

## New Vietnam bank guarantee provisions



**By Le Hong Bao Chuong**

On June 25, 2015 the State Bank of Vietnam promulgated Circular No. 07/2015/TT-NHNN on bank guarantees, effective as of August 9, 2015 (Circular 07), to replace Circular No. 28/2012/TT-NHNN dated October 3, 2012 (Circular 28). The main provisions of Circular 07 are summarised below, with key changes highlighted:

### **Guarantees for sale and grant of hire purchase of residential houses yet to be built**

Under the Law on Real Estate Business No. 66/2014/QH13, dated November 25, 2014 (2014 LREB), before the developer of a real estate project sells or grants hire purchase of residential houses yet to be built, the financial obligations of the developer towards the purchaser where the developer fails to hand over residential houses according to an undertaken schedule to the purchaser must be guaranteed by a capable commercial bank.

Circular 07 provides in details the conditions for a commercial bank providing a guarantee to the developer of a real estate project for sale or grant of hire purchase of residential houses yet to be built as follows:

- The residential houses yet to be built are eligible to be sold or hire purchased under the 2014 LREB;
- The sale and purchase or hire purchase contract relating to the residential house stipulates that the developer is obliged to make reimbursement to the purchaser or hire purchaser if the developer is in breach of the obligation to handover the residential house in accordance with the agreed schedule;
- The commercial bank assesses the developer as capable of implementation in accordance with the schedule of the project and using advance payments or other sums paid by purchasers or hire purchasers to the developer for correct purposes;
- The commercial bank is licensed by the State Bank of Vietnam to carry out bank guarantee activities;
- The agreement issuing a guarantee signed with the developer and/or the guarantee undertaking must be consistent with the provisions of the 2014 LREB;
- The guarantee undertaking must be effective until a date at least 30 days after the handover date of residential houses to purchasers or hire purchasers.

These new regulations aim to ensure the enhanced responsibilities of

the developer for handing over residential houses according to their commitment to the customers.

### **Language to be used**

Unlike Circular 28 which stipulates that all guarantees must be issued in the Vietnamese language, Circular 07 allows that in the case of a guarantee with a foreign element, the related parties are permitted to agree on use of a foreign language. In the case of use of a foreign language, the documents must be translated into Vietnamese (certified by the legal representative of a credit institution or foreign bank branch), accompanied by foreign language versions if requested by competent agencies.

### **Scope of foreign exchange activities in the international market**

Law on Credit Institutions No. 47/2010/QH12 states that: "foreign bank branches only provide a number of foreign exchange services in the international market for customers in Vietnam under the laws on the foreign exchange". However, according to Circular No. 21/2014/TT-NHNN dated August 14, 2014 specifying the scope of foreign exchange transactions, the foreign bank branches may only grant a guarantee by foreign currency in the international market for customers in Vietnam.

In order to comply with this provision, Circular 07 provides that a foreign bank branch is not permitted to provide a guarantee in foreign currency in respect of an institutional client being a non-resident overseas, except in the following cases:

- Guarantee for a principal (i.e. a client of an offshore credit institution) in Vietnam on the basis of a cross-guarantee of this offshore credit institution;
- Guarantee confirmation for a guaranteed obligation of an offshore credit institution to a principal in Vietnam who is guaranteed by the offshore credit institution.

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