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BANKING LAW

Big changes still on the cards

By Hoang The Thang

The use of bank cards for payment and in banking activities has become familiar to Vietnamese people and the number of card users has increased substantially.

Along with the increase in card users, a variety of card types has been introduced to the market by banks and credit institutions. Furthermore, this diversity of bank cards requires new technologies and techniques. Therefore, the appearance of supporting services for bank card providers is necessary and the number of support service providers in Vietnam has surged in recent years.

As the preliminary legal regulations for such activities were issued nearly 10 years ago and were not capable of regulating the current bank card activities, the State Bank governor on May 15, 2007 issued Decision 20/2007/QĐ-NHNN promulgating regulations on the issuance, payment and use of bank cards and the supply of services supporting bank card activities (“Decision 20”) to replace Decision No. 371/1999/QĐ-NHNN of October 19, 1999 stipulating Regulations on bank card issuance, use and payment (“Decision 371”). The move is designed to reinforce the management of legal frameworks which is necessary for bank card activities development.

Generally, in inheriting the provisions of Decision 371, Decision 20 has upgraded the legislation relating to the bank card activities to an enhanced level.

Firstly, the term of “Card Issuer Bank” under Decision 371 has been replaced by the term of “Card Issuer Institution” under Decision 20. Along with this new term, Decision 20 has also broadened the extent of institutions which are permitted to provide bank card services in Vietnam. In particular, subject to Decision 371, only banks are entitled to issue a bank card, while under Decision 20, the institutions which were allowed to take part in card bank activities were not limited to banks, but also comprise non-banking credit and cooperated credit institutions permitted to implement banking operations. Those provisions under Decision 20, in our opinion, will stir up competition between banks and other institutions in the field of providing bank card services and lead to the improvement in quality of bank services offered in Vietnam.

In addition, the types of bank card customers have also expanded. Under Decision 371, the clients of card issuing banks only comprise individuals, not organizations. Decision 20 has abrogated such restriction in stating that card issuing institutions can provide bank card services to both individuals and organizations. However, the organization must be a legal entity.

In another point, Decision 20 not only regulates “domestic cards”, “international cards”, “debit cards” and “credit cards” as in Decision 371, but also deals with a new product - “prepaid card that are specifically defined as a kind of card allowing its

holder to perform the bank card transactions within the card's prepaid amount equal to the amount that the holder has to pay in advance to card issuer". In our opinion, the recognition of prepaid cards in Decision 20 reflects the reality of bank card activities in Vietnam. There are many Card Cooperation Agreements executed between Vietnamese banks and foreign card companies to provide the prepaid card services in Vietnam. Besides, with the consideration of prepaid cards as bank cards, Decision 20 has subrogated the conditions requiring card users must be the owner of a bank account opened at a card issuing bank in order to own a bank card under Decision 371. In particular, according to Decision 20, only a credit card holder can have a bank account opened at a card issuing bank.

Last but not least, Decision 20 also gives, for the first time, a legal framework for services supporting bank card activities. From our point of view, such regulations will serve as a clear legal basis for enterprises which have the intention to participate in the bank card business by providing these supporting services without performing any banking operations in Vietnam. Furthermore, there are more specific definitions introduced by Decision 20 in comparison with Decision 371, such as "switching card institution" and "the institution providing the balancing card payment services". With the stipulation of such new definitions, we may see that the legal regulations on managing bank card activities become more adequate.

In conclusion, the issuance of the new legal document with more detailed and suitable provisions and definitions in relation to the bank card activities in Vietnam shall not only help competent authorities to better manage bank card activities, give a more open and clearer legal environment for the bank card services providers in Vietnam, but also contribute to triggering a boom in bank card activities in the near future.

ENTERPRISE LAW

Decree points to hands off role

By Pham Thi Trang Van

“Under the new regulations, strategic investors may purchase shares at a price not lower than the average winning bidding price”.

A new decree is being seen as a more practical tool in regulating enterprise conversion in the current context with the newest provisions of the Enterprise and the Securities Laws. On June 26, 2007, the Government issued Decree 109/2007/ND-CP (“Decree 109”) on the conversion of State-owned enterprises (SOEs) into joint stock companies replacing Decree 187/2004/ND-CP, dated November 16, 2004 (“Decree 187”).

Firstly, apart from independent State-owned companies, the new decree adds more types of enterprises to the equitization list such as State-owned corporations, parent companies of economic groups, holding companies of parent-subsidiary consortiums and limited liability companies with 100 per cent State equities. This addition conforms to policy and spirit of the Government to reduce participation of the State in managing enterprises activities.

In addition, Decree 109 abrogates strategic investors’ right to purchase shares at preferential rates. This has been highly controversial for a long time. Under Decree 187, strategic investors were allowed to purchase shares with a discount of up to 20 per cent from average winning price. Under the new regulations, strategic investors may purchase shares at a price not lower than the average winning bidding price.

Some argue that such regulations abolishing preferential price for strategic investors are not necessary because normally, these investors have strong financial capacities and purchase shares for the purpose of enterprise management. They, therefore, would rather be given preferential treatment to purchase shares than price incentive. Strategic investors may not transfer shares within three years from the date when the new joint-stock company is granted its business registration certificate. Furthermore, now foreigners can become strategic investors. This is a practical requirement, especially in the equitization of enterprises in the fields requiring important mobilization of capital, experiences and power resources such as finance, banking and insurance.

Another outstanding aspect of Decree 109 is the detailed provisions on determining the value of enterprises, a move to end inaccurate evaluation of enterprises and State assets losses. During equitization, the evaluation of enterprises can cause great losses to the State if land use rights are not correctly valued. Decree 109 clearly stipulates the basis on which to compute market value of land use right when enterprises go public.

Land price shall be based on the area, location and purpose, and then submitted to competent organizations for consideration. With existing land, enterprises have two options: lease land or allocate land under the Land Law. If the land is granted to the enterprise for use, the value of land use rights shall be added to the value of the enterprises in accordance with the price set by the provincial and municipal authorities.

Where enterprises prefer land lease option and pay the rental annually, the land value shall not be counted towards enterprise value. If enterprises pay all rentals for the leasing duration, the rental should be counted towards the value of the enterprises and the rental shall be based on the rate provincial and municipal authorities set forth for the period concurrent to equitization.

Besides, according to Decree 109, new forms of first share sales will be applied, including underwriting and direct negotiation. In addition, the public auctioning method is imposed. Enterprises' shares offered for sale which are worth less than VND10 billion will be auctioned at intermediary financial organizations. If their value exceeds VND10 billion, the auctions will be take place at stock exchanges or securities trading centres. Economic groups and corporations have to organise separate auctions for strategic investors, based on the Prime Minister's decision.

Moreover, filling the gap left by Decree 187, Decree 109 provides that charters of new joint stock companies should be prepared by the equitization Steering committee and given to investors before share sale. Enterprises eligible for listing shares on the stock market are requested to list and register transactions at stock exchange/securities trading centres during the equitization process. These regulations aim to associate the equitization of SOEs with stock market development, increased quantity and quality of listed companies and improved publicity and transparency under market principles.

Finally, Decree 109 contains other supplemented and amended points from Decree 187 to meet new requirements regarding the equitization process of State-owned enterprises and to create a fair playground for both foreign and domestic investors.

Other Sectors

Finance

- On August 2, 2007, the Prime Minister issued Decision 128/2007/QD-TTg on the approval of Project on the development of Vietnam capital market to 2010 and orientation to 2020.
- Decision 33/2007/QD-NHNN, dated July 6, 2007, of the State Bank of Vietnam on the amendment of Point 5 Annex 3 of Regulations on banking codes used in payment transactions through the State Bank accompanying Decision 02/2006/QD-NHNN, dated January 18, 2006, of the Governor of the State Bank.
- On July 3, 2007, the State Bank of Vietnam stipulated Decision 32/2007/QD-NHNN providing limit of credits for anonym prepaid cards.
- Decision 29/2007/QD-NHNN, dated June 29, 2007, of the State Bank of Vietnam on the amendment of Point 3 Annex 3 of Regulations on banking codes used in payment transactions through the State Bank accompanying Decision 02/2006/QD-NHNN, dated January 18, 2006, of the Governor of the State Bank.
- On July 25, 2007, the Ministry of Finance issued Circular 89/2007/TT-BTC guiding the collection and payment of penalties, the management and use of money gained from dealing with administrative violations in the fields of land, railways and waterways traffics.
- Circular 88/2007/TT-BTC, dated July 19, 2007, of the Ministry of Finance on amendment of and supplementation to Circular 37/2003/TT-BTC, dated April 24, 2003 regulating the collection, payment and use management of the fees for the grant of passport, visa and documents for entry, exit, transit and residence in Vietnam.

Securities

- On June 5, 2007, the Ministry of Finance stipulated Decision 45/2007/QD-BTC providing Regulations on the establishment and management of securities investment funds.
- Circular 97/2007/TT-BTC, dated August 08, 2007, of the Ministry of Finance guiding the implementation of a number of articles of Decree 36/2007/ND-CP, dated March 8, 2007 dealing with administrative violations in the field of securities and securities market.

Taxation

- On July 30, 2007, the Ministry of Finance issued Decision 65/2007/QD-BTC on amendment of and supplementation to the rates of preferential import taxes

imposed on second-hand trucks and specialized vehicles which have the total loaded weight from 20 tones or more and on a number of items of automobile spare parts and components.

- Circular 85/2007/TT-BTC, dated July 18, 2007, of the Ministry of Finance guiding the implementation of the Law on Tax Administration in relation to tax registration.

Trading

- On July 18, 2007, the Government issued Decree 119/2007/ND-CP on the manufacture of and business in tobacco.
- Decision 018/2007/QD-BTM, dated July 30, 2007, of the Ministry of Trade stipulating Regulations on the grant of electronic certificate of origin.
- On July 27, 2007, the Ministry of Trade stipulated Decision 017/2007/QD-BTM on the suspension of temporary import for re-export and cross-border gate transshipment of garments
- Decision 52/2007/QD-BTC, dated June 22, 2007, of the Ministry of Finance providing pilot electronic customs procedures.
- On May 31, 2007, the Ministry of Finance issued Decision 41/2007/QD-BTM stipulating the List of special preferential taxes of Vietnam to implement the ASEAN – Korea free trade area (Part II).
- Decision 108/2007/QD-UBND, dated August 1, 2007, of Ho Chi Minh City People's Committee providing Regulations on consideration to allow the use of APEC businessmen travel card of Ho Chi Minh City.
- On July 25, 2007, the Ministry of Science and Technology stipulated Circular 14/2007/TT-BKHCN on amendment of Circular 09/2007/TT-BKHCN, dated April 6, 2007, of the same Ministry guiding the implementation of a number of articles of Decree 89/2006/ND-CP, dated August 30, 2006 on the label of goods.

Labour

- Decree 133/2007/ND-CP, dated August 8, 2007 with detailed regulations and guidelines on the implementation of a number of articles of the Law on amendment of and supplementation to a number of articles of the Labour Code in relation to settlement of labour disputes.
- On August 01, 2007, the Government issued Decree 126/2007/ND-CP with detailed regulations and guidelines on the implementation of a number of articles of the Law on Vietnamese working abroad under contracts.
- Decree 122/2007/ND-CP, dated July 27, 2007 providing the list of enterprises in which strikes are prohibited and the handling of labour collective's request in these enterprises.

- On August 1, 2007, the Ministry of Labour, War Invalids and Social Affairs stipulated Decision 20/2007/QD-BLDTBXH on the issuance of certificate on training of necessary acknowledges for employees before going to work abroad.
- Interminiscircular 95/2007/TTLT/BTC-BLDTBXH, dated August 7, 2007, of the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Finance guiding the charges of work introduction.

Construction

- On July 31, 2007, the Government issued Decree 124/2007/ND-CP on the management of construction materials.
- Decision 131/2007/QD-TTg, dated August 9, 2007, of the Prime Minister providing Regulations on recruiting foreign consultants in the field of construction in Vietnam.
- On July 25, 2007, the Ministry of Construction stipulated Circular 07/2007/TT-BXD guiding the method for assessing shift of works construction machineries and equipments.
- Circular 06/2007/TT-BXD, dated July 25, 2007, of the Ministry of Construction guiding contracts in construction operations.
- On July 25, 2007, the Ministry of Construction stipulated Circular 05/2007/TT-BXD guiding the set up and management of costs and expenses for works construction investments.

Land

- On August 2, 2007, the Government issued Decree 129/2007/ND-CP dealing with administrative violations relating to dykes.
- Decree 123/2007/ND-CP, dated July 27, 2007 on amendment of and supplementation to a number of articles of Decree 188/2004/ND-CP, dated November 16, 2004 regulating the method of assessment of land prices and price frame for all kinds of land.

Science and Technology

- On August 1, 2007, the Government issued Decree 127/2007/ND-CP detailing the implementation of a number of articles of the Law on Technical Standards and Specifications.
- Decision 34/2007/QD-BCN, dated July 31, 2007, of the Ministry of Industry on the approval of planning on development of supporting industries to 2010, vision to 2020.

- On July 25, 2007, the Ministry of Science and Technology stipulated Decision 15/2007/QD-BKHCN providing Regulations on technology and equipment markets.

Post

- Decree 128/2007/ND-CP, dated August 2, 2007 on delivery/forwarding services.
- On August 2, 2007, the Ministry of Post and Telecom issued Decision 22/2007/QD-BBCTV providing services uniquely reserved to Vietnam Post.

Miscellaneous

- Decree 136/2007/ND-CP, dated August 16, 2007 regulating the entry and exit of Vietnamese citizens.
- On the same day, the Government stipulated Decree 135/2007/ND-CP dealing with administrative violations in the field of social insurance.
- Decree 121/2007/ND-CP, dated July 25, 2007 on overseas direct investments in the field of petroleum and gas.
- On July 11, 2007, the Government issued Decree 117/2007/ND-CP on the production, supply and consumption of clean water.
- Decision 135/2007/QD-TTg, dated August 17, 2007, of the Prime Minister providing Regulations on the visa exemption for Vietnamese settling abroad.
- On June 27, 2007, the Ministry of Justice issued Decision 06/2007/QD-BTP providing Regulations on handling claims and denouncements of this Ministry.
- Decision 28/2007/QD-BGTVT, dated June 25, 2007, of the Ministry of Traffic and Transport on amendment of Points (a) and (b) Item 8 Annex I of International rules on prevention from collision of ships on sea attached to Decision 49/2005/QD-BGTVT, dated October 4, 2005 of the Minister of Traffic and Transport.
- On July 18, 2007, the Ministry of Natural Resource and Environment issued Decision 1081/QD-BTNMT on amendment of regulation on effective term of Circular 07/2007/TT-BTNMT, dated July 3, 2007, of the Ministry of Natural Resource and Environment.

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