UPDATE >>

Emerging Markets

State Bank of Vietnam Continues to Tighten the Use of Foreign Currency

The State Bank of Vietnam (SBV) has proposed a Draft Circular dated 17 May 2011, to guide the implementation of Article 29 of Decree 160 on Foreign Exchange Control. The general rule, as provided in Ordinance 28 on Foreign Exchange, states that within the territory of Vietnam, all transactions, payments, listings and advertisements of residents and non-residents "must not be effected in foreign exchange" (i.e. Vietnamese Dong must be used), except for transactions with credit institutions and payments made via intermediaries, including authorized collection, entrustment, agency and other necessary cases permitted by the Prime Minister of the Government. The Draft Circular provides an expanded list of transactions where foreign currency may be used, as an exception to the general rule. However, the most important provision in the Draft Circular is to prohibit contractual provisions that insulate the contracts from the devaluation of the Vietnamese Dong (VND).

The Draft Circular states that written agreements should not contain stipulations providing for the adjustment of prices according to fluctuations in the foreign currency exchange rate between VND and other foreign currencies. The ordinary convention in international commercial contracts is for parties to provide for a contract price and to introduce a means of sharing the risk in the event of fluctuations in foreign currency exchange rates by providing for a minimum and maximum rate between which the currency can fluctuate without any impact on the price. The price is adjusted only if the variations of the exchange rate pass these limits. The Draft Circular would however restrict parties from agreeing to such provisions.

It is important to note that this prohibition under the Draft Circular may be contrary to the Civil Code of Vietnam. Article 431 (2) of the Civil Code states generally that parties may agree on the application of mechanisms to reflect fluctuations in price. A broad reading of this clause would therefore include foreign exchange fluctuations, among other considerations.

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The Draft Circular states that it is to take effect as of 1 July 2011. To date there have been no developments as to whether the Draft Circular has indeed taken effect. Should the Draft Circular take effect, it will have significant implications in the sharing of risk among parties in international commercial contracting. Even while it has not taken effect however, it reflects the trend to increasingly restrict the use of foreign currency in Vietnam.

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