

HIGHLIGHTS OF CIRCULAR 06 AND CIRCULAR 10 ON ONSHORE LENDING

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"Circular 6 provides significant amendments and supplements to the regulations on lending activity by onshore credit institutions and branches of foreign banks in Vietnam."

On 28 June 2023, the State Bank of Vietnam ("SBV") issued Circular 06/2023/TT-NHNN ("Circular 06") to provide significant amendments and supplements to the regulations on lending activity by onshore credit institutions and branches of foreign banks in Vietnam (collectively "onshore credit institutions") provided under Circular 39/2016/TT-NHNN ("Circular 39").

Following its issuance, Circular 06 received negative feedback regarding the restrictions on lending purposes it included. In light of that, SBV issued Circular 10/2023/TT-NHNN ("Circular 10") on 23 August 2023 to suspend certain said lending prohibitions in Circular 06 until further guidance is provided. Both Circular 06 and Circular 10 take effect from 1 September 2023.

This briefing note summarises the major changes introduced by Circular 06 and Circular 10.

KEY TAKEAWAYS

- the list of prohibitions on lending purposes in Circular 39 has been amended by Circular 06 with notable amendments such as lending prohibitions in cases of payments for capital contribution or shares. Although such added prohibitions are suspended under Circular 10, it is unclear whether such cases will be prohibited again in the future or subject to different restrictions. Therefore, any plan to use domestic loans for such purposes should be considered carefully before being implemented;
- the order of debt collection is clarified to (1) overdue principal; (2) interest accrued on the unpaid overdue principal; (3) due principal; and, finally (4) interest accrued on unpaid due principal; and
- for the first time, Circular 06 introduces a set of regulations on lending by electronic means.

PROHIBITED LENDING PURPOSES

Circular 06 amends the list of prohibited lending purposes, notably with the following revised restrictions:

(a) onshore credit institutions must not provide loans for the purpose of refinancing offshore loans (excluding offshore loans in the form of deferred payments) or credit extensions granted by another onshore credit institution, except for refinancing a loan fully satisfying the following conditions:

- (i) the loan term does not exceed the remaining loan term of the old loan; and
- (ii) being a loan that has not yet been restructured within the debt repayment term. Refinancing offshore loans in the form of importing goods with deferred payments (i.e. the importing goods having the first withdrawal date before the first repayment date) is carved out under Circular 06, which can be interpreted that it is a permitted.

(b) onshore credit institutions must not provide loans for the purpose of making deposits. This prohibition is new to Circular 06 in comparison with Circular 39;

(c) onshore credit institutions must not provide loans for the purpose of paying capital contributions, or purchasing or receiving the transfer of:

- (i) capital contributions of limited liability companies or partnerships; or
- (ii) shares in unlisted joint stock companies on the stock market or unregistered for trading on the Upcom trading system.

(d) onshore credit institutions must not provide loans for the purpose of paying capital contributions under capital contribution agreements, investment cooperation agreements or business cooperation agreements to implement investment projects that have not satisfied the conditions to commence business in accordance with the laws at the time the onshore credit institution decides to provide loans; and

(e) onshore credit institutions must not provide loans for the purpose of providing financial compensation, unless the loan fully satisfies the following conditions:

- (i) the customer has advanced capital from itself to pay the cost of the implementation of the business operation project which are incurred less than 12 months from the time the onshore credit institution decides to provide a loan; and
- (ii) the costs paid by the customer's own capital to implement the business operation project are the costs using the borrowed capital of the onshore credit institution according to the capital use plan submitted to the onshore credit institution for consideration for medium and long-term lending to implement that business project.

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Among the new above points, (c), (d) and (e) have been suspended by Circular 10 due to their perceived potential negative impact on business activities. As there is no time period specified for the suspension of these prohibitions, it is not clear whether such cases will be prohibited again or subject to different restriction going forward. Accordingly, any plan to use domestic loans for these purposes should be carefully considered before implementation.

REPAYMENT CURRENCY

Previously, Circular 39 provided that the repayment currency must be the lending currency of the loan. Circular 06 changes this requirement to an option only by allowing the onshore credit institutions and the client to agree on a different repayment currency in accordance with the law.

ORDER OF DEBT COLLECTION

Whilst Circular 39 only provides generally that, for overdue debt, the principal will be collected first and the interest later, Circular 06 clarifies the order of the debt collection in case where one or more repayment instalment of the debt is overdue. This now (1) overdue principal, (2) interest accrued on the unpaid overdue principal, (3) due principal, and finally, (4) interest accrued on unpaid due principal.

Use of loan proceeds

Circular 06 introduces some notable provisions regarding the use of loan proceeds as follows:

"For the first time, Circular 06 introduces a set of regulations on lending by electronic means."

- Circular 06 states that checking and supervising the use of loan proceeds are the obligation and right of the onshore credit institution, rather than just the right of the onshore credit institution as under Circular 39. The procedures for said checks and supervision must be provided in the internal regulations of the onshore credit institution; and
- previously, Circular 39 provided that a feasible plan for use of loan proceeds was a condition for borrowing. However, a "plan for use of loan proceeds" is only defined as a plan for the loan to implement business projects. Circular 06 extends the scope

of such plans to the use of loan proceeds to loans serving general "living needs". Accordingly, in case where loan proceeds are used for servicing living needs, a plan for use of loan proceeds (including information on plans or projects for serving the living needs of housing purchases; housing construction and renovation and the transfer of land use rights to build houses) must be submitted by the borrower to the onshore credit institutions.

Lending by electronic means

For the first time, Circular 06 introduces a set of regulations on lending by electronic means, notably:

- principals for lending by electronic means are provided, including a requirement that the information system used for lending activities must comply with the regulations on security assurance of information systems at level 3 or above;
- onshore credit institution must provide the required solutions and technology to run an Electronic Know Your Customer ("e-KYC") process on the borrower and fulfil the specified requirements;
- limitations on the outstanding balances of an individual borrower using loan proceeds for living needs and verified by an e-KYC process must not exceed VND100m (approximately US\$4,148.5) at an onshore credit institution; and
- loan agreements must be made in writing. If they are in electronic format, they must comply with the laws on electronic transactions and the required contents of Circular 06.

TRANSITIONAL PROVISION

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Under Circular 06 and Circular 10, parties to loan and facility agreements executed before 1 September 2023 shall continue to adhere to the terms of executed agreements in accordance with the laws at the time of their execution. Any new amendments and supplementations to executed loan and facility agreements must comply with Circular 06 and Circular 10.

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