**CASE LAW NO. 08/2016/AL**

*The case law was adopted by the Judicial Council of the Supreme People’s Court on 17 October 2016 and promulgated under Decision No. 698/QD-CA dated 17 October 2016 of the Chief Justice of the Supreme People’s Court.*

**Source of the case law:** Cassation Decision No. 12/2013/KDTM-GDT dated 16 May 2013 of the Judicial Council of the Supreme People’s Court on a commercial case named *“Dispute over the credit facility agreement”* in Hanoi between the Plaintiff being Joint Stock Commercial Bank for Foreign Trade of Vietnam and the Defendant being Kaoli Pharmaceutical Joint Stock Company; the related persons comprise Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan.

**Location of contents of the case law:**

Paragraph 16 of the *“Whereas”* part of the cassation decision as above-mentioned.

**Overview of the case law:**

* ***Background of the case law:***

In the facility agreement, the parties agreed on the loan interest rate, including: the interest rate, the overdue interest rate, the adjustment of loan interest rate of the lending Bank or credit institution from time to time up to the time of the firstinstance hearing and the borrower has not made payment or has not made payment in full the amount of principal and interest in accordance with the facility agreement.

* ***Legal resolution:***

In this case, the borrower must continue making payment to the Bank or credit institution for the unpaid principal, the interest accrued on the principal amount (if any), the overdue interest of the unpaid principal according to the interest rate agreed by the parties in the facility agreement until the borrower has fully repaid the principal. In case the parties agreed on the adjustment of interest rate of the bank or the lending credit institution from time to time, the interest rate that the borrower is obliged to continue paying pursuant to the court decision shall be adjusted in accordance with the adjustment of interest rate of the lending bank or credit institution.

**Applicable provisions of laws relating to the case law:**

* Articles 471, 474, 476 of the Civil Code 2005;
* Article 91.2 of the Law on Credit Institution 2010;
* Article 1.1 of Circular No. 12/2010/TT-NHNN dated 14 April 2010 of the State Bank of Vietnam on guidance for lending in Vietnamese Dong at the agreed interest rate by the credit institutions to their customers;
* Article 11.2 of the Regulations on lending activities of the Credit Institutions to their customers enacted pursuant to Decision No. 1627/2001/QD-NHNN of the Governor of the State Bank of Vietnam dated 31 December 2001 as amended by Decision No. 127/2005/QD-NHNN dated 3 February 2005.

**Key words of the case law:**

*“Interest”, “Unpaid principal”, “Facility Agreement”, “Adjustment of interest rate”, “Overdue interest”.*

**CONTENTS OF THE CASE**

Pursuant to the Statement of Claims dated 20 July 2010, documents and evidence enclosed in the case file:

Joint Stock Commercial Bank for Foreign Trade of Vietnam – Thang Long Branch (hereinafter referred to as *“Vietcombank”*) and Kaoli Pharmaceutical Joint Stock Company (hereinafter referred to as *“Kaoli”*) signed 4 facility agreements, including: Facility Agreement No. 03/07/NHNT-TL dated 25 December 2007; Facility Agreement No. 04/07/NHNT-TL dated 28 December 2007; Facility Agreement No. 144/08/NHNT-TL dated 28 March 2008 and Facility Agreement No. 234/08/NHNT-TL dated 27 May 2008. The above Facility Agreements were secured with the ownership of house(s) and the land use rights at the following addresses:

* No. 122 Doi Can, Doi Can Ward, Ba Dinh District, Hanoi (Land lots No. 46B+39C+37C, cadastral map No. 19) under the ownership and use of Ms. Nguyen Thi Phuong (pursuant to the Mortgage Agreement No. 1678.2008/HĐTC dated 25 June 2008; The secured assets shall be used for securing the loan and the maximum guarantee value for the borrower is VND4,605,000,000; the detailed terms and conditions for borrowing and lending the above-mentioned loan shall be specified in the banking documents that Vietcombank and the secured party (Kaoli) shall sign at the head office of Vietcombank (Article 1, clause 1.3). The value of the secured assets is VND4,605,000,000 as determined under the Minutes on Valuation of Assets No. 105/08/NHNT.TL; the mortgage term shall be 5 years from the date that the secured party received the loan. The Agreement shall be effective from the time that it is registered at the Land Use Right Registration Office. (Article 10, clause 10.1). This Agreement was certified by a notary of the Notary Office No. 3 of Hanoi on 25 June 2008 and the registration of mortgage over land use rights and assets attached to land under this Agreement was certified by the Natural Resources and Environment Office of Ba Dinh District on 10 July 2008). Previously, on 3 September 2007, Ms. Phuong and Vietcombank made a Minutes on Hand-over of legal documents of the mortgaged, pledged or guaranteed assets with the following contents: *“The parties shall carry out the hand-over of the original documents of the following secured assets to secure the obligations of Kaoli in Vietcombank – Thang Long Branch. Name of assets: The ownership of house(s) and the land use rights in 122 Doi Can, Doi Can ward, Ba Dinh district, Hanoi”* (Exhibit 52).
* Group 13, Hamlet 2, Nhat Tan Ward, Tay Ho District, Hanoi under the ownership and use rights of Mr. Nguyen Dang Duyen and his wife, Ms. Do Thi Loan (under the Mortgage Agreement No. 1677.2008/HDTC dated 25 June 2008, the secured assets shall be used for securing the loan with the maximum guarantee value of VND1,250,000,000; the detailed terms and conditions on borrowing and lending the above loan shall be specified in the banking documents that Vietcombank and the secured party (Kaoli) shall sign at the head office of Vietcombank (Article 1, clause 1.3). The value of the secured assets is VND1,250,000,000 as determined under the Minutes on Valuation of Assets No. 106/08/NHNT.TL dated 3 September 2007 (Article 3, clause 3.01); The mortgage term shall be 5 years from the date that the secured party receives the loan. The Agreement shall be effective from the time that it is registered at the land use right registration office. (Article 10, clause 10.1). This Agreement was certified by a notary of the Notary Office No. 3 of Hanoi on 25 June 2008 and the registration of mortgage over land use rights and assets attached to land under this Agreement were certified by the Natural Resources and Environment Office of Ba Dinh District on 1 July 2008. Previously, on 3 September 2007, Mr. Nguyen Dang Duyen and Vietcombank made a Minutes on Handover of legal documents of the mortgaged, pledged or guaranteed assets with the following contents: The parties shall carry out the hand-over of the original documents of the following secured assets to secure the obligations of Kaoli in Vietcombank – Thang Long Branch. Name of assets: The ownership of house(s) and the land use rights in Group 13, Hamlet 2, Nhat Tan Ward, Tay Ho District, Hanoi” (Exhibit 58a).

Additionally, the loans of the above-mentioned facility agreements are secured by the secured assets being houses, land under the ownership and use rights of Mr. Cao Ngoc Minh and his wife, Ms. Doan Thi Thanh Thuy; being houses and land of Mr. Giang Cao Thang and his wife, Ms. Duong Thi Sinh (which had already been released); being the land use rights of Mr. Chu Quoc Khanh; being house(s) and land of Ms. Chu Thi Hong and Mr. Nguyen Van Minh.

In order to implement the contract, Vietcombank – Thang Long Branch disbursed the loans to Kaoli pursuant to the facility agreements as mentioned above. Kaoli, however, have just repaid a part of the principal amount and the interest amount. Vietcombank initiated a lawsuit to the Court for requesting Kaoli to make the unpaid payments of the 4 facility agreements with the total amount of VND8,197,957,837 (in which, the principal amount is VND5,457,000,000, the interest amount is VND397,149,467, the overdue interest amount calculated up to the time of the first-instance hearing is VND2,343,808,370); and enforce the secured assets of Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan for recovery of debts.

The Defendant’s representative, Mr. Do Van Chinh, being the director of Kaoli presented the following: Mr. Do Van Chinh acknowledged the fact that Kaoli still owed the principal amounts and the original interest amounts, the overdue interest amounts under the 4 facility agreements to Vietcombank as stated by Vietcombank are true. He determined the repayment obligations under the above-mentioned 4 facility agreements belonged to Kaoli and requested to make payment within 5 years.

Vietcombank requested to conduct an auction sale of the secured assets of Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan in case Kaoli is unable to pay the loans or to pay the loans in full, Vietcombank proposed to the Court to resolve the case in accordance with the laws. Mr. Chinh confirmed that Vietcombank had disbursed the loan before the execution of the Mortgage Agreement No. 1678.2008/HDTC dated 25 June 2008 and Mortgage Agreement No. 1677.2008/HDTC dated 25 June 2008. From 25 June 2008 until now, Kaoli has not borrowed any additional loan or signed any additional facility agreement with Vietcombank.

The related persons presented the following:

* Mr. Nguyen Van Nghi (being the authorized representative of Ms. Nguyen Thi Phuong) presented as follows: Vietcombank initiated a lawsuit against Kaoli and requested the Court to order the auction sale of Ms. Phuong’s secured assets in case Kaoli did not perform its repayment obligations. He did not agree with this request because Ms. Phuong signed the mortgage agreement on 25 June 2008, therefore, Ms. Phuong should not be responsible for guaranteeing the loan obligations of Kaoli with Vietcombank under the 4 facility agreements that Vietcombank based on to initiate the lawsuit. He requested the Court to order Vietcombank to implement the release of mortgage assets and return the Certificate of Ownership of House(s) and Land Use Rights to Ms. Phuong.
* Mr. Nguyen Dang Duyen and Ms. Do Thi Loan presented that: The husband and wife signed the Mortgage Agreement dated 25 June 2008. However, this agreement is used only for guaranteeing the loan of Kaoli from Vietcombank and they will be responsible for any obligations arising after 25 June 2008 until 25 April 2009. In addition, they will not be responsible for any obligations arising out of all other facility agreements signed prior to 25 June 2008 between Vietcombank and Kaoli. According to Vietcombank, after the date of 25 June 2008 until now, Vietcombank did not sign any facility agreement with Kaoli. Therefore, the legal liabilities of the husband and wife have not arisen. Thus, they requested the Court to order Vietcombank to release the secured assets under the Mortgage Agreement dated 25 June 2008 to them.

In First-instance Commercial Judgment No. 32/2011/KDTM-ST dated 24 March 2001, the People’s Court of Hanoi ruled that:

1. *“To accept a part of the request for relief of Joint Stock Commercial Bank for Foreign Trade of Vietnam towards Kaoli. Kaoli is obliged to repay Vietcombank the principal amounts and the interest amounts of VND8,197,957,837.*
2. *To reject the request of Joint Stock Commercial Bank for Foreign Trade of Vietnam for the auction sale of secured assets being the value of the ownership of houses and land use rights in the land lots 46B + 39C + 27C having the cadastral map No. 19 with the address at No. 122 Doi Can, Doi Can Ward, Ba Dinh District, Hanoi under Certificate of ownership of houses and land uses rights No. 10101132587 of the People’s Committee of Ba Dinh District dated 27 April 2004 issued to Ms. Nguyen Thi Phuong and the value of the house ownership and the land use rights in the address Group 13, Hamlet 2, Nhat*

*Tan Ward, Tay Ho District, Hanoi pursuant to the Certificate of house ownership and*

*land use rights in the land lots no. 13+64A (a part) having Cadastral map No. 04 at Group 13, Hamlet 2, Nhat Tan Ward, Tay Ho District, Hanoi under Certificate of ownership of houses and land uses rights No. 10103090899 of the People’s Committee of Hanoi on 23 March 2004 issued to Mr. Nguyen Dang Duyen and his wife, Ms. Do Thi Loan.*

*Vietcombank is required to return the documents relating to the ownership of house(s) and land use rights and to carry out the procedures on release of the secured assets for Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and his wife, Ms. Do Thi Loan”.*

In addition, the first-instance court ruled on the legal fees, the right to appeal of the parties in accordance with the laws.

On 4 April 2011, Vietcombank submitted an appeal.

In Appellate Commercial Judgment No. 148/2011/KDTM-PT dated 17 August 2011, the Supreme People’s Court in Hanoi based on Article 275.2 and Article 276.1 of the Civil Procedure Code and ruled the following:

*“To amend First-instance Commercial Judgment No. 32/2011/KDTM-ST dated 23 and 24 March 2011 of the People’s Court of Hanoi on the guarantee obligations of Ms. Nguyen Thi Phuong and Mr. Nguyen Dang Duyen and his wife Ms. Do Thi Loan, particularly:*

*The Supreme People’s Court ruled that: The Minutes on Hand-over of the documents relating to the mortgage, pledge or guarantee dated 3 September 2007 between Joint Stock Commercial Bank for Foreign Trade of Vietnam – Thang Long Branch and Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and his wife Ms. Do Thi Loan are the guarantee agreements (Exhibits No. 52, 58a).*

*Kaoli is obliged to repay Joint Stock Commercial Bank for Foreign Trade of Vietnam the total amount of VND8,197,957,837 for the principal amounts and the interest amounts. In case, Kaoli does not perform its repayment obligation or does not perform its repayment obligations in full to Joint Stock Commercial Bank for Foreign Trade of Vietnam, Joint Stock Commercial Bank for Foreign Trade of Vietnam is entitled to request the Department of Enforcement of Civil Judgement of Hanoi to enforce the secured assets in accordance with the Law on Enforcement of Civil Judgement for recovery of debt for the guarantee liabilities of the guarantor.*

*[…] From the effective date of the judgment and the judgment creditor filed an application for enforcement of judgment, the judgment debtor is required to pay the interest amount on the payment for late enforcement of judgment according to the basic interest rates announced by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment”.* In addition, the appellate court ruled on the fees for enforcement of judgment as follows;

After the appellate hearing, Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and his wife Ms. Do Thi Loan submitted a number of applications for re-consideration of the appellate judgment as above mentioned in accordance with the cassation procedures.

In Protest Decision No. 34/2012/KDTM-KN dated 15 October 2012, the Chief Justice of the Supreme People’s Court requested the Judicial Council of the Supreme People’s Court to hear the case in accordance with the cassation procedures following the direction of offsetting aside Appellate Commercial Judgment No. 148/2011/KDTM-PT dated 17 August 2011 of the Appellate Court under the Supreme People’s Court of Hanoi; and to transfer the case to the Appellate Court of the Supreme People’s Court of Hanoi for appellate hearing in accordance with the laws.

In the cassation hearing, the representative of the Supreme People’s Procuracy agreed unanimously with the protest of the Chief Justice of the Supreme People’s Court.

**The Judicial Council of the Supreme People’s Court finds:**

Considering the Mortgage Agreement over Land Use Rights and Assets Attached to Land for guarantee of the third party to borrow loan from the bank (Notarisation number: 1677.2008/HDTC and 1678.2008/HDTC of the same date of 25 June 2008):

Both the mortgage agreements over land use rights and assets attached to land for guarantee of the third party to borrow loans from the bank did not specify that the guarantee of the loan shall be secured for which facility agreement and were signed after the loans had been disbursed under the 4 facility agreements No. 03/07/NHNT-TL dated 25 December 2017, No. 04/07/NHNT-TL dated 28-12-2007, No. 144/08/NHNT-TL dated 28 March 2008 and No. 234/08/NHNT-TL dated 27 May 2008. Pursuant to clause 1.3 of Article 1 of both the above-mentioned mortgage agreements: *“The detailed terms and conditions on borrowing and lending of the above amount of money shall be specified in the banking documents that Party B (Vietcombank – Thang Long Branch) and the secured party shall sign banking documents at the head office of Party B (Vietcombank – Thang Long Branch) (The secured obligations are the loan and the maximum guarantee value is VND4,605,000,000 pursuant to clause 1.2 of Article 1 of the mortgage agreement). Therefore, it can be understood that Ms. Phuong, Mr. Duyen and Ms. Loan only guaranteed for Kaoli to borrow loan under the facility agreements which shall be signed in the head office of Vietcombank after the signing date of the mortgage agreement (25 June 2008) and they did not guarantee for the loans of the 4 facility agreements signed previously [prior to 25 June 2008]*”.

Vietcombank based on clause 6.2 of Article 6 of the 4 facility agreements as abovementioned on the creation of security over the loan, which recorded (handwritten) the followings: *“The detailed agreements on assets, rights and obligations of the parties shall be determined in the Mortgage Agreement No. 1677.2008/HDTC dated 25 June 2008 and the Mortgage Agreement No. 1678.2008/HDTC dated 25 June 2008”* to request the court to order Ms. Phuong, Mr. Duyen and his wife – Ms. Loan to implement their guarantee obligations to the loans of Kaoli under the 4 facility agreements as above-mentioned. These contents, according to the representative of Vietcombank stated in the first-instance hearing, were *“written by the accountant of the bank”*. In the first-instance hearing, Mr. Do Van Chinh, being the Director of Kaoli presented: “*Kaoli did not know about these additional written parts of these agreements*” and *“Kaoli does not agree with the request for auction sale of secured assets of the bank. The assets of Ms. Phuong and Mr. Duyen and his wife – Ms. Loan added into the facility agreement by the bank”.*

On the other hand, in the appellate hearing, the authorized representative of Ms. Nguyen Thi Phuong presented that Ms. Nguyen Thi Phuong has not received any facility agreement from Vietcombank, Mr. Duyen and Ms. Loan received the facility agreements from Vietcombank. Thus, Mr. Chinh, Ms. Phuong, Mr. Duyen and Ms. Loan did not know about the handwritten contents of the accountant of the bank that are recorded in the facility agreements. They also did not sign on the facility agreements, therefore, there is no basis to determine that the above facility agreements are guaranteed by the mortgage agreements No. 1677.2008/HDTC and 1678.2008/HDTC on the same date of 25 June 2008.

In addition to the two above-mentioned mortgage agreements, in the case file, there are 2 case files relating to the mortgage of assets: 1 case file of Ms. Phuong and 1 case file of Mr. Duyen and Ms. Loan. In each case file, there are the following documents: (i) Minutes on valuation of assets and Minutes on hand-over of assets with the same date of 3 September 2007; (ii) An application for registration of mortgage (dated 29 January 2008 of Ms. Phuong, and dated 25 June 2008 of Mr. Duyen and Ms. Loan). However, these Minutes and the Application for registration of mortgage did not specify clearly about the creation of security for the loan of any facility agreement.

The appellate court opined (briefly) as follows: *“The Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets between Vietcombank – Thang Long Branch with Ms. Phuong, Mr. Duyen and Ms. Loan made on 3 September 2017 all have the contents on mortgage, pledge and guarantee for the obligations of Kaoli in the Bank. Therefore, these minutes should be deemed as a contract, and the appellate court ruled that: The Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets between Vietcombank – Thang Long Branch between Joint Stock Commercial Bank for Foreign Trade of Vietnam – Thang Long Branch with Ms. Phuong, Mr. Duyen and Ms. Loan are the guarantee agreements (Exhibits 52, 58a)”* and *“In case that Kaoli did not perform its obligations or perform fully its repayment obligations to Joint Stock Commercial Bank for Foreign Trade of Vietnam, Joint Stock Commercial Bank for Foreign Trade of Vietnam is entitled to request the Department of Enforcement of Civil Judgement to enforce the secured assets in accordance with the Law on Enforcement of Civil Judgement for recovery of debt for the guarantee obligations of the guarantor”.*

The above opinions and decision of the appellate court has no basis and is not in accordance with law. Therefore,

* The Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets dated 3 September 2007 between Ms. Nguyen Thi Phuong (as well as Mr. Duyen and Ms. Loan) and Vietcombank – Thang Long Branch is not a guarantee agreement as determined by the appellate court.

In the appellate hearing dated 17 August 2011, the representative of Vietcombank only confirmed that: “*the Minutes on hand over of assets and the Minutes on valuation of assets are inseparable part of the mortgage agreement over assets”*.

* Pursuant to the Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets, the Minutes on valuation of assets and the

Vietcombank’s representative’s statement at the appellate court hearing, the date of hand-over of the documents and valuation of assets is 3 September 2007. The mortgage agreement between Ms. Phuong (as well as Mr. Duyen and Ms. Loan) and Vietcombank – Thang Long Branch were signed on 25 June 2008 (after the date of the Minutes on hand-over and receipt of documents on assets and the Minutes on Valuation of Assets), therefore, these Minutes cannot be seen as inseparable parts of the above-mentioned mortgage agreement. The appellate court also determined that: “*The mortgage agreement dated 25 June 2008 does not relate to the minutes on hand-over of documents […]”*.

* Pursuant to the date of the Minutes and the statement of Vietcombank’s representative in the appellate court hearing, the date of hand-over of the documents (the original Certificate of ownership of house(s) and land use rights) and the valuation date is 3 September 2007. However, these Minutes on valuation of assets provided that *“Based on the land price table of each district of Hanoi attached to Decision 150/2007/QD-UBND dated 28 December 2007 of the People’s Committee of Hanoi”* and this Minutes is an inseparable part of the Mortgage Agreement No. 1678.2008/HDTC and No. 1677.2008/HDTC dated 25 June 2008. For the case of Ms. Phuong, the value of land use rights shall be determined in accordance with the Minutes on valuation of actual land price dated 4 September 2017 and the Application for mortgage registration dated 29 January 2008 of Ms. Phuong, which recorded that *“the Mortgage Agreement 1678.2008/HDTC dated 25 June 2008”.* On the other hand, pursuant to the statement and documents presented by Ms. Phuong, Mr. Duyen and his wife – Ms. Loan, on 3 September 2007, the house(s) and land of Ms. Phuong were being mortgaged to Vietnam Bank for Agriculture and Rural Development – Quang An Branch in Tay Ho District and were only to be released upon 11 January 2008. The house(s) and land of Mr. Duyen and Ms. Loan were being mortgaged in Vietnam Prosperity Joint Stock Commercial Bank – Thang Long Branch and were to be released upon 16 January 2008.

Based on the above-mentioned evidence, the court concluded that: the Minutes on handover of documents relating to the mortgage, pledge, guarantee of assets and the Minutes on Valuation of Assets were not made on 3 September 2007, the Certificate of ownership of house(s) and land use rights were not assigned on 3 September 2007, and the valuation of assets was not conducted on 3 September 2007 as presented and stated by the Vietcombank’s authorized representative and accepted by the appellate court.

On 3 September 2007, the Mortgage Agreement and the Guarantee Agreement over land use rights and assets attached to land must be notarized and registered with the security registration authority as stipulated under Article 130.1(a) of the Land Law 2003, Article 12.1(a) of Decree No. 163/ND-CP dated 29 December 2006 and Section 2 subsection 2.4 of Joint Circular No. 03/2006/TTLT-BTP-BTNMT dated 13 June 2006; thus, this is contrary to the appellate court’s findings that these agreements are not required to be notarized and registered.

The appellate court did not clarify whether, in addition to the above-mentioned documents, there are any documents or evidence indicating that the mortgage agreements signed by Ms. Phuong, Mr. Duyen and Ms. Loan are used for securing the 4 facility agreements of Kaoli or not. Instead, the appellate court found that the Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets are mortgage agreements, which is not true and accurate. Because these minutes cannot be considered as mortgage agreements when considering its formality and contents.

* If there are bases to determine that the Mortgage Agreements dated 25 June 2008 of Ms. Phuong and Mr. Duyen and his wife Ms. Loan are used for securing the facility agreement, then the guarantee agreement of Ms. Phuong only guaranteed the loan and the maximum guarantee value is VND4,605,000,000; the guarantee agreement of Mr. Duyen and Ms. Loan only guaranteed the loan and the maximum guarantee value is VND1,250,000,000. Meanwhile, the appellate court stated that the Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets dated 3 September 2007 are mortgage agreements and ruled *“In case that Kaoli did not perform its obligations or fully perform its repayment obligations to Joint Stock Commercial Bank for Foreign Trade of Vietnam, then Joint Stock Commercial Bank for Foreign Trade of Vietnam is entitled to request the Department of Enforcement of Civil Judgement to enforce the secured assets in accordance with the Law on Enforcement of Civil Judgement for recovery of debt for the guarantee obligations of the guarantor”*. This means that Ms. Phuong, Mr. Duyen and Ms. Loan must be responsible for the guarantee obligations for the whole debt of Kaoli and there is no separation of guarantee obligations of Ms. Phuong, Mr. Duyen and Ms. Loan, which is untrue.

In addition, the first-instance court and the appellate court ruled that *“From the date when the judgment is effective and the judgment creditor has filed an application for enforcement of judgement, the judgment debtor is required to pay the interest amount on the late enforcement of judgment according to the basic interest rates announced by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment”,* which is also not correct. With respect to the loans of the banking and credit institutions, in addition to the principal, the interest amount, the overdue interest amount, and the fees that the borrower is obliged to pay to the lender under the facility agreement calculated up to the date of the first-instance hearing, the borrower shall be responsible to pay the overdue interest amount of the outstanding principal from the date immediately after the first-instance hearing according to the agreed interest rate in the facility agreement until the borrower has paid the principal in full. In case in the facility agreement the parties had an agreement on adjustment of interest rate from time to time of the lending bank, the interest amount that the borrower is required to pay to the lending bank pursuant to the court decision shall be adjusted in accordance with the adjustment of interest of the lending bank.

For the above reasons, based on Article 291.3, Article 297.3, Article 299 of the Civil Procedure Code (as amended and supplemented in 2011)

**RULES**

1. To set aside Appellate Commercial Judgment No. 148/2011/KDTM-PT dated 17 August 2011 of the Appellate Court of the Supreme People’s Court of Hanoi on hearing the commercial dispute over the facility agreement between the Plaintiff being Joint Stock Commercial Bank for Foreign Trade of Vietnam and the Defendant being Kaoli Pharmaceutical Joint Stock Company and the related persons being Ms.

Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan.

1. To transfer the case to the Appellate Court of the Supreme People’s Court in Hanoi for an appeal court hearing in accordance with the laws.

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*“The first-instance court and the appellate court ruled that “From the date when the judgment is effective and the judgment creditor has filed an application for enforcement of judgement, the judgment debtor is required to pay the interest amount on the late enforcement of judgment according to the basic interest rates announced by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment”, which is also not correct. With respect to the loans of the banking and credit institutions, in addition to the principal, the interest amount, the overdue interest amount, and the fees that the borrower is obliged to pay to the lender under the facility agreement, the borrow shall be responsible to pay from the date after the first-instance hearing the overdue interest amount of the outstanding principal according to the agreed interest rate in the facility agreement until the borrower has paid the principal in full. In case in the facility agreement the parties had an agreement on adjustment of interest rate from time to time of the lending bank, the interest amount that the borrower is required to pay to the lending bank pursuant to the court decision shall be adjusted in accordance with the adjustment of interest of the lending bank”.*