LOAN NUMBER 2707-VIE (SF)

# LOAN AGREEMENT
(Special Operations)

(Third Financial Sector Program - Subprogram 2)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 24 DECEMBER 2010

LPS: VIE 37577

**LOAN AGREEMENT**
**(Special Operations)**

LOAN AGREEMENT dated 24 December 2010 between the SOCIALIST REPUBLIC OF VIET NAM (the "Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 14 October 2010 which updates and supplements the original development policy letter dated 2 November 2007 (collectively the "Policy Letter"), setting forth certain objectives, policies and actions described in Schedule 1 to this Loan Agreement, designed to create a more diversified and resilient financial sector under a cluster of two (2) subprograms forming the Third Financial Sector Program (the "Program Cluster"), some of which have been implemented under the second subprogram of the Program Cluster (the "Program");

(B) the Borrower has applied to ADB for a loan from its Special Funds resources for the purposes of the Program; and

(C) ADB has, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

## ARTICLE I

## Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(24) is deleted and the following is substituted therefor:

> 24. The term "Program" means the second subprogram of the Program Cluster for which ADB has agreed to make the Loan, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Borrower.

(b) The term "Project" wherever it appears in the Loan Regulations shall be substituted by the term "Program".

(c) Section 2.01(26) is deleted and the following is substituted therefor:

26. The term "Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Loan Agreement.

(d) The term "Project Executing Agency" wherever it appears in the Loan Regulations shall be substituted by the term "Program Executing Agency".

(e) Section 6.05(c) is deleted and the following is substituted therefor:

(c) Promptly after the closing date for withdrawals from the Loan Account, but in any event not later than three (3) months thereafter or such later date as may be agreed for this purpose between the Borrower and ADB, the Borrower shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution of the Program, including its cost, the performance by the Borrower of its obligations under this Loan Agreement and the accomplishment of the purposes of the Loan.

Section 1.02. The terms defined in the Loan Regulations are incorporated into this Loan Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Counterpart Funds" means the Dong proceeds generated from the Loan proceeds under the Program and referred to in paragraph 3 of Schedule 1 and paragraph 1 of Schedule 5 to this Loan Agreement;

(b) "Deposit Account" means the account referred to in paragraph 4 of Schedule 3 to this Loan Agreement;

(c) "Dong" or the sign "VND" means dong in the currency of the Borrower;

(d) "Eligible Items" means the goods imported under the Program (except those specifically excluded pursuant to Attachment 1 to Schedule 3 to this Loan Agreement), the foreign exchange costs of which are eligible for financing out of the proceeds of the Loan;

(e) "HNX" means the Hanoi Stock Exchange of the Borrower, and any successor thereto;

(f) "Implementing Agencies" or "IAs" means the MOF, HNX, and VSD which are responsible for implementing parts of the Program as described in paragraph 2 of Schedule 5 hereto;

(g) "MOF" means the Ministry of Finance of the Borrower, and any successor thereto;

(h) "Policy Letter" means the development policy letters referred to in Recital (A) of this Loan Agreement;

(i) "Policy Matrix" means the revised policy matrix as agreed between

the Borrower and ADB and set out in the RRP which sets forth actions accomplished or to be accomplished by the Borrower under the Program Cluster and PPPF;

(j) "PPPF" means the post program partnership framework as agreed between the Borrower and ADB and set out in the Policy Matrix which sets forth actions accomplished or to be accomplished by the Borrower following completion of the Program Cluster Period;

(k) "Program Cluster" has the meaning specified in Recital (A) to this Loan Agreement;

(l) "Program Cluster Period" means the period from 1 January 2006 until 30 September 2010 during which the Program Cluster will be implemented;

(m) "Program Executing Agency" or "EA" means, for the purposes and within the meaning of the Loan Regulations, SBV, which is responsible for the carrying out of the Program;

(n) "Program Period" means the period from 1 March 2009 until 30 September 2010 during which the Program will be implemented;

(o) "PSC" means the Program steering committee, established under Subprogram 1, as described in paragraph 3 of Schedule 5 of this Loan Agreement, and any successor thereto;

(p) "RRP" means the Report and Recommendation of the President to the Board of Directors of ADB in relation to the Program;

(q) "SBV" means the State Bank of Viet Nam, and any successor thereto;

(r) "SSC" means the State Securities Commission of the Borrower, and any successor thereto;

(s) "Subprogram 1" means the first of two (2) subprograms which together form the Program Cluster; and

(t) "Viet Nam Securities Depository" or "VSD" means the Viet Nam securities depository of the Borrower, and any successor thereto.

## ARTICLE II

## The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to thirty eight million two hundred seventy one thousand Special Drawing Rights (SDR38,271,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 May and 1 November in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

## ARTICLE III

## Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Program in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan may be withdrawn from the Loan Account only for the purposes of financing foreign currency expenditures incurred for Eligible Items under the Program in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Eligible Items to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Withdrawals from the Loan Account shall be made only on account of expenditures relating to Eligible Items which:

(a) are produced in, and are supplied from, such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and

(b) meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. Except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account in respect of expenditures for Eligible Items incurred more than one hundred eighty (180) days prior to the Effective Date.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 May 2011 or such other date as may from time to time be agreed between the Borrower and ADB.

## ARTICLE IV

## Particular Covenants

Section 4.01. In the carrying out of the Program, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. (a) The Borrower shall maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Loan and to record the progress of the Program Cluster.

(b) The Borrower shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.03. (a) As part of the reports and information referred to in Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning the implementation of the Program Cluster, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter and Policy Matrix.

(b) Without limiting the generality of the foregoing or Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB semiannually reports on the carrying out of the Program Cluster and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter and Policy Matrix.

## ARTICLE V

## Effectiveness

Section 5.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Deposit Account shall have been nominated or opened as provided in paragraph 4 of Schedule 3 to this Loan Agreement; and

(b) all reform actions and measures, as specified in the Policy Matrix relating to the Program, shall have been taken or achieved and be completed to the satisfaction of ADB.

Section 5.02. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## ARTICLE VI

## Miscellaneous

Section 6.01. The Governor of SBV is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

State Bank of Viet Nam
47 - 49 Ly Thai To
Hanoi, Viet Nam

Facsimile Numbers:

+84 4 3825 0612
+84 4 3825 8385

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

+63 2 636 2444
+63 2 636 2388.

IN. WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

SOCIALIST REPUBLIC OF VIET NAM

By _____

NGUYEN VAN GIAU
Authorized Representative

ASIAN DEVELOPMENT BANK

By _____

AYUMI KONISHI
Country Director
Viet Nam Resident Mission

## SCHEDULE 1

### Description of the Program

1. The principal objectives of the Program Cluster are to expand the financial sector through improved capital markets; to introduce a wider range of legal and regulatory structures; and to create a more diversified, extensive, and more resilient financial sector. The scope of the Program Cluster includes reforms to: (a) enhance market liquidity by lowering transaction costs; (b) strengthen the institutional framework for securities issuance; (c) improve investor and consumer protection; and (d) promote regional cooperation in securities market regulation. The Program Cluster is described in more detail in the Policy Letter and the Policy Matrix.

2. The Program represents the second phase of the Program Cluster and Program actions are being implemented during the Program Period.

3. In support of the Program:

(a) the proceeds of the Loan shall be used to finance the foreign exchange costs of Eligible Items; and

(b) the Counterpart Funds shall be used to finance the local currency costs relating to the implementation of certain programs and other activities consistent with the objectives of the Program, pursuant to the provisions of paragraph 1 of Schedule 5 to this Loan Agreement.

4. The proceeds of the Loan are expected to be disbursed and utilized by 31 May 2011.

## SCHEDULE 2

### Amortization Schedule

### (Third Financial Sector Program - Subprogram 2)

| Date Payment Due | Payment of Principal (expressed in Special Drawing Rights)* |
|---|---|
| 1 May 2019 | 1,195,969 |
| 1 November 2019 | 1,195,969 |
| 1 May 2020 | 1,195,969 |
| 1 November 2020 | 1,195,969 |
| 1 May 2021 | 1,195,969 |
| 1 November 2021 | 1,195,969 |
| 1 May 2022 | 1,195,969 |
| 1 November 2022 | 1,195,969 |
| 1 May 2023 | 1,195,969 |
| 1 November 2023 | 1,195,969 |
| 1 May 2024 | 1,195,969 |
| 1 November 2024 | 1,195,969 |
| 1 May 2025 | 1,195,969 |
| 1 November 2025 | 1,195,969 |
| 1 May 2026 | 1,195,969 |
| 1 November 2026 | 1,195,969 |
| 1 May 2027 | 1,195,969 |
| 1 November 2027 | 1,195,969 |
| 1 May 2028 | 1,195,969 |
| 1 November 2028 | 1,195,969 |
| 1 May 2029 | 1,195,969 |
| 1 November 2029 | 1,195,969 |
| 1 May 2030 | 1,195,969 |
| 1 November 2030 | 1,195,969 |
| 1 May 2031 | 1,195,969 |
| 1 November 2031 | 1,195,969 |
| 1 May 2032 | 1,195,969 |
| 1 November 2032 | 1,195,969 |
| 1 May 2033 | 1,195,969 |
| 1 November 2033 | 1,195,969 |
| 1 May 2034 | 1,195,969 |
| 1 November 2034 | 1,195,961 |
| **Total** | **38,271,000** |

*The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

## SCHEDULE 3

### Withdrawal of Loan Proceeds

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Loan proceeds from the Loan Account.

2. (a) Withdrawals from the Loan Account shall be made for the financing of the cost of Eligible Items.

(b) No withdrawals from the Loan Account shall be made in respect of any expenditures which have been financed by credits from official international or bilateral aid agencies or any other loans and grants made by ADB.

3. (a) An application for withdrawal from the Loan Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.

(b) Such withdrawal application shall be accompanied by a certificate of the Borrower confirming that: (i) in case the proceeds of the Loan will finance imports already made, the value of Eligible Imports in the period concerned exceeded the amount of the requested withdrawal, or (ii) in case the proceeds of the Loan will finance items to be imported, the value of Eligible Imports in the immediately preceding one-year period was equal to or greater than the amount of the requested withdrawal plus all other amounts expected to be withdrawn from the Loan Account during the succeeding one-year period.

(c) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Borrower during the relevant period minus the following imports during the same period:

(i) imports from countries which are not members of ADB;
(ii) imports for ineligible items specified in the Attachment to this Schedule; and
(iii) imports financed from credits from official international or bilateral aid agencies or any other loans and grants made by ADB.

(d) The Borrower shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Borrower has certified the value of Eligible Imports in its withdrawal application.

4. (a) Prior to submitting the application to ADB for withdrawal from the Loan Account, the Borrower shall open or nominate an account (the Deposit Account) at a commercial bank acceptable to ADB into which the withdrawal(s) from the Loan Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with terms and conditions satisfactory to ADB.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with consistently maintained sound accounting principles. Upon

ADB's request, the Borrower shall have the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with appropriate auditing standards. Promptly after their preparation but in any event not later than six (6) months after the date of ADB's request, certified copies of such audited accounts and records shall be furnished to ADB, all in the English language.

(c) Throughout the Program implementation period, the Borrower shall submit trade statistics and any other information as ADB may require from time to time to assess the Borrower's compliance with the formula for determining Eligible Imports.

5. Notwithstanding any other provisions of this Loan Agreement or the Loan Regulations and except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account unless ADB shall be satisfied based on evidence satisfactory to ADB and after consultation with the Borrower, that there has been no action which materially reverses the objectives of the Program.

Attachment to Schedule 3

## List of Ineligible Items

1. Loan proceeds will finance the foreign currency expenditures for the reasonable cost of imported goods required during the Program.

2. No withdrawals will be made for the following:

(i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Borrower:

**Table A12: Ineligible Items**

| Chapter | Heading | Description of Items |
|---|---|---|
| 112 | | Alcoholic beverages |
| 121 | | Tobacco, unmanufactured; tobacco refuse |
| 122 | | Tobacco, manufactured (whether or not containing tobacco substitute |
| 525 | | Radioactive and associated materials |
| 667 | | Pearls, precious and semiprecious stones, unworked or worked |
| 718 | 718.7 | Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors |
| 728 | 728.43 | Tobacco processing machinery |
| 897 | 897.3 | Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems) |
| 971 | | Gold, nonmonetary (excluding gold ore and concentrates) |

Source: United Nations.

(ii) expenditures in the currency of the Borrower or of goods supplied from the territory of the Borrower;

(iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any other loan or grant from the ADB;

(iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

(v) expenditures for narcotics;

(vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party; and

(vii) expenditures on account of any payment prohibited by the Borrower in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

## SCHEDULE 4

## Procurement

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraph of this Schedule shall apply in the procurement of Eligible Items to be financed out of the proceeds of the Loan.

2. (a) Except as provided in subparagraph (b) of this paragraph, each contract for Eligible Items shall be awarded on the basis of either the purchaser's normal commercial procurement practices, in the case of procurement by the private sector, or the Borrower's prescribed procurement procedures, in the case of procurement by the public sector, having due regard for the principles of economy and efficiency.

(b) Each supply contract for Eligible Items which are commonly traded commodities shall be awarded on the basis of procedures appropriate to the trade and acceptable to ADB.

## SCHEDULE 5

### Program Implementation and Other Matters

I. Counterpart Funds

1. The Borrower shall: (a) ensure that the Counterpart Funds shall be used to finance the local currency costs relating to the implementation of the Program Cluster, and in particular, the Program and other activities consistent with the objectives of the Program Cluster, as more fully described under paragraph 1 of Schedule 1 to this Loan Agreement, the Policy Letter and the Policy Matrix; and (b) provide necessary budget appropriations to finance the structural adjustment costs relating to the implementation of the reforms under the Program and the Program Cluster.

II. Implementation and Coordination

2. SBV shall continue as the Program Executing Agency and shall bear overall responsibility for the implementation of the Program and shall coordinate with MOF. The IAs shall be responsible for implementing their respective parts of the Program and reporting to the EA.

3. The Program Steering Committee (PSC), chaired by a senior official of SBV and comprising senior officials from MOF and agencies of the Borrower established under Subprogram 1, will meet semiannually and if needed, on an ad hoc basis, to monitor progress of the Program Cluster and in particular, progress of the PPPF, to review pending issues, to propose concrete actions for their resolution, and to provide guidance and direction to the EA and IAs, and relevant line agencies of the Borrower involved in Program Cluster and PPPF actions. The PSC may invite ADB to participate in its meetings as an observer. The PSC shall ensure that the reforms are undertaken in accordance with the agreed timetable.

4. The Program Implementation and Coordination Unit (PICU) established within SBV, shall be headed by a senior officer of SBV, and staffed by SBV and MOF officials with expertise acceptable to ADB. The Borrower shall ensure that the PICU shall have the responsibility for the day-to-day implementation of the Program and shall have the following functions: (a) to prepare the semiannual reports to ADB and the PSC, on the progress and issues relating to PPPF implementation; (b) to coordinate, monitor, and supervise PPPF implementation; and (c) to assess the impact of the Program.

III. Policy Reform

5. The Borrower shall ensure that the policies adopted and actions taken as described in the Policy Letter prior to the date of this Loan Agreement continue to be in effect during the Program Period and subsequently.

Schedule 5

IV. Policy and Sector Dialogue

6. The Borrower shall keep ADB informed of, and the Borrower and ADB shall, from time to time, engage in active policy dialogue on sector issues, policy reforms, and other measures during the implementation of the Program Cluster and the PPPF, that may be considered necessary or desirable, including the progress made in carrying out policies and actions set out in the Policy Letter and the Policy Matrix.

7. The Borrower shall promptly discuss with ADB problems and constraints encountered during implementation of Program and the PPPF, and adopt appropriate measures to overcome or mitigate such problems and constraints in a timely manner, taking into account the changing economical circumstances of the Borrower.

8. The Borrower shall keep ADB informed of policy discussions with other multilateral and bilateral agencies that have adverse implications for implementation of the Program Cluster and the PPPF, and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take ADB's views into consideration before finalizing and implementing any such proposals.

V. Governance and Anticorruption

9. The Borrower, in addition to its compliance with ADB's Anticorruption Policy (1998, as amended to date), shall undertake other measures to ensure good governance, accountability, and transparency under the Program. More specifically, the Borrower shall implement in a timely manner, the mitigation measures agreed upon by the Borrower and set out in the risk assessment and risk management plan in the RRP.

VI. Program Performance Monitoring and Reviews

10. The Borrower shall ensure that: (a) within one (1) month of the Effective Date, the Program Performance Management System (PPMS), previously established by SBV under the Program Cluster, is updated in a form acceptable to ADB and in accordance with PPPF performance indicators agreed with ADB; (b) the SBV undertakes periodic reviews in accordance with the PPMS to evaluate the scope, implementation arrangements, progress, achievements, and impacts of the objectives of the PPPF; and (c) the SBV is responsible for maintaining all monitoring data and evaluating benefits of the Program and the PPPF. To facilitate ADB's semiannual reviews of Program Cluster and PPPF implementation, the Borrower shall provide relevant macroeconomic and financial data and related information in such detail as ADB may reasonably request. The Borrower shall also actively assist and support ongoing Program monitoring and evaluation including facilitating consultations with central and provincial agencies of the Borrower, financial sector participants, civil society, and other key stakeholders as appropriate. These shall form the basis for discussions between the Borrower and ADB on further reforms and measures that may be considered necessary or desirable to promote the continued development of the financial sector and to reflect the Borrower's priority in response to a changing market environment.

11. The Borrower shall ensure that: (a) reporting to evaluate the scope, implementation arrangements, impact and achievement of the objectives of the Program Cluster and the PPPF following the Program Period is made by the IAs to the SBV which will

in turn, report to ADB; and (b) the SBV and the IAs will, as needed, hold consultative meetings with stakeholders and development partner community to solicit their feedback on proposed and existing relevant regulations and the impact of the Program Cluster and PPPF.

12. The Borrower shall cause the SBV in coordination with the IAs to submit a Program Cluster completion report to ADB within six (6) months after the Effective Date that assesses compliance with, and impact of, the agreed actions under the Program and Program Cluster. The report, showing the overall outcomes and output results of the Program Cluster and taking into account the interim completion report prepared for the Program Cluster's Subprogram I, will be prepared and submitted to ADB. The Borrower shall encourage partner donor agencies, business groups and other sector stakeholders to support monitoring of the reforms and agreed actions under the Program Cluster and the PPPF.