

1. The banking institution didn't enjoy the full autonomy and bear full responsibility for their business and suffered from government intervention at times. The following are some of risks facing state-owned banks.

- Decree 49/CP dated May 6, 1997 allows state-owned companies to get fiduciary loans from state-owned commercial banks. This is a preferential treatment leading to unequal opportunity. This also means that the state-owned commercial banks will suffer bad consequences when the company borrowers become insolvent because of any risks.

- Official Letter 417-CV/NH14 issued by the SBV Governor on May 31, 1997 on urgent measures relating to the banking service requires state-owned banks to supply loans to loss-making state-owned companies if they have feasible business plans approved by ministries or provincial



Shortcomings in the Banking System During the Economic Reform

by MEcons NGUYỄN CAO CHÍ & NGUYỄN HẢI HÀ

governments; and to supply loans beyond the credit line to the following borrowers: importers of fertilizer, purchasers of rice for export, peasants suffering from force majeure, and borrowers supported by the central governments. This regulation exposes state-owned banks to more risks.

- Inter-departmental Circular 03/1997/TTLT issued jointly by the SBV and the Ministry of Finance directs state-owned banks to write off debts from insolvent borrowers against retained profit and reserve for bad debts. This requirement affected unfavorably on banks' business performance because they are forced to pay interest to depositors when receiving no payment from those borrowers.

2. There is no legal infrastructure for by-laws relating to the supply of bank loan while current regulations



didn't cover all possibilities and contingencies, which made it difficult to realize them.

Many banking regulations are inconsistent and fail to distinguish between normal credit, preferential credit and government-required credit. The bulk of subordinate legislation relating to the banking service fails to spell out legal responsibility of creditors and borrowers with the result that violations of business contracts are tried according to criminal codes, which made banking institutions reluctant to supply big loans and invest in feasible business plans.

Too many governmental bodies are authorized to make banking regulations: the SBV, the Ministry of Finance (controlling the Fund for Development), the Ministry of Labor - War Invalids and Social Affairs (controlling the Fund for Job Creation), and the Ministry of Trade (controlling pawnbroker service). And as a result, these regulations overlap, and sometimes contradict, one another.

SBV Decision 324/1998/QĐ-NHNN1 was issued after the State Bank Law and Banking Institutions Law have posed difficulties for banking institutions in realizing it when supplying credit and reduce their autonomy in business.

3. Some regulations about mortgage and guarantee service are not appropriate enough, such as Decree 49/CP dated May 6, 1997 which requires state-owned banks to supply loans to state-owned companies based on their business plans, not on mortgaged assets. These regulations also divide borrowers into two groups:

- Borrowers eligible for fiduciary loans: state-owned companies getting loans from state-owned banks; individuals borrowing less than VND10 million (according to PM Decision 67/1999/QĐ-TTg dated March 30, 1999); and poor families getting loans from the Bank for the Poor.

- The rest are all other borrowers (including state-owned companies) getting loans from joint stock commercial banks, branches of foreign banks and joint venture banks.

This division prevents banking institutions, especially the state-owned ones, from enjoying their full autonomy and bearing their full responsibility, and potential borrowers from enjoying equal treatment from banks. Moreover, it also prevents joint stock banks from attract more customers because many private companies have sound business

plans but have not valuable assets to mortgage to banks. If the bank decides to supply fiduciary loans to such customers, the banking authorities could be blamed for the failure to ensure safety for banking institutions.

In addition, the procedures for mortgaging assets are complex and time-consuming with the result that companies may miss business opportunities before they can get necessary loan. This failure, in its turn, leads to more risks to both borrowers and banks. This 'asking and giving-based' mechanism pays only a little attention to creditworthiness and capabilities of customers and gives preferential treatment to state-owned companies, which encourage them to rely more on the government support than their potentials.

The regulation that allows state-owned companies to get fiduciary loans from state-owned banks is also unsuitable for the Business Bankruptcy Law. If a state-owned company goes bankrupt, the state-owned bank that provided the company with fiduciary loans will never get repaid because unsecured loans aren't taken into the debtor's assets.

4. The regulation that requires the mortgage contract to be certified by the public notary leads to waste of time and money for both borrowers and banks when the network of notary service hasn't developed to the fullest and their responsibility hasn't been clarified by law. Therefore this regulation didn't help ensure safety for the parties engaged in the mortgaged contract.

Up till now, there is no regulation about settlement of mortgaged assets when the borrowers fail to pay interest and principal on time and roles of the banking institutions and other government agencies. That is why many mortgaged assets are left unsettled in the hands of banks, many mortgagors refuse intentionally to hand the assets to banks, many violations of the mortgage contract aren't handled properly, and the proportion of bad debt in banks keeps on rising.

Until recently, the deposit insurance mechanism has been perfected by Decree 165/1999/NĐ-CP dated Nov. 19, 1999 on "guaranteed transaction" and Decree 178/1999/NĐ-CP dated Dec. 29, 1999 on "deposit insurance for banking institutions." However, many guidelines and circulars from ministries are needed for making these decrees to produce intended results.

As for mortgaged assets with ownership certificates, the banks are

allowed to keep original certificates and borrowers are allowed to keep using the assets for their business. This regulation seems unsuitable for current conditions in Vietnam because of the following reasons:

- The most common assets to mortgage to banks are real estate and certificates of land use right, but many companies and individuals couldn't mortgage them because the procedure for getting such certificates and title deeds is very time-consuming. As for other assets, such as machines and production lines, the owners have to apply for certificates of ownership. Such paperwork prevents a lot of customers from getting bank loans.

- The Civil Code provides regulations about mortgage contracts but subordinate legislation isn't sufficient enough to facilitate the application of the Code.

5. Bank officials differ widely in their knowledge and interpretation of banking laws and regulations with the result that the regulations are applied at their will. Many officials fail to observe these regulations. Some of them even connive with customers to milk money from the banks. In certain major state-owned banks, such as Bank for Industry and Commerce and Bank for Foreign Trade, many violations are common, such as failure to buy deposit insurance or underestimate of value of mortgaged assets. The task of inspection and information in many banks haven't been carried out properly with the result that a customer could secure loans from different banks by mortgaging the same assets. Many bank officials allow mortgagors to keep the original title - deed or certificate, which easily leads to fraud, insolvency and other wrongdoings by borrowers' side.

In rural areas where most customers lack knowledge of banking regulations, many bank officials charge their customers interest rates higher than the ceiling set by the SBV or require the potential customers to pay a wide range of fees.

In our opinion, these shortcomings make the banking system less healthy, prevent it from contribute more to the economic development and create unnecessary obstacles to operation of companies and business circle in general. The banking regulations must be perfected and amended regularly to deal with these shortcomings as soon as possible when Vietnam is trying to integrate into the world market. ■