coordination committee, lead negotiations with the debtor and ensure the expeditious progress of the informal workout negotiations.

Standstill Period

If the Financial Creditors consider at the meeting of such creditors, that it appears possible to resolve the financial difficulties of the debtor and to achieve long term viability of its business, all relevant creditors should be prepared to cooperate with each other to provide sufficient time (a 'Standstill Period') to enable information about the debtor to be obtained and evaluated, and for proposals for resolving the debtor's financial difficulties to be formulated and assessed, unless such a course of action is inappropriate.

During the Standstill Period, all relevant Financial Creditors should agree to refrain from taking any steps to enforce their claims (other than disposal of their debt to a third party), but are entitled to expect that during the Standstill Period their position relative to other creditors and each other will not be prejudiced.

The length of such a Standstill Period should be limited to the time that is reasonably required to fulfill the objective of restructuring the debtor's business if that is possible. The length of a Standstill may be difficult to estimate and in some circumstances may need to be extended.

During the Standstill Period, the debtor should not take any action which might adversely affect the prospective return to relevant creditors (either collective or individually) as compared with the position of those creditors at the commencement of the Standstill Period.

Assignment of debts

Care must be exercised when dealing with sales of debt, particularly to third parties who have not previously been involved in the workout process. Bringing buyers up to speed and ensuring their commitment can impede progress. Sellers of debts should ensure that buyers are aware of the Informal Workout Guidelines and that they would be expected to adhere to them.

Priority for funding during workout

If additional funding is provided during the Standstill Period or under any rescue or restructuring proposals, the repayment of such additional funding should, so far as practicable, be accorded priority status as compared to other indebtedness or claims of relevant creditors.

Access to Information about Debtor

During the Standstill Period, the debtor should provide and allow relevant creditors and/or their professional advisors reasonable and timely access to all relevant information relating to its assets, liabilities, business and prospects, to enable proper evaluation to be made of its financial position and any proposals to be made to relevant creditors.

Achievable Business Plan

A restructure should be based on an achievable business plan that addresses operational as well as financial issues. A business plan should contain forecasts, based on documented and reasonable assumptions as to future events, which evidence that the business of the debtor corporation can generate sufficient cash flow and profit to meet its obligations existing after the restructure. The underlying objective of any workout should be to obtain the best deal that can be achieved for Financial Creditors.

Costs

A careful watch must be kept on costs. Financial Creditors should take care that costs are minimized and reasonable, given that otherwise the debtor's cash flow will be unnecessarily worsened.

The debtor should meet all reasonable costs of creditors in considering restructuring proposals. This would include the costs of professional advisers and any costs necessarily incurred by the coordinating committee.

Restructuring Proposal

Proposals for resolving the financial difficulties of the debtor, and so far as practicable, arrangements between relevant creditors relating to any standstill should reflect applicable law and the relative positions of relevant creditors at the commencement of the Standstill Period.

The term of any restructuring proposal must be manageable for the debtor.

Confidentiality

Information obtained for the purposes of the informal workout process concerning the assets, liabilities, business and prospects of the debtor and any proposals for resolving its difficulties, should be made available to all relevant creditors and should, unless such information is already publicly available, be treated as confidential, and only be used by creditors for the purpose of determining and ascertaining an informal workout proposal.

Conflicts

Any conflict of interest should be declared openly and promptly.

Dispute Resolution

In endeavoring to determine disputes between creditors or between a debtor and its creditors, regard should be given to the possibility of referring such disputes, with the consent of those involved, to mediation.

[Exhibit 6] Introduction to the Out-of-court Workout Procedures of Japan, South Korea and India

Below is a brief introduction to the out-of-court workout procedures of Japan, South Korea and India.

1. Procedure in Japan

The following is an introduction to the Out-of-Court Workout Procedure Guidelines in Japan and Turnaround ADR as part of the out-of-court workout procedures in Japan.

(1) Out-of-Court Workout Procedure Guidelines

The Out-of-Court Workout Procedure Guidelines are a gentleman's agreement (not a law) which was developed in September 2001 by a committee which consisted of many financial institutions and observers, such as the Ministry of Economy, Trade and Industry, the Financial Services Agency and the Bank of Japan.

The Out-of-Court Workout Procedure Guidelines stipulate enterprises that may be eligible, the steps of the procedure, the requirements that need to be fulfilled when drawing up a restructuring plan, management responsibilities, and shareholder responsibilities, etc.

The outline of the Out-of-Court Workout Procedure Guidelines is the same as the "Out-of-court workout procedures" mentioned in Part III-I, III, 2, (2), a above. The "Creditors' Committee" mentioned in that section consists of "professional advisors" -- attorneys or certified accountants with considerable experience in the field of business revitalization including legal insolvency proceedings.

The Out-of-Court Workout Procedure Guidelines aided to organize the basic concept of an informal workout for Japanese enterprises, and to develop common awareness of methods for conducting the procedure and of the workout plan between parties involved, greatly contributing to the development of the out-of-court workout procedures in Japan.

(2) Turnaround ADR

Based on the Act on Special Measures Concerning Revitalization of Industry and Innovation in Industrial Activities, the Turnaround ADR procedure was developed in 2007 as an expansion of the Out-of-Court Workout Procedure Guidelines. In accordance with that said Act and related regulations, the Turnaround ADR contains the same informal workout content as the Out-of-Court Workout Procedure Guideline.

Because business revitalization professionals such as attorneys and accountants certified by the Minister of Justice and the Minister of Economy, Trade and Industry preside over the Turnaround ADR, the procedure ensures high transparency and fairness.

An outline of the Turnaround ADR procedure is as follows.

(i) The debtor and the Japanese Association of Turnaround Professionals ("JATP") jointly request that each of the financial creditors agree to a standstill of debt collection, and send a notice to convene a creditors' meeting.

(ii) At the first creditors' meeting, creditors appoint mediators who were nominated in advance by JATP from its list of eligible turnaround professionals (such as attorneys and accountants with considerable experience in the field of business revitalization), and the effect of the standstill is approved by the creditors' vote. The debtor will also provide a summary of the proposed business turnaround plan to the creditors.

(iii) The debtor will develop and modify the business turnaround plan by collecting opinions from the financial creditors.

(iv) The mediators will conduct a thorough assessment of the debtor's financial situation and review the business turnaround plan.

(v) At the second creditors' meeting, the debtor presents the modified business turnaround plan and the mediators report the debtor's financial situation and the verification result of the proposed plan to the financial creditors.

(vi) Each creditor will take the necessary steps to make an internal decision on the proposed plan, which usually takes about a month.

(vii) At the third creditors' meeting, the creditors vote for or against the proposed plan. In the event that all the creditors participating in the Turnaround ADR procedure consent to the proposed business turnaround plan, the plan is validated and the creditors' rights are modified pursuant to the terms and conditions of the plan. In the event that one or more creditors reject the proposed plan, the Turnaround ADR is immediately terminated and the debtor may go into another process, such as the Specified Conciliation proceedings or legal liquidation proceedings.

2. Procedure in Korea

An example of Korea's out-of-court workout procedure is the Out-of-Court Workout Proceedings under the Corporate Restructuring Promotion Law. The Workout Proceedings, which were developed as a means of handling failing companies after the 1997 Asian currency crisis, are based on the "Agreement Among Financial Institutions for Corporate Restructuring" (analogous to the Japanese Out-of-Court Procedure Guidelines), and later enacted into the Corporate Restructuring Promotion Law. Companies with a total debt of 50 billion won owed to financial institutions are eligible for the Workout Proceedings under the Corporate Restructuring Promotion Law.

An outline of the proceedings is as follows.

First, when a failing company is notified by its main bank that it is in financial difficulty, it may file for the commencement of the Workout Proceedings. After the filing, the main bank will convene a Financial Institution Creditors Council to determine whether the Workout Proceedings should be commenced. There are three types of management: (1) co-management with financial institution creditors, (2) co-management with bank creditors, and (3) management by the main bank.

When co-management is initiated, the Financial Institution Creditors Council will enter into a "Memorandum of Understanding for Implementation of the Workout Plan" with the failing company after a resolution has been passed.

To pass the resolution, the Financial Institution Creditors Council needs an affirmative vote of at least 75% of the aggregate amount of the credit extension made by the financial institution creditors to the debtor company. For any credit restructuring and new financing, an affirmative vote of 75% of the secured creditors is required.

Dissenting creditors who voted against the commencement of the Workout Proceedings, credit restructuring and new financing may request that the assenting creditors buy its debts, and the assenting creditors shall jointly and severally purchase the debts at a fair price within 6 months. The purchase price will be determined upon discussions. Although in practice the price is usually set at the liquidation value at the time the purchase is demanded, if there is a disagreement on the purchase price, the Financial Institution Creditors Council may determine the purchase price in answer to a petition made by assenting creditors or creditors requesting that the debt be purchased. A party objecting to the decision of the Financial Institution Creditors Council may petition a court to change the decision.

3. Procedure in India

The Corporate Debt Restructuring ("CDR") is an out-of-court workout procedure developed in accordance with the guidelines framed by the Reserve Bank of India ("RBI"). The CDR system is implemented through a three-tier structure comprising of (1) the CDR Standing Forum (a self-regulatory organization of all financial institutions and banks in India which lays down policies and guidelines for the CDR to be followed), (2) the CDR Empowered Group (has the authority to ultimately approve and confirm the restructuring plan), and (3) the CDR Cell (conducts CDR procedures on a practical level).

[Exhibit 7] Outline of Proposals

Please refer to following pages.

Outline of Proposals

Legal Systems

Promotion of Sales of NPLs

- Expanding the eligible enterprises of an LUR mortgagee
- Easing the foreign investment restrictions on acquiring LUR and buildings
- Easing the foreign investment restrictions of the Real Estate Business Law
- Easing restrictions on foreign ownership in enterprises
- Establishing an NPLs exchange market
- Developing laws for NPL securitization
- Developing laws for real estate securitization
- Improving the real estate registration system
- Reforming the system of registration of foreign loans

Promotion of Collection of NPLs

- Ensuring effectiveness of security interests
  - ・Abolishing the requirement for the owner's agreement to enforce security assets in practice
  - ・Enactment of delivery orders
- Ensuring effectiveness of execution procedures
  - ・Limiting reassessment of reserved prices and causes of objections,
  - ・Strengthening counter-measures against abusive filings with the court and asset concealment by debtors

Restructuring of SOEs

- Promoting business efficiency
- Rationalizing and expediting the selling procedure
  - ・facilitating the sales of SOEs' assets at a price lower than their book value
- Improving the company split framework in the Law on Enterprises
- Establishing appropriate legal liability rules in a sale of an SOE's assets
- Developing disclosure of corporate information of SOEs

Enhancement of Business Restructuring

- Introducing rules of out-of court work-out procedures
- Amendment of bankruptcy law
  - ・Improving the filing process, Expediting the procedures, Improving the rehabilitation procedure, Improving the business transfer procedure, Strengthening counter-measures against asset concealment
- Easing the waiver of claims of credit institutions and SOEs

Reform of Banking sector

- Improving the system of classification and disclosure of information on NPLs
- Strengthening the functions of banking supervision
- Developing a bankruptcy system for credit institutions
  - ・Introducing a financial administrator
  - ・Introducing financial assistance methods
  - ・Introducing a bridge bank program

Organizations

Utilization of the systems

VAMC

① Strengthening the function of selling NPLs
- ・Making the strategy for selling NPLs
- ・Leading the exchange market and the securitization market of NPLs.

② Strengthening the function of collecting NPLs
- ・Enhancing the ability of foreclosure and enforcement
- ・Vesting the power to investigate a debtor's assets

③ Strengthening the function of restructuring enterprises

coopera tion

DATC

① Strengthening the function of restructuring corporate debts
- ・Utilizing out-of court workout procedures

② Strengthening the function of capital injection and lending

③ Strengthening the function of business support

coopera tion

SCIC

① Strengthening the function of corporate governance of SOEs
- ・Making guidelines for exercise of voting rights by SCIC

② Strengthening the function of business support

③ Strengthening the function of investment for corporate restructuring

Main obstacles and solutions 1

Promotion of Sales of NPLs

Under the current system, there are restrictions on purchasers of NPLs and real estates. It is necessary to increase purchasers of NPLs and real property in order to promote the sales of NPLs.

Current Obstacles	Solutions
➢ Due to the restriction that only financial institutions in Vietnam can be security interest holders of LURs and buildings (under the Land Law), there are very few potential purchasers of NPLs secured by mortgages.	→**Expanding the enterprises eligible to be a security interest holder of LURs and buildings**
➢ Due to the restriction that foreign investors cannot acquire LURs and buildings (under the Land Law, etc.) directly from the existing users, it is difficult for foreign investors to invest in NPLs secured by mortgages or real estates.	→**Easing the foreign investment restrictions on LURs and buildings**
➢ Due to the regulations to limit the scope of real estate business and the resale of LURs, as well as the prohibition on the use of land for purposes not written in the certificate of the LUR, it is difficult for foreign investors to invest in NPLs secured by mortgages or real estate.	→**Easing the foreign investment restrictions of the Real Estate Business Act**
➢ Due to the regulations on foreign investors on the ratio of holding shares in domestic enterprises, it is difficult for foreign investors to purchase NPLs for the purpose of implementing DES.	→**Easing restrictions on foreign ownership in enterprises**
➢ Due to the lack of an NPL exchange market, transactions of NPLs are not active.	→**Establishing an NPL exchange market**
➢ Due to the fact that laws for securitizing NPLs and real property have not been developed, transactions of NPLs are not active.	→**Developing laws for securitization of NPLs and real property**
➢ An IT system has not been introduced into the real estate registration system in favor of people, which makes it necessary to go to the registration office to view records, and therefore, makes it difficult to confirm the holders of rights in a speedy manner.	→**Improving the real estate registration system**
➢ Under Circular 09/2004/TT-NHNN, even if it is necessary to register NPLs that foreign investors have purchased from domestic creditors, registration is not guaranteed, and if registration is not permitted, they cannot transfer money abroad.	→**Clarifying the system of registration of foreign loans**

Main obstacles and solutions 2

Promotion of Collection of NPLs

Under the current system, the quick and effective execution of security interests is not possible. It is necessary to develop a system to collect NPLs speedily and certainly, to promote the collection of NPLs and increase the number of purchasers.

Current Obstacles	Solutions
➢ In executing security interests on real estate, most of institutions responsible for the registration process request the agreement of the debtor (the owner of real estate) for the registration of transfer of real estate to the purchaser; therefore, it is difficult to execute security interests on real estate quickly and certainly.	**→Abolishing the requirement of needing the owner's agreement in actual practice**
➢ In executing security interests on real estate, if a debtor refuses to deliver real estate, a security interest holder must file a lawsuit with a court to seek delivery, obtain a court decision in favor of the security interest holder, and enforce civil judgment; therefore, it is difficult to execute security interests on real estate quickly.	**→Creating a system of court-issued delivery orders**
➢ If there are no prior agreements for the reserve price in the auction procedure of a compulsory execution, a debtor can request the revaluation of the reserve price (Article 99.1.b of Law 26/2008/QH12), which causes delays in the auction procedure.	**→Limiting reassessment of reserved price in the auction procedure**
➢ The reasons of the filing of an objection are not limited, which permits abuse of the filing of objections, with some debtors deliberately delaying the procedure (Article 140 of Law 26), which causes delays in the auction procedures.	**→Limiting causes of objections to important ones**
➢ In a compulsory execution, the execution is postponed when a dispute regarding the attached property arises and an action has been filed with the court (Article 48 of Law 26), which permits deliberate delays of the execution by abusive filing. This is an obstacle to quick and compulsory execution.	**→Creating a system of limiting abusive filings with the court for the purpose of obstructing enforcement of civil judgments**
➢ Even if a debtor conceals the property, it is difficult to find it and to pursue their liability, which acts as an obstacle to collection of loans.	**→Strengthening counter-measures against asset concealment by debtors**

Main obstacles and solutions 3

Enhancement of Business Restructuring

Under the current system, a system for business restructuring has not been developed, and this does not facilitate a revitalization of business by enterprises in financial difficulty.

Current Obstacles	Solutions
➢ Because there are no rules for out-of-court procedures, it is difficult to execute debt rescheduling out of court, quickly and fairly.	**→Introducing rules for out-of court work-out procedures**
➢ Bankruptcy procedures are not used well (there were only 330 filings in the most recent 10 years), and even with the revision of the bankruptcy law, revisions allowing measures such as proper filing, speeding-up of procedures, the revitalization of enterprises, and counter-measures against concealment of assets by debtors may not be realistically achieved.	**→Amendment of bankruptcy law (e.g. Improving the filing process, Expediting the procedures, Improving the rehabilitation procedures, Improving the business transfer procedures, Strengthening counter-measures against asset concealment)**
➢ The cases in which credit institutions and SOEs can implement a debt waiver are limited or unclear, and it is currently incredibly difficult for credit institutions and SOEs to waive their debt.	**→Permission for a debt waiver by clarifying the legal framework of waivers of claims owned by credit institutions and SOEs**

Main obstacles and solutions 4

Restructuring of SOEs

Under the current system, it is difficult to sell SOEs' assets, such as non-core businesses.

Current Obstacles	Solutions
➢ Previously, sales of SOEs' capital investments (≒shares) at a price lower than their book value were not explicitly regulated and therefore understood to be prohibited practically. Under Decree 71/2013/ND-CP, Circular 220/2013/TT-BTC, and Resolution 15/NQ-CP, there is still a restriction that sale of SOEs' assets below the book value would be subject to report and approval of the managing authority, and the situation remains that it is not so easy to sell assets at a price lower than their book value.	**→Abolishing the approval of the managing authority in sales of SOEs' capital investments (≒shares) at a price lower than their book value**
➢ It takes a long time to decide the reserve price in the auction procedure of SOEs' assets, and it is difficult to buy them quickly.	**→Expediting the decision process of the reserve price in the auction procedure**
➢ Provisions regarding a spin-off framework in the Law on Enterprises have not been developed, which makes it difficult to utilize them for dividing unprofitable businesses.	**→Improving the company split framework in the Law on Enterprises**
➢ Managers of SOEs are reluctant to sell assets, because they have incurred strict legal liability on a loss arising from a sale of SOE's assets.	**→Establishing appropriate legal liability rules in a sale of an SOE's assets by introducing the "business judgment rule"**
➢ With respect to a disclosure system for corporate information, although Decree 61/2013/ND-CP and Circular171/2013/TT-BTC were promulgated, investors has not trust and confidence in the disclosure system, which is an obstacle to investment by investors.	**→Developing disclosure of corporate information of SOEs**

Main obstacles and solutions 5

Reform of the Banking sector

It is necessary to develop a system of classification and more adequate disclosure of information on NPLs, and to develop the bankruptcy system for financial institutions in the case of their bankruptcy.

Current Obstacles	Solutions
➢ Although Circular 02/2013/TT-NHNN has been enacted regarding the classification and disclosure of NPLs, it has yet to be implemented (Initially, it was due for implementation in June 2013).	**→Improving the system of classification and disclosure of information on NPLs and strengthening the functions of banking supervision**
➢ In the case of a bankruptcy of financial institutions, a system to deal with the bankruptcy quickly and in an orderly manner has not been developed.	**→Developing a bankruptcy system for credit institutions (e.g. introduction of a financial administrator, financial assistance methods, a bridge bank program, and reviewing the amount of insured deposits)**