

## **SIGNIFICANT AMENDMENTS OF CIRCULAR 39 ON LENDING ACTIVITIES IN VIETNAM**

On 28 June 2023, the State Bank of Vietnam (SBV) issued Circular 6 (Circular 6/2023) to amend Circular 39/2016 on lending activities of credit institutions (CIs) and foreign bank branches (FBBs). Circular 6/2023 will take effect from 1 September 2023.

Circular 6/2023 introduces stricter control over lending activities conducted by CIs and FBBs. In this post, we will summarize some of the key points of Circular 6/2023.

### **1. Additional prohibited lending purposes**

Circular 6 provides for certain new scenarios where CIs and FBBs are prohibited from providing loans. These cases include:

<b>New prohibited lending purpose</b>	<b>Notes</b>
1.1. To make saving deposits	
1.2. To pay for the capital contribution, transferred capital of LLCs or partnerships.	The same restriction is already provided in Circular 22/2019 on prudential ratios (Circular 22/2019).
1.3. To contribute capital or to acquire shares in unlisted JSCs or those which have not been registered for trading on Upcom.	Under Circular 22/2019, borrowers are allowed to obtain short-term loans for the purpose of acquiring shares in both listed and unlisted companies;
1.4. To make capital contribution under capital contribution agreements, investment cooperation contracts or BCCs to implement investment projects which do not satisfy conditions for commercial operation at the time of the lending decision.	
1.5. To make financial reimbursement (bù đắp tài chính), <u>except</u> where the customers have satisfied the following conditions: 1.5.1. the customers have advanced their own fund to pay project implementation expenses which have arisen less than 12 months; and 1.5.2. the paid expenses are those that utilize the borrowed capital from the CIs under the capital usage plan submitted to the CIs for consideration to be granted medium and long-term loans for implementing the said project.	Currently, Circular 39/2016 does not explicitly address whether CIs/FBBs are allowed to provide loans for reimbursing paid expenses. However, according to Circular 21/2017, which deals with loan disbursement, reimbursement of own funds is recognized as one of the methods for loan disbursement. Consequently, in practice, CIs/FBBs still offer loans for this purpose, and the evaluation process depends on the judgment of

New prohibited lending purpose	Notes
Circular 6/2023 defines “lending for financial reimbursement” ( <i>cho vay bù đắp tài chính</i> ) as the act of a CI providing a loan to customers to compensate for expenses that have been paid or reimbursed using the customers' own capital or loans borrowed from individuals or organizations (excluding credit institutions), in order to implement business operation projects or plans, or projects or plans that serve living needs.	each CI or FBB. However, with the introduction of Circular 06/2023, stricter conditions have been imposed, and CIs/FBBs must ensure that loans intended for reimbursement meet the aforementioned conditions.

## 2. Less restrictions to lend for repayment of existing loans

Circular 39/2016 prohibits CIs and FBBs from providing loans to refinance existing loans, including both foreign and domestic loans except where the existing loan meets the following conditions:

- 2.1. The existing loan is for business purposes;
- 2.2. The term of new loan does not exceed the remaining term of the existing loan; and
- 2.3. The existing loan has not been restructured.

Circular 6/2023 has excluded deferred payment foreign loans from the category of prohibited refinanced loans. Additionally, the condition outlined in 2.1 has been abolished. This implies that CIs/FBBs are now permitted to lend if the existing loans are intended for any lawful purposes, such as living expenses.

## 3. Loan repayment currency

Unlike Circular 39/2016, which mandates that the loan repayment currency must be the same as the currency of the loan, Circular 6/2023 permits borrowers to repay the loan in a different currency subject to the agreement between the borrower and the lender and the applicable laws.

## 4. Debt collection sequence

Circular 6/2023 provides clarity on the sequence for debt collection in cases where loans have one or more overdue repayment periods. In such situations, CIs/FBBs will prioritize the collection of outstanding debt in the following order: overdue principal, accrued interest on overdue principal, due principal, and accrued interest on due principal that remains unpaid.

## **5. CIs/FBBs' obligation to check and monitor loan use of customers**

To align with the provisions of the Law on Credit Institutions 2010, Circular 06/2023 explicitly outlines that CIs/FBBs have both the right and obligation to monitor and oversee the utilization of loans as well as the repayment of their customers. In contrast, under Circular 39/2016, this responsibility was solely considered a right of the CIs/FBBs.

## **6. Lending for the purpose of payment to ensure the fulfillment of obligations**

Circular 6/2023 supplements a case where the loan is granted for the purpose of payment to ensure the fulfillment of obligations. This aims to address Article 3.3 of Decree 21/2021 on secured obligations.

Specifically, where the CI/FBB extends loan for the purpose of payment to ensure the fulfillment of obligations, it must set aside the disbursed loan amount at the lending CI/FBB until the termination of the security obligation.

## **7. Lending via electronic channels**

In line with the Digital Transformation Strategy for the banking sector until 2025 as set forth by the SBV, Circular 06/2023 enables CIs/FBBs to provide loans to customers through electronic channels. However, this extension of loans through electronic means is subject to specific conditions imposed by Circular 06/2023. For instance:

7.1. The electronic lending information system must adhere to regulations ensuring information system security at level 3 or above;

7.2. CIs/FBBs must have solutions and technical technologies in place to perform KYC processes and assume responsibility for any associated risks; and

7.3. The outstanding loan amount for an individual customer borrowing funds for living purposes should not exceed 100,000,000 Vietnamese dong at a CI/FBB.

This post is written by Hoang Thi Thanh Thuy and edited by Nguyen Quang Vu.

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