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Changes in the regulation of the banking and finance sector

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For a couple of years now there have been significant changes in the Vietnamese banking and finance sector. The country has seen a sharp increase in the number of securities firms (from 14 in 2005 to nearly 70 in late 2007), and the drastic rise and fall of the securities market. The VN-Index reached a peak of 1174 points in early March 2007 and fell to below 500 points within a year; the market capitalisation was \$15.9 billion (accounting for 22.6% of GDP) in 2006 and \$26.4 billion (accounting for 40% of GDP) by October 2007.

There has also been a marked interest in opening new banking and financial institutions, with applications for dozens of local private banks, six fully foreign-owned banks and dozens of consumer finance companies - Prudential and Société Générale are already in operation, and GE and Toyota are recently licensed.

In addition, credit has grown too quickly: total outstanding loans to and investment in the economy by the banking system in Vietnam increased by nearly 37.8% compared with that of 2006 while the target was only from 18% to 22%; and a significant part of the loans was extended to high-risk sectors such as securities, real estate and consumption or projects beyond their appraisal and risk-management capacities.

These developments posed several challenges for Vietnamese regulators, who have been required to issue many new regulations. On the one hand, they needed to make the regulatory framework more conducive for both local and foreign institutions, creating a more level playing field with greater transparency. On the other hand, the regulations also needed to be crafted in such a way as to protect consumers in a fast-changing, embry-

onic and highly volatile market. For many watching, it looked like a tight-rope walk.

Establishment of non-banking credit institutions (financial and financial leasing companies)

The State Bank of Vietnam has created clearer requirements for the establishment of non-banking credit institutions by issuing Decision 40/2007/QD-NHNN of November 2 2007, promulgating the Regulation on Granting Licences for Joint-Stock Non-Banking Credit Institutions.

The level of charter capital required is D300 billion (\$18.1 million) before 2010 and D500 billion from 2010 onward for financial companies; and D100 billion before 2010 and D150 billion from 2010 onward for leasing companies. As such, there is no discrimination between domestic and foreign-invested companies in terms of required charter capital. The objective of this stipulation is to create a level playing field, as required by the WTO. The planned increase in required charter capital is also to ensure that only institutions with enough financial capability provide services to the public.

The new rule also makes stricter and more specific requirements for founding members, which are now required to prove sufficient legal money to make capital contributions to the new company and commit to support it if it has difficulties such as capital shortage or illiquidity. An institutional founding member must have owner's capital of at least D200 billion and must have been in profit the preceding year.

OTC securities market

Before, shares of unlisted public companies were freely traded on an unorganised market. In November 2007, the Ministry of Finance issued Decision 3567/QD-BTC on Managing Securities Transactions of Unlisted Public Companies.

According to this decision, all securities of unlisted public companies will be registered at

the Vietnam Securities Depository and transacted through securities houses. Each investor will open an account for these transactions. The registered public companies will be responsible for making disclosures as required by law.

This regulation is a response to investors' demands for a more transparent market and a higher liquidity of unlisted shares. With the new regulation, investors will have opportunities to reduce price risks and time spent finding buyers/sellers and making the ownership registration. At the macroeconomic level, the equitisation of state-owned companies will be more attractive, the link between listed and unlisted markets will be closer and both securities houses and the state budget will receive more funds.

Lending for securities investment

Part of the growth of the Vietnamese securities markets in the past two years has been fuelled by commercial banks' loans for securities investment, which is very risky. In order to ensure the sustainability of both the securities market and the banking system, on February 1 2008 the State Bank of Vietnam issued Decision 03/2008/QD-NHNN on Lending and Discounting Valuable Papers for Securities Business. According to this provision, the total outstanding debts for securities activities at a credit institution will at all times not exceed 20% of its total charter capital. This provision replaces the former regulation, which caps lending for securities at 3% of total outstanding credit and is claimed as one of the reasons for the recent overheated growth of credit.

The most important advantage of Decision 03/2008/QD-NHNN over its precedent is the combination of risk portfolios, risk management capacity and charter capital, not the total credit portfolio. This is a step in line with the spirit of international banking governance: banks with better corporate governance and greater capital can extend more loans and accept more risks.

By requiring a ratio of bad debt on total outstanding debts of less than 5% and by classifying credit for securities investments as assets with the risk weight of 250% (not 150%, as before), this decision also reflects the spirit of international risk management practices. Banks are now required to improve their internal control systems and risk management procedures in order to maintain profitability and sustainability in the long term.

It is expected that the abovementioned changes will help the Vietnamese financial market develop in a more powerful and sustainable way in the future.

Banking and finance

Recommended firms

Tier 1

Allens Arthur Robinson
Freshfields Bruckhaus Deringer
Mayer Brown JSM
YKVN

Tier 2

Baker & McKenzie
Frasers Law Company
Gide Loyrette Nouel
Vilaf-Hong Duc

Tier 3

Ngo Migueraes & Associés
Vietbid Law Firm
Vision & Associates

Mergers and acquisitions

Recommended firms

Tier 1

Allens Arthur Robinson
Baker & McKenzie
Freshfields Bruckhaus Deringer
Vilaf-Hong Duc

Tier 2

Frasers Law Company
Gide Loyrette Nouel
Mayer Brown JSM
YKVN

Tier 3

Ngo Migueraes & Associés
InvestConsult Group
Vietbid Law Firm
Vision & Associates

The banking and finance sector in Vietnam is in a constant state of transformation as a result of increasing competition, regulation (including the gradual move towards Basel II compliance) and globalisation. 2007 and 2008 saw a resurgence of activity from investment banks fuelled by rising acquisitions.

M&A deal size and volume soared in 2007, which saw a tripling in deal volume, with the average value also doubling compared to the previous year, keeping the relatively small legal fraternity in Vietnam very busy. The Vietnamese government's drive to convert state-owned enterprises into public limited companies or corporations; its relaxing of ownership restrictions for foreign investors; and changes to the country's tax regulations have all improved the deal environment and the range of available targets.

Vietnam has become increasingly attractive to global investors after its admission to the WTO in 2006, its cheap, high-quality labour in the manufacturing sector, and the allure of its 86 million residents' strengthening purchasing power. Market commentators say that the opening of new industries will further increase the flow of foreign direct investment. This despite recent concerns over rising inflation, which may prompt the tightening of credit and liquidity measures.

June 2008 saw the establishment of the first joint-venture law firm to be licensed in Vietnam. AGZI LCT comprises Allen & Gledhill (Singapore), Zaid Ibrahim & Co (Malaysia) and LCT Lawyers (Vietnam), and will specialise in advising the growing base of foreign investors.

Allens Arthur Robinson

Allens Arthur Robinson holds on to its place in the top tier following comments from the market that it is "the leading international outfit in Vietnam".

The firm formerly known as Phillips Fox has been part of the Allens Arthur Robinson network since last year, and boasts two of Vietnam's most respected lawyers: veteran Bill Magennis, known for his expertise in cross-border energy projects, and managing partner Nigel Russell. Recent additions to Allens' Ho Chi Minh practice include project finance partner Thomas Miller and senior associate David Hinchey, who relocated from the firm's Bangkok and Sydney offices respectively.

Allens Arthur Robinson has recently played significant roles on transactions such as the acquisition by Morgan Stanley of a substantial interest in Vietnam Gateway Securities, which was renamed Morgan Stanley & PVFC Gateway Securities, as well as the \$254 million purchase by HSBC of a strategic interest in Bao Viet Insurance, the first equitisation of a large state-owned enterprise in Vietnam.

The firm has advised on numerous innovative transactions as a result of its reputation. One such deal saw the firm act as international counsel for Colonial Mutual in the \$23 million acquisition of Bao Minh CMG (an insur-

ance joint venture between Bao Minh and Colonial Mutual) by Dai-ichi Mutual Life Insurance Co. This was the first M&A in the life insurance industry in Vietnam.

Leading lawyers

Bill Magennis
Nigel Russell

Baker & McKenzie

Baker & McKenzie, one of the first international law firms to establish representative offices in Hanoi and Ho Chi Minh, commands its fair share of high-profile deals. Managing partner Fred Burke is one of the best-known legal personalities in the country and is especially praised for his deep knowledge of trade law. "The laws in Vietnam seem to be constantly changing. To me it looks like every deal is a new deal," says a client of Burke. "Fred is great because he understands the country in a way few lawyers do and can interpret those changes quickly and effectively ensuring the end result is what we expect." Burke's involvement on internationally funded work related to Vietnam's admission to the WTO is of particular note.

Another leading lawyer, Nguyen Hoang Kim Oanh, is highly active in banking work, and is a popular choice among foreign lenders such as ANZ Bank, Citibank and the Japan Bank for International Cooperation. Nguyen is particularly known for her "quality work" on both foreign and domestic syndicated financings and limited non-recourse project finance. In addition, the firm is often sought by financial institutions seeking advice on Vietnam's dynamically changing banking regulatory regime.

Baker & McKenzie has also acted for numerous lenders, sponsors and contractors in connection with outgoing projects in the telecoms, power, infrastructure and tourism sectors, all of which are growth areas in Vietnam.

Examples of the firm's recent M&A work include its counsel to Standard Chartered Bank in Vietnam on the acquisition of a stake in Asia Commercial Bank from the International Finance Corporation, representing Rohm and Haas on the construction of a \$10 million acrylic emulsion factory in the Dong Nai province of Vietnam, and acting for a multinational finance group on a \$158 million syndicated loan to finance the construction of a port in Baria Vung Tau.

One additional transaction of note saw the firm acting for a fund management corporation in the establishment of Vietcombank Partners Fund 2, an investment fund targeting mainly pre-IPO Vietnamese companies. The fund is managed locally but incorporated in

the Cayman Islands, an offshore structure which is unusual in the Vietnamese market.

Leading lawyers

Fred Burke

Nguyen Hoang Kim Oanh

Frasers Law Company

Boasting one of the largest teams of foreign and local lawyers in Vietnam, Frasers Law Company's presence in the market has been steadily increasing as has its deal flow. Led by well-regarded name partner Mark Fraser, the firm has a close referral relationship with the Australian law firm Freehills, which exited Vietnam a few years ago. This association provides mutual benefits such as deal referrals and lawyer secondments.

Frasers has acted for numerous banks on a wide range of transactions and is best-known for its work in this area. In addition to lending activities into Vietnam, the firm regularly represents financial institutions during claims in debt restructurings and insolvencies. Clients have included Goldman Sachs, Deutsche Bank and the International Finance Corporation.

In addition, the firm does a fair amount of capital markets work. Recent deal highlights include acting for VinaCapital on its \$401 million Vietnam Infrastructure Limited Fund listing on the Aim board of the London Stock Exchange, and advising European investment bank Bankinvest on the establishment of two private-equity funds worth over \$300 million. The funds will invest in unlisted Vietnamese companies across a wide range of sectors including construction, finance and retail.

Another recent standout deal saw the firm acting for an international insurance company in its bid for a stake in Vietnam's largest state-owned insurance company. At the time of writing, Frasers was counselling Crown Asia Pacific Holdings, a packaging company, in its acquisition of Vietnamese companies. The firm is also advising affiliates of a US-listed media group with regard to the proposed acquisition of Vietnamese media interests.

"We have always had a really good working relationship with Frasers Law Company and will continue to use them as they provide constructive and often innovative advice," says a client of the firm.

Leading lawyers

Mark Fraser

Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer's depth of talent and experience wins praise from peers and clients. "It is a clear winner in the Vietnamese

legal market," says one client. "It is the one firm that takes a more strategic approach to its business legal advice and every lawyer I have worked with from there is impressive. They can also be trusted."

Despite the departure of leading lawyer Mara Folz, Freshfields retains a loyal client following due to its international reputation as well as that of managing partner Tony Foster.

The firm's client list includes ANZ, Bank of America, The Bank of Tokyo-Mitsubishi UFJ, BNP Paribas, Citigroup, International Finance Corporation and HSBC. An example of its recent advice to lenders was its counsel to Deutsche Bank on a €80 million syndicated loan granted to Braun Vietnam.

In 2007 the firm's M&A practice in Vietnam advised numerous blue-chip clients on a range of confidential M&A transactions. Non-confidential examples saw the firm advising Carlsberg on its purchase of shares in Habeco (the state brewing company), Goldman Sachs on its investment in Dianna Joint Stock Company and Morgan Stanley on its purchase of a strategic interest in PetroVietnam Finance Company. The latter was Vietnam's second equitisation of a large state-owned enterprise.

Meanwhile, a number of big projects have provided work for Freshfields' finance team. Instructions in this area have seen the firm advise Fortis Bank and Bayerische Hypo- und Vereinsbank on its \$250 million project financing of Nui Phao mining joint venture, and Maersk Singapore on the establishment of two container ports.

Leading lawyers

Tony Foster

Gide Loyrette Nouel

Gide Loyrette Nouel has an outstanding reputation for Vietnamese M&A, restructuring and investment projects. Nicolas Audier receives particular praises from clients and peers.

The firm enjoys a good relationship with a number of French multinationals and banks such as BNP Paribas and Crédit Lyonnais, which it often advises them on issues arising from banking and securities laws and foreign-exchange regulations. But the bulk of its work now comes from local and international banks and corporations. The firm also advises the state on legislative and regulatory reforms, notably on the development of the foreign-investment law, the restructuring of the banking system, and the government's plan to unify legislation for foreign and domestic investment.

The team boasts considerable real-estate experience and was at the time of writing advising the Accor Group on the acquisition

of a Vietnamese joint-stock company in connection to the construction and operation of a hotel, and Natexis Banques Populaires on the development, construction and financing of its new office building. The latter is made complex by the prohibition of Natexis' ownership of the land.

Another highlight for Gide Loyrette Nouel last year was its role advising Axa on the acquisition of a minority shareholding in Bao Minh, a recently equitised state-owned insurance company. The deal is significant because Vietnam's insurance sector is both sensitive and highly protected: all foreign investment is strictly monitored and controlled. This was one of the first acquisitions of a Vietnamese listed company by a foreign investor under the new regulations.

"Gide Loyrette Nouel are a pleasure to work with and I would recommend them," says a client. "The firm has very smart, charming lawyers that know how to handle all those little but very complicated problems that always occur in Vietnam."

Leading lawyers

Nicolas Audier

Mayer Brown JSM

Mayer Brown's merger with well-established firm Johnson Stokes & Master has led to an even stronger presence in Vietnam - particularly as it gives the latter access to Mayer Brown's international network.

Johnson Stokes & Master already has a solid foothold in Vietnam; its banking team is known for advising the Vietnamese branches of large banks such as HSBC, Calyon Bank, ANZ and Deutsche Bank. Its counsel to banks spans syndicated lending, security structures, bond transactions, hedging arrangements and regulatory issues. The firm recently advised Chinatrust Commercial Bank on drafting a \$30 million syndicated facility agreement with EVN Telecom Company. It also acted for HSBC in relation to its \$1.5 billion term loan facility agreement with Lafarge Concrete Vietnam Co.

Other highlights include advising Tamouh Investments on a \$334 million acquisition and restructuring of a mixed development project and JSM Indochina on its \$265 million acquisition of part of a mixed development project.

The firm has also advised on a number of inbound investments for multinational clients in the food and beverage, power, manufacturing, packaging and advertising sectors.

Leading lawyers

Dao Nguyen

Hoang Anh Nguyen

Vilaf-Hong Duc

Vilaf-Hong Duc has been promoted to the top tier for M&A category this year after applause from clients and as a result of a strong deal portfolio, which won it *International Financial Law Review's* award for the Vietnamese law firm of the year in 2008 for the third year in a row.

"The standard at Vilaf-Hong Duc is equal to that of international firms in Vietnam and in some areas it even surpasses them," says a client of the firm. Rivals agree that Vilaf-Hong Duc provides "excellent counsel" and point out that the firm is frequently sought-after by international firms seeking advice on local issues.

Examples of standout deals include advising PetroVietnam Insurance Corporation on the sale of shares to a foreign strategic investor, one of the country's first strategic sales by a Vietnamese insurer. The firm also provided counsel to VinaCapital on its acquisition of a five-star hotel in Hanoi. The deal involved complexity, as it required clarification of the structure and liabilities of hotel financing and refinancing in Vietnam.

The firm also advised Sumitomo Mitsui Banking Corporation on its \$225 million acquisition of Eximbank Vietnam, the largest acquisition of a local bank in Vietnam to date. The lack of certain local regulatory provisions meant that negotiations for the deal lasted a year.

In addition, the firm advised Citibank on a \$130 million syndicated loan financing for Vinalines, a state-owned shipping company, for the acquisition of ships and other corporate purposes.

Leading lawyers

Tran Anh Duc
Tran Tuan Phong

YKVN

Described by a client as "the best local firm in Vietnam", YKVN has won roles on many of the country's most sought-after project finance and banking transactions, the two areas in which it is most reputed.

The firm's banking practice serves a variety of key domestic and international players in the syndicated lending market, such as Citibank, the Bank for Foreign Trade of Vietnam and the Bank for Investment and Development of Vietnam. YKVN's bank lending work this year saw the firm act as Vietnamese counsel to the International Finance Corporation on an D800 billion (\$48.4 million) facility to Sacombank to finance its mortgage loans to small and medium-sized enterprises in Vietnam. This was the International Finance Corporation's first dong-denominated financing.

Another standout deal saw YKVN advising the Vietnam Shipbuilding Corporation on a \$600 million loan facility arranged by Credit Suisse. This was not only one of the biggest loan financings in Vietnam but also involved one of the biggest syndicates of banks in a Vietnam financing to date.

Big-ticket project finance work this year came in the form of advising the International Finance Corporation and the Ministry of Industry and Trade on the development, on a build-operate-transfer (BOT) basis, of a coal-fired power project in central Vietnam, a project worth \$1.5 billion. YKVN assisted its client in the selection of investors, negotiation of project documents, and the power purchase agreement and financial closing. The project's documentation is expected to be used as a template for future BOT power projects in Vietnam.

In addition, the firm has worked on a number of sales of strategic stakes in state-owned companies as a result of the government's equitisation programme. For example, YKVN advised the Bank for Foreign Trade of Vietnam on its equitisation. At the time of writing the firm was advising Vietnam Airlines on the selection of a financial advisor and underwriter for its upcoming equitisation, which will comprise international and domestic IPOs and a strategic sale to foreign investors.

Leading lawyers

Vu Dzong
Diep Hoai Nam
Truong Nhat Quang