Vietnam
Nishimura & Asahi

New regulations for debt purchase

In light of a potential crisis of non-performing loans (NPL) in Vietnam, and having regard to experiences in the disposal of NPLs in some foreign countries, the Vietnam Asset Management Company (VAMC) was established in 2013 by the government as part of an attempt to reform the environment in which NPLs exist.

Through decree 53/2013/ND-CP (decree 53) and circular 19/2013/TT-NHNN (circular 19), the VAMC is tasked with the general functions of purchasing NPLs from credit institutions and then attempting to recover, restructure, enforce security interests and/or dispose of the NPLs through sales to interested purchasers. Notably, regarding the disposal of NPLs purchased from credit institutions, decree 53 and circular 19 provide no clear framework through which foreign investors might enter and purchase NPLs or otherwise get involved in the process of NPL disposal through the VAMC; this despite the fact that such involvement by foreign investors was not prohibited and was already possible through existing regulations and mechanisms. It was reported by the VAMC’s spokesperson that several foreign investors had approached them to investigate opportunities to purchase NPLs from the VAMC without success due to the lack of a clear and simple legal framework. However, this situation is expected to improve in the near future because decree 34/2015/ND-CP (decree 34) and circular 14/2015/TT-NHNN (circular 14) have recently been issued to amend and supplement decree 53 and circular 19, respectively.

The issuance of decree 34 and circular 14 is a milestone which opens the door to a debt market for interested foreign investors, among others. It is quite clear that the VAMC is now permitted to sell NPLs to offshore investors, provided that such sale is compliant with the applicable regulations on foreign exchange control. In particular, a non-resident purchaser is required to pay through an account in a foreign currency opened at a credit organization licensed to operate in Vietnam. Alternatively, payment can be made to the VAMC through an offshore foreign currency account in accordance with the relevant debt sale and purchase contract when the transaction is carried out in a foreign currency.

Meanwhile, when the parties agree to execute a transaction in Vietnamese Dong (VND), the regulations do not distinguish between resident and non-resident purchasers. Compared with circular 19, decree 34 and circular 14 also provide more detailed guidance on the procedures for the VAMC to perform bidding and other transparent methods in the sale of NPLs at market prices, which is expected to provide an open and clearer platform for foreign investors.

Although specialists remain skeptical about whether these new regulations will eliminate the hindrances for foreign investors wishing to jump into the debt market (if such a market can be reliably established in the near future), it now seems more likely that interested foreign investors will be able to rely upon such a legal framework to purchase debts from the VAMC in Vietnam.

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