

Hanoi, 26 December 2006

**DECISION
ISSUING
REGULATIONS ON INTEREST RATE SWAPS**

The Governor of the State Bank of Vietnam

Pursuant to the *Law on State Bank* No. 01-1997-QH10 dated 12 December 1997 and the *Law on Amendments and Additions to a Number of Articles of the Law on State Bank* No. 10-2003-QH11 dated 17 June 2003;

Pursuant to the *Law on Credit Institutions* No. 02-1997-QH10 dated 12 December 1997 and the *Law on Amendments and Additions to a Number of Articles of the Law on Credit Institutions* No. 20-2004-QH11 dated 15 June 2004;

Pursuant to Decree No. 52-2003-ND-CP of the Government dated 19 May 2003 on the functions, duties, powers and organizational structure of the State Bank of Vietnam;

On the proposal of the Director of the Monetary Policy Department;

Decides:

Article 1

To issue with this Decision the *Regulations on Interest Rate Swaps*.

Article 2

This Decision shall be of full force and effect fifteen (15) days after the date of its promulgation in the Official Gazette and shall replace Decision No. 1133-2003-QD-NHNN14 of the Governor of the State Bank dated 30 September 2003 issuing *Regulations on Interest Rate Swaps*.

Article 3

The Head of the office, the Director of the Monetary Policy Department, heads of all relevant entities of the State Bank, directors of State Bank branches in provinces and cities under central authority, and chairmen of boards of management and general directors (directors) of the credit institutions and banks concerned shall be responsible for implementation of this Decision.

Governor of the State Bank
Deputy Governor
TRAN MINH TUAN

REGULATIONS ON INTEREST RATE SWAPS

(Issued with Decision No. 62-2006-QD-NHNN of the Governor
of the State Bank of Vietnam dated 29 December 2006)

Article 1 *Governing scope and applicable entities*

These Regulations regulate the conduct of interest rate swaps as between commercial banks, joint venture banks, banks with one hundred (100) per cent foreign owned capital and branches of foreign banks operating in Vietnam (hereinafter all referred to as *banks*) with enterprises which are not banks and which are established and operate pursuant to the law of Vietnam (hereinafter all referred to as *enterprises*), and as between banks with each other and as between banks with offshore credit institutions. All interest rate swap transactions must be implemented in accordance with these Regulations, and in conformity with international practice not contrary to the law of Vietnam.

Article 2 *Objective of interest rate swaps*

Banks and enterprises shall implement interest rate swaps with the aim of preventing and limiting risks arising from market interest rate fluctuations.

Article 3 *Definitions*

In these Regulations, the following terms shall be construed as follows:

1. *Offshore credit institutions* comprise commercial banks, finance companies, finance leasing companies, investment banks, development banks and other finance and credit organizations established and operating pursuant to foreign law, or as established by international organizations which are recognized by the law of Vietnam (except for branches of foreign banks operating in Vietnam).
2. *Interest rate swap transaction* means the parties sign a contract with each other pursuant to which each party undertakes to remit to the other party a sum of money being interest calculated at one predetermined type of swap interest rate on a nominal capital amount for a predetermined term.
3. *Nominal capital amount* of any one interest rate swap transaction means the amount of money which the parties conducting the interest rate swap transaction agree as the basis for calculation of the amount of interest payable, the amount of interest receivable, and the net interest of the interest rate swap.
4. *Amount of net interest for each period* of any one interest rate swap contract means the difference between the amount of interest receivable and the amount of interest payable for each payment period of such contract.
5. *Payment period* of net interest means the time within the term of an effective interest rate swap contract as agreed between the parties, at the expiry of which the parties shall conduct payment as between each other of net interest.

Article 4 *Circumstances in which interest rate swap transactions are permitted to be conducted:*

1. Interest rate swap in any one currency (either Vietnamese dong or a foreign currency).
2. Interest rate swap between two different currencies or a cross rate currency swap in which implementation of the swap of the nominal capital amount at the beginning of any one period shall be agreed as between the two parties, but it shall be mandatory that there be a swap of the nominal capital amount at the end of the period at the exchange rate agreed as from the date the contract takes effect.
3. An interest rate swap to commence in the future, in which the parties may agree about the future date from which transactions shall commence to have effect for payment.
4. Swap of accumulative interest income, in which the amount of interest payable and the amount of interest receivable shall be calculated at interest rates agreed on conditions based on fluctuations in the market exchange rate and market interest rates.

Article 5 *Conditions for conducting interest rate swap transactions*

1. A bank conducting interest rate swap transactions aimed at averting interest rate risks of a client must satisfy all the following conditions:
 - (a) Have equity of one trillion (1,000,000,000,000) or more VND or the equivalent.
 - (b) Satisfy the capital prudential ratios stipulated by the State Bank of Vietnam during business activities.
 - (c) Have rules on implementation of interest rate swap transactions which include measures for preventing risks.
 - (d) Have an aggregate net interest from all interest rate swap transactions which is a positive number; if this number is a negative number, the maximum it may reach shall be equal to five (5) per cent of the equity of such bank.
 - (dd) If the bank conducts interest rate swaps in a foreign currency, it must be authorized by the State Bank of Vietnam to conduct foreign exchange activities.
 - (e) If the bank conducts interest rate swap transactions between two currencies, it must comply with the provisions on foreign exchange control relevant to swap of nominal capital amount.
2. An enterprise or bank conducting interest rate swap transactions aimed at averting interest rate risks of the enterprise or bank itself must satisfy all the following conditions:
 - (a) Have an original transaction which has been implemented in accordance with the law of Vietnam. Such original transaction means one of the transactions of savings deposit, issuance or investment in valuable papers, lending, finance leasing, or purchase of goods by instalment payment.
 - (b) Have the financial capacity or have security as agreed by the two parties in order to discharge the obligation to remit the net interest amount payable to the bank.

Article 6 *Restrictions, time-limits and amount of interest rate swap nominal capital amount applicable to any one enterprise*

1. The term of any one interest rate swap contract shall be as agreed by the parties, but the maximum term shall not exceed the residual term of the contract for the nominal capital amount transaction.
2. The amount of nominal capital for interest rate swap transactions applicable to any one enterprise shall not exceed thirty (30) per cent of the bank's equity.

Article 7 *Swap interest rates*

The parties shall agree and undertake in the interest rate swap contract on the interest rates for conducting interest rate swap transactions.

Article 8 *Determination of aggregate net interest*

Aggregate net interest of interest rate swap transactions of any one bank at any one time means the aggregate amount of net interest on all interest rate swap contracts which are currently effective at such time.

The amount of net interest on one interest rate swap contract at any one time means the total of all the amounts of net interest of each period of all the periods currently effective of the interest rate swap contract, calculated at the interest rates as agreed and on the balance of the nominal capital amount at such time.

Article 9 *Remittance of amount of net interest for each period*

1. The parties shall remit money as between each other being the amount of net interest for each period arising from a signed interest rate swap contract.
2. The term for remittance of the amount of net interest for each period shall be as agreed by the parties, but shall be a maximum of one year.
3. If remittance of the amount of net interest is made in a foreign currency, the parties must do so in compliance with the law on foreign exchange control.
4. If remittance of the amount of net interest is made offshore, the parties must do so in compliance with the law on remittance of money overseas.

Article 10 *Interest rate swap contracts*

All interest rate swap transactions must be established in the form of an interest rate swap contract. Based on the sample contract form issued by the International Swap and Derivatives Association (ISDA), the parties may agree on the form of an interest rate swap contract which complies with article 1 of these Regulations and which contains the following main particulars:

1. Names and addresses, telephone and fax numbers, and representatives of the parties signing the contract.
2. Amount of the nominal capital, interest rates, and schedule for payment of principal and interest on the nominal capital amount.
3. Effective term of the contract.

4. Interest rates agreed to act as swap interest rates.
5. Period for payment of amount of net interest.
6. Method of calculation of amount of net interest in each period and method for payment.
7. Amount of any collateral deposit or advance deposit by an enterprise in order to guarantee payment of net interest.
8. Rights and obligations of the two contracting parties.
9. Circumstances in which the contract shall be subject to early termination.
10. Procedures for dispute resolution and liquidation of the contract.

Article 11 *Accounting and risk reserves*

1. Banks must account for all interest rate swap transactions and must establish a risk reserves fund in accordance with regulations of the State Bank of Vietnam.
2. Enterprises must account for all interest rate swap transactions and must establish a risk reserves fund in accordance with the relevant law on enterprise accounting and finance.

Article 12 *Registration and reporting on conduct of interest rate swap transactions*

1. Any bank which fully satisfies the conditions in article 5.1 of these Regulations shall, on the initial occasion when it conducts an interest rate swap transaction, provide written notice of registration of the conduct of interest rate swap transactions to the State Bank of Vietnam (Department of Monetary Policy).
2. On a monthly basis, at the latest by the tenth day of the following month, banks which have registered with the State Bank of Vietnam to conduct interest rate swap transactions must provide a report to the State Bank of Vietnam (Department of Monetary Policy) on the form issued in the Appendix with these Regulations.

Article 13 *Organization of implementation*

Based on these Regulations, other relevant laws and international practice, banks shall issue their own rules for the conduct of interest rate swap transactions consistent with the conditions, particular characteristics and financial capability of such bank.

On behalf of the Governor of the State Bank
Deputy Governor

TRAN MINH TUAN