



Global Legal Group

**QUESTIONS FOR
THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO**

SECURITISATION 2011

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DEFINED TERMS:

- **Accounts receivable:** payment obligations arising from sales of goods or services; book debts.
- **Consumer:** an obligor that purchases goods or services or borrows money primarily for personal, family or household use.
- **Continuous sales:** a seller agrees in a contract to sell all of its receivables to the purchaser automatically as they come into existence, against payment out of collections and (if available) additional funding advances, rather than selling specific identified receivables on a periodic (*e.g.*, weekly or monthly) basis.
- **Contract:** an agreement or other legal relationship between the obligor and the seller which gives rise to, evidences or governs a receivable.
- **Effective Sale:** a sale that (i) allows the purchaser to enforce the debts directly against the obligors; (ii) prevents the obligor and the seller from amending the receivables contract without the purchaser's consent; (iii) prevents the obligor from setting off the receivables against any obligations of the seller to the obligor; and (iv) requires the obligors to pay the purchaser rather than the seller.
- **Insolvency official:** a bankruptcy trustee, receiver, administrator, debtor-in-possession or other representative of the seller or its creditors in an insolvency proceeding or the court or other tribunal conducting the proceeding.
- **Insolvency proceeding:** bankruptcy, insolvency, liquidation, administration, or other legal proceeding under insolvency laws.
- **Obligors:** persons obligated to make payments under receivables.
- **Persons:** individuals, enterprises, government entities or other entities.
- **Perfected:** a sale or a security interest is effective against (i) the seller; (ii) creditors of the seller; (iii) an insolvency official; and (iv) another person (if any) that acquires the same receivables after they were acquired by the purchaser.
- **Purchaser:** a special purpose entity, financial institution or other entity that acquires receivables from a seller.
- **Receivables:** accounts receivable, loans, lessee's lease obligations, promissory notes, mortgages, debt securities or other rights of a seller to receive payments.

- **Related security:** the seller's rights under the receivables contract relating to the receivable, the seller's rights under other contracts (if any) relating to the receivable, all related insurance and other guarantees of payment of the receivable, and all assets securing payment of the receivable.
- **Sale:** an outright sale, assignment or transfer of ownership of or other interest in receivables.
- **Security interest:** a mortgage, pledge, collateral assignment, consensual lien or charge or other interest granted to a creditor to secure payment of a debt or other obligation.
- **Seller:** an enterprise that originates, acquires or otherwise owns receivables.
- **True sale:** a transaction that will be enforced by a court as a perfected sale and not as a secured loan.

QUESTIONS

1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller, (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a receivable “contract” be deemed to exist as a result of behaviour of the parties?

As provided by Vietnamese laws, contracts can be made orally, in writing or by specific acts. Accordingly, in general, it is not necessary that the sales of goods or services are evidenced by a formal receivables contract. Thus, invoices alone may be sufficient and a receivable contract can be deemed to exist as a result of behaviour of the parties. However, with some kinds of sales of goods or services, it is required by the laws that they are evidenced by a formal receivable contract, such as: contract for sales and purchase of real estate, registered properties, etc...

1.2 Consumer Protections. Do Vietnam laws (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

(a) Yes, rates of interest on consumer credit, loans or other kinds of receivables are limited by laws which are not exceeded 150% of the basic interest rate announced by the State Bank of Vietnam from time to time. (b) Yes, in case of late payments, it is provided by laws that the interest on late payments shall be the basic interest rate announced by the State Bank of Vietnam at the time of payment corresponding to the period of late payments. (c) No, the laws do not permit consumers individually cancel receivables for a specified period of time. In general, receivables can only be cancelled if (i) agreed by both parties or (ii) by one party upon violation of the other party. (d) Recently, the Law on Consumer Protection has been adopted by the National Assembly of Vietnam. The Law provides some measures of protection to consumers, such as: if there is a different interpretation to provisions of a contract wherein consumer is one of the parties, the interpretation that favour consumer shall be applied; information of consumers can not be disclosed unless it is requested by the state authorities or agreed by the consumers themselves.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

Yes, in many cases where the government or a government agency is one of the parties in a receivables contract, specific requirements and laws shall be applied. For example, bidding procedure under the Law on Tendering shall be applied for contracts on purchase of goods/services wherein the government or a government agency is one of the parties while application of such procedure is optional to contract between non-government organizations or entities.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in Vietnam that will determine the governing law of the contract?

As provided by laws, for determining the governing law of the contract to which the seller and the obligor do not specify a choice of law, the following principles shall be applied by order from the highest to the lowest:

- (1) Provision of treaty to which Vietnam is contracting party (if any);
- (2) Specific laws;
- (3) The Civil Code.

And, if legal documents have different provisions on the same issue, the document of higher legal effect shall prevail.

2.2 Base Case. If the seller and the obligor are both resident in Vietnam, and the transactions giving rise to the receivables and the payment of the receivables take place in Vietnam, and the seller and the obligor choose the law of Vietnam to govern the receivables contract, is there any reason why a court in Vietnam would not give effect to their choice of law?

The choice of Vietnamese laws in this circumstance is not only the right of the seller and the obligor but also their duty. And, since it is required that the relevant receivables contract must be governed by the laws of Vietnam, the court is required to respect such choice of Vietnamese law.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in Vietnam but the obligor is not, or if the obligor is resident in Vietnam but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in Vietnam give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such that between the seller and the obligor under the receivables contract?

In general, if the obligor or the seller is resident in foreign country, the choice of foreign law is acceptable in most of cases but not all. For example, the court of Vietnam would not give effect to the choice of foreign law if receivables are immovable properties in Vietnam.

As a principle, the recognition of foreign law is limited/prohibited in case that such foreign law is contrary to the provisions or main principles of Vietnamese laws.

2.4 CISG. Is the United Nations Convention on the International Sale of Goods in effect in Vietnam?

No, Vietnam is not a member of CISG.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does Vietnam law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., Vietnam laws or foreign laws)? Are there any exceptions to this rule that would apply to receivables sale transactions?

Actually, the laws of Vietnam are not clear as to whether the governing law of the sale of receivables and of the receivables themselves must be the same. However, it is interpreted that Vietnamese laws respect the choice of laws of parties to a receivable contract provided that the application of such laws is not contrary to the basic principles of the laws of Vietnam. It means that, the law governing the sale of receivables and the law governing receivables themselves may be different. However, some exceptions as mentioned in answers from 2.1 to 2.3 above are still required to apply.

3.2 Freedom to Choose Other Law. If (a) the receivables are governed by one country's laws (whether Vietnam laws or foreign laws), (b) the seller sells the receivables to a purchaser located in a third country, and (c) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, will a court in Vietnam give effect to their choice of foreign law? Are there any exceptions to this rule that would apply to receivables sale transactions?

As stated in question 2.3 above, in some cases, the contract is required to comply with Vietnamese laws regardless of the residence of the contracting parties. In this regard, if the receivables purchase agreement relates to the immovable in Vietnam, the court in Vietnam would not give effect to their choice of foreign law. For example, the prevailing Civil Code provides that the determination of the ownership rights to

civil aircraft and sea-going vessels in Vietnam must comply with the law on civil aviation and the maritime law of Vietnam.

3.3 Freedom to Choose Home Country Law. Conversely, if (a) another country's law governs the receivables (e.g., a foreign obligor's country), and (b) the seller and purchaser are resident in Vietnam, will a court in Vietnam permit the seller and purchaser to choose the law of Vietnam to govern the receivables sale? Will a court in Vietnam permit the seller and purchaser to choose the law of Vietnam to govern the receivables sale if only one of the seller or the purchaser are resident in Vietnam? Are there any exceptions to this rule that would apply to receivables sale transactions?

Vietnamese laws also can be applied to transactions evolving foreign elements (e.g. receivables governed by foreign law). Thus, if the seller and purchaser are resident in Vietnam or if only one of them is resident in Vietnam, it is quite possible for a court in Vietnam to permit the seller and the purchaser to choose Vietnamese law to govern the receivables sale. The exception to this rule is that if legal documents of Vietnam or the treaties to which Vietnam is a contracting party refer to the application of foreign laws, such foreign laws shall be applied if the consequence thereof is not contrary to the basic principles of the laws of Vietnam.

3.4 Recognition of Foreign Law Sales. If (a) both the receivables contract and the receivables purchase agreement are governed by the same foreign law, and (b) the requirements for a true sale have been fully met under that foreign law, will a court in Vietnam recognise that sale as being effective against the seller, the obligors and other third parties (such as creditors or insolvency administrators of the seller and the obligors) without the need to comply with Vietnam's own sale requirements? Are there any exceptions to this rule?

No, one of the principles of Vietnamese laws on recognizing foreign law is that the application of foreign law is not contrary to the laws of Vietnam. Therefore, a court would not recognise that sale as being effective against the seller, the obligors and other third parties without the need to comply with Vietnamese requirements. No exceptions to this rule.

4 Asset Sales

4.1 Sale Methods Generally. In Vietnam what are the customary methods for a seller to sell receivables to a purchaser?

In Vietnam, receivables are normally sold from a seller to a purchaser by transferring the outright rights, title and interest in, to and under the receivables.

4.2 Perfection Generally. What formalities are required generally for perfecting (i.e., making enforceable against other creditors of the seller) a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

The sales of receivables are normally carried out in the forms of writing. In some particular cases, the sales of receivables required to be notarized or registered at the competent authorities or permitted by the relevant authorities. For example, for sales of receivables being real estate, it is required the relevant contract to be notarized.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Requirements for sale and perfection applied to sales of promissory notes, mortgage loans, consumer loans and marketable debt securities are different.

Promissory notes

A sale of promissory notes could be made in either form of (1) endorsement; or (2) delivery. There are some specific requirements on sale of promissory notes, such as: sale of a part of the sum stated in the promissory note shall be invalid; sale of the promissory note to two or more persons shall be invalid; sale of the promissory note by endorsement must be unconditional; the endorser shall not be allowed to write any conditions on the promissory note. All conditions accompanying the endorsement shall be invalid; sale of a promissory note would be the sale of all rights arising from such promissory note...

Mortgage loans

As provided by law, a mortgage loan must be made in writing. Particularly, some of mortgage loan contracts are required to be notarised and registered with the state authority. For example, mortgage loans relating to land use right are required to be notarised and registered with Ministry of Justice of Vietnam.

Consumer loans

In general, consumer loan contracts are made in form of writing with acknowledgement of relevant parties by signing in such contracts, without the needs of being notarized or registered.

Marketable debt securities

There exists no specific requirement for sale and perfection applied to sales of marketable debt securities except conditions on offering (selling) marketable debt securities to public by an enterprise. Accordingly, in order to offer marketable debt securities to public, an enterprise must: (1) have its paid-up charter capital at the time of registering for public offering of at least VND 10 billion in book value; (2) being profit-making in the year preceding the year of such registration for offering, having no accumulated losses up to the year of registration for offering or overdue debts over than 1 year; (3) having a plan for offering and use and refund of capital received from the offering approved by the Board of Management, the Board of Members or the enterprise's owner (4) Having commitments to fulfil obligations of the issuer towards investors, regarding the conditions for issuance and payment, ensuring the investors' legitimate rights and interests and other conditions.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Does the answer to this question vary if (a) the receivables contract does not prohibit assignment but does not expressly permit assignment; or (b) the receivables contract expressly prohibits assignment? Are there any limitations regarding the purchaser notifying the obligor of the sale of receivables even after the insolvency of the seller or the obligor?

In general, it is not required by Vietnamese laws that the seller has to notify the obligor in writing when carrying out the sale of such receivables in order for the sales to be an effective sale against the obligors. However, the consent of the obligors would be required for the receivables sale contract if such consent from the obligor to the seller is required in an agreement made by relevant parties.

In a sale of receivable, agreement between the parties shall be firstly respected if it is not contrary to the laws. Accordingly, in general, in case that the receivables contract does not prohibit assignment, the seller is not required to notify the obligor. And, if the receivables contract does not expressly permit assignment or prohibits assignment, the seller must obtain the obligor's consent before the sale of such receivable.

It is the obligation of only the seller to notify the obligor of the sale of receivables, not the purchaser.

4.5 Restrictions on Assignment; Liability to Obligor. Are restrictions in receivables contracts prohibiting sale or assignment generally enforceable in Vietnam? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If Vietnam recognises prohibitions on sale or assignment and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or on any other basis?

Provisions restricting sale and assignment in receivables contracts are enforceable in Vietnam. Moreover, agreements in forms other than written contract limiting sale and assignment of receivables are also enforceable.

If the seller sells receivables to another party including the purchaser even though receivables contracts contains provisions prohibiting sale or assignment, it shall have to compensate the obligor for material damage and/or suffer a contract penalty in accordance with terms and conditions of receivables contract and regulations of relevant laws.

4.6 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables?

Identification of receivables shall not be required and specifically stated unless it is considered as the essential information of them. However, documents relating to the receivables (if any) must be transferred to the purchaser by the seller.

4.7 Respect for Intent of Parties; Economic Effects on Sale. If the parties denominate their transaction as a sale and state their intent that it be a sale will this automatically be respected or will a court enquire into the economic characteristics of the transaction? If the latter, what economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain (a) credit risk; (b) interest rate risk; and/or (c) control of collections of receivables without jeopardising perfection?

As Vietnamese laws do not distinguish between true sale and secured loan, there is no definitive answer for these questions.

4.8 Continuous Sales of Receivables. Can the seller agree in an enforceable manner (at least prior to its insolvency) to continuous sales of receivables (i.e., sales of receivables as and when they arise)?

Yes, a seller can agree to continuous sale of receivables.

4.9 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., “future flow” securitisation)? In that regard, is there a distinction between receivables that arise prior to or after the seller’s insolvency?

Yes, in principle, the seller can commit to sell receivables which come into existence in the future. In theory, receivables arising within three months prior to the seller’s insolvency or in the time of insolvency proceeding can be reversed to and treated as assets of the seller for paying its remaining debts. For more details, please see answers to questions in section 6 below.

4.10 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

In principle, related securities are required to be transferred together with the sale of receivables. In some cases, re-registration of the contract with the competent authorities of Vietnam is required. For example,

the sale of receivable being the rights to a mortgaged loan shall require to be re-registered with the competent authority of Vietnam.

5 Security Issues

5.1 Back-up Security. Is it customary in Vietnam to take a “back-up” security interest over the seller’s ownership interest in the receivables and the related security, in the event that the sale is deemed by a court not to have been perfected?

No, it is not customary and there exists no provision of Vietnamese laws providing the same.

5.2 Seller Security. If so, what are the formalities for the seller granting a security interest in receivables and related security under the laws of Vietnam, and for such security interest to be perfected?

Generally, under Vietnamese laws the common formality for granting security interest and related security is in writing (i.e. contract, or other documents). And in some cases, for perfection, a security interest in receivables and related security are required to be notarized and registered at the state authority of Vietnam.

5.3 Purchaser Security. What are the formalities for the purchaser granting a security interest in receivables and related security under the laws of Vietnam, and for such security interest to be perfected?

Vietnamese laws do not distinguish between the granting of security interest of seller and of the purchaser. Therefore, the answer for this question is the same with the answer of question 5.2.

5.4 Recognition. If the purchaser grants a security interest in the receivables under the laws of the purchaser's country or a third country, and that security interest is valid and perfected under the laws of that other country, will it be treated as valid and perfected in Vietnam or must additional steps be taken in Vietnam?

It will not be automatically treated as valid and perfected in Vietnam. However, it could be treated as valid, perfected and enforceable in Vietnam if simultaneously satisfying the conditions that (i) it is not contrary to Vietnamese laws; and (ii) it is judged and recognized by Vietnamese competent court to be enforceable in Vietnam.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to promissory notes, mortgage loans, consumer loans or marketable debt securities?

Please see the answers to question 4.3.

5.6 Trusts. Does Vietnam recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller’s own assets until turned over to the purchaser?

If trusts are identified as a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller’s own assets until turned over to the purchaser, it is recognised by the law of Vietnam.

5.7 Bank Accounts. Does Vietnam recognise escrow accounts? Can security be taken over a bank account located in Vietnam? If so, what is the typical method? Would courts in Vietnam recognise a foreign-law grant of security (for example, an English law debenture) taken over a bank account located in Vietnam?

Yes, Vietnam recognises escrow accounts. And, security can be taken over a bank account in Vietnam by escrow deposits. Courts in Vietnam may recognise a foreign-law grant of security taken over a bank account located in Vietnam.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will Vietnam's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables ("automatic stay")? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

Vietnamese insolvency laws do not automatically prohibit purchaser from exercising ownership rights when the sale of receivables is conducted even in a short time before the seller becomes subject to an insolvency proceeding. However, if the sale of receivables is considered to be carried out for the purpose of dispersing assets of the seller and is made within three months before the time the seller is subject to the insolvency proceeding, it may be declared invalid by the court. In such a case, the purchased receivables shall be revoked and treated as assets for paying the debts of the seller.

If the sale agreement is being performed or shall be performed by the seller and the purchaser, it can be suspended if the court considers that the suspension of performance of such agreement is necessary to create advantages for the seller in the insolvency proceeding. Under such circumstance, the purchaser shall have the same rights as an unsecured creditor.

This answer also applies for the case that the purchaser is deemed to only be a secured party.

6.2 Insolvency Official's Powers. If there is no automatic stay, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of rights (by means of injunction, stay order or other action)?

Generally, insolvency official does not have the power to prohibit the purchaser from exercising its rights if it is not subject to the cases mentioned in the answer to question 6.1. However, in case where the purchaser is considered to be a party who has the relationship with the seller, the competent court could issue a decision to impose a temporary injunction measure to prohibit the performance and/or order compulsory performance of a number of specified acts by the purchaser.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the insolvency proceeding? What are the lengths of the "suspect" or "preference" periods in Vietnam for (a) transactions between unrelated parties and (b) transactions between related parties?

If a transaction is conducted between the seller and other parties within three months before the commencement of the insolvency proceeding, it could be subject to the declaration of invalidity made by the court. Circumstances for such transaction to be declared invalid as stipulated by Article 43 of the Bankruptcy Law consist of the followings: (i) Donation of moveable or immovable property to another person; (ii) settlement of a bilateral contract in which the obligation of the party who is in insolvency proceeding is clearly larger than that of the other party; (iii) payment of an undue debt; (iv) conducting the mortgage or pledge of assets in respect of debts; (v) other transactions for the purpose of disposing of assets of the enterprise or co-operative.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding?

Not as such.

6.5 Effect of Proceedings on Future Receivables. What is the effect of the initiation of insolvency proceedings on (a) sales of receivables that have not yet occurred or (b) on sales of receivables that have not yet come into existence?

The fact of being in an insolvency proceeding of the seller could cause some uncertainties to sales of receivables that have not yet occurred and sales of receivables that have not yet come into existence. First, in insolvency proceeding, estates of the seller shall be strictly supervised by the insolvency official and could be processed for paying the remaining debts of the seller. Such payment shall follow a fixed order regulated by the Bankruptcy Law. Second, it would be a risk for parties sale agreements executed around the time of commencement of insolvency proceeding because of the likelihood that such agreements could be rejected or suspended by the court in circumstances mentioned in the answers to question 6.1, 6.2 and 6.3 above.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in Vietnam establishing a legal framework for securitisation transactions? If so, what are the basics?

Not as such.

7.2 Securitisation Entities. Does Vietnam have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

Not as such.

7.3 Non-Recourse Clause. Will a court in Vietnam give effect to a contractual provision (even if the contract's governing law is the law of another country) limiting the recourse of parties to available funds?

Under Article 35 of the Law on Bankruptcy, where the judge issues a decision to commence liquidation procedures against an enterprise or co-operative, debts which were secured by assets mortgaged or pledged prior to the court accepting jurisdiction over a petition to commence bankruptcy procedures shall have the right to priority payment by such assets; if the value of the mortgaged or pledged property is insufficient to pay the amount of the debt, the outstanding part of the debt shall be paid during the process of liquidation of assets of the enterprise or co-operative; and if the value of the mortgaged or pledged property is greater than the amount of debt, the difference shall be included in the value of the remaining assets of the enterprise or co-operative. This provision does not limit the recourse of parties to available funds in case of a secured claim. As such, the non-recourse clause is not satisfactory to the laws of Vietnam and, therefore, is not applied and courts will not give effect to this clause in Vietnam.

Pursuant to Civil Code of Vietnam, in the case where the Civil Code, another legal instrument of Vietnam, or an international treaty of which Vietnam is a member provides for the application of foreign law, the law of such foreign country shall apply its application or the consequences of its application are not inconsistent with the fundamental principles of the law of Vietnam. A foreign law may also apply where the parties so agree in a contract provided that such agreement does not conflict with the Civil Code or any other legal instruments of Vietnam. In fact, in interpreting the non-recourse clause, courts will analyze their language in an attempt to determine the intent of the parties. Courts will enforce the agreement of the parties, giving the contract language its normal and usual meaning. Courts generally will give effect to a non-recourse provision in a contract where the governing law of that of another country, unless the enforcement of that provision would offend the fundamental principles of the laws of Vietnam.

7.4 Non-Petition Clause. Will a court in Vietnam give effect to a contractual provision (even if the contract's governing law is the law of another country) prohibiting the parties from: (a) taking

legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

“Covenants not to sue” generally are governed by the laws of Vietnam, and courts will interpret them in accordance with the existing laws and based on provisions of the contracts made and signed by the parties therein. Courts may enforce covenants not to sue that are negotiated in business transactions. However, they will not enforce covenants not to sue that violate applicable law and/or policy of the State.

Courts generally will also enforce contractual provisions prohibiting parties from commencing an involuntary insolvency proceeding against a purchase or another person. Like covenants not to sue, courts will interpret these provisions in accordance with the existing laws and the contracts between/among parties. However, covenants preventing entities from filing voluntary bankruptcy petitions probably are unenforceable.

7.5 Independent Director. Will a court in Vietnam give effect to a contractual provision (even if the contract’s governing law is the law of another country) or a provision in a party’s organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

An agreement by an entity not to file a voluntary bankruptcy petition may be unenforceable as the petition is considered as the legal right of a director.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in Vietnam, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in Vietnam? Does the answer to the preceding question change if the purchaser does business with other sellers in Vietnam?

Receivables purchase and ownership generally do not subject a purchaser to licensing or other qualification requirements to do business in Vietnam, although there may be exceptions to this rule depending on the type of receivables (including without limitation those who must satisfy conditions of capital or license or other conditions prior to doing business). Collection and enforcement activities are more likely to require an entity to obtain a license and qualify to do business.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

The laws of Vietnam require some legal business activities governed by an entity are legal only if that entity complies with conditions of capital or license or other conditions depending on the kind of receivables. Therefore probably it is necessary for seller/servicer to require licenses in a specific situation for a certain type of receivables.

8.3 Data Protection. Does Vietnam have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

Confidential consumer information cannot generally be disclosed to third parties and can only be used for the purposes for which such information was provided, except where the State agencies have jurisdiction request.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of Vietnam? Briefly, what is required?

Consumer protection law of Vietnam shall be in force as of July 01, 2011 pursuant to which a purchaser may be liable for the acts of the seller originating the receivables, as these liabilities are considered to pass to the holder of the receivables. Also, a purchaser could be subject to the provisions on consumer protection in a certain field of law, including with not limited law on credit institutions or law on lawyers.

8.5 Currency Restrictions. Does Vietnam have laws restricting the exchange of Vietnam's currency for other currencies or the making of payments in Vietnam's currency to persons outside the country?

The laws of Vietnam have legalized the anti-money laundering, including law on credit institutions and Decree No. 74/2005/ND-CP dated June 07, 2005 of the Government on prevention and combat of money laundering pursuant to which the financial institutions shall be responsible for developing processes of obtaining and updating information and procedures for identifying clients in order to prevent the transfer of cash to certain prohibited persons.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in Vietnam? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located?

Payments of interest to the seller or the purchaser by the obligors who are (domestic or foreign) persons on interest-bearing debt obligations are subject to Vietnamese withholding tax if the seller or the purchaser is foreign businesses with or without Vietnam-based permanent establishments, and resident or non-resident foreign businessmen doing business in Vietnam or earning incomes in Vietnam under contracts, agreements or commitments between them and Vietnamese organizations and individuals (collectively referred to as foreign contractors) or between them and foreign contractors to perform part of contractor agreements. Such seller/purchaser shall pay value-added tax and enterprise income tax under the laws of Vietnam and the seller/purchaser shall pay value-added tax and personal income tax under the law of Vietnam. In addition, the above-mentioned seller/purchaser shall pay other taxes, fees and charges in accordance with the existing laws on taxes, fees and charges. The statutory rate of Vietnamese withholding tax depends on kind of receivables in a certain situation.

9.2 Seller Tax Accounting. Does Vietnam require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

All taxpayers are required to use the accrual method of accounting.

9.3 Stamp Duty, etc. Does Vietnam impose stamp duty or other documentary taxes on sales of receivables?

Depending on a certain kind of receivables but not all, Vietnam imposes stamp duty. The stamp duty is clearly provided in Decree No. 176/1999/ND-CP dated December 21, 1999 of the Government on the stamp duty, Circular No. 68/2010/TT-BTC dated April 26, 2010 of the Ministry of Finance making guidelines for the stamp duty and other guidelines. As such, Vietnamese persons and foreign persons in Vietnam which have receivables being subject to the payment of the stamp duty must pay the stamp duty prior to registration of ownership rights and use rights to the competent authorities of Vietnam, although there may be some exceptions in a certain situation under the laws of Vietnam. The rate of the stamp duty shall be calculated as a percentage of the value of the receivable subject to payment of the stamp duty, and every kind of receivables shall have the different rate of the stamp duty from time to time (for

instance, land and housing: 0,5%; motorized river transport vehicles, fishing vessels and aquaculture transport vehicles (including hulls, chassis and complete sea-going vessels):1%, deep-sea fishing boats (including hulls, chassis and replacement complete engines): 0,5%; and so on).

9.4 Value Added Taxes. Does Vietnam impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

There are no value-added, sales or similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services.

9.5 Purchaser Liability. If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

In the event that the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, the taxing authority may make claims for the unpaid tax against the purchaser or against the sold receivables or collections.

9.6 Doing Business. Assuming that the purchaser conducts no other business in Vietnam, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in Vietnam?

If the purchaser is a foreign business with or without Vietnam-based permanent establishments, and resident or non-resident foreign businessmen doing business in Vietnam or earning incomes in Vietnam under contracts, agreements or commitments between them and Vietnamese organizations and individuals (collectively referred to as foreign contractors) or between them and foreign contractors to perform part of contractor agreements, that purchaser will be required to pay Vietnam withholding tax on any income that is connected with its purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors.