



# Special Alert

July 2023

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## New Lending Requirements for Credit Institutions in Vietnam

### Key Takeaways:

- Four new loan purposes are added to the list of purposes which credit institutions are prohibited from granting loans to Vietnam-based borrowers, including: (i) deposits; (ii) payments of capital contribution in companies; (iii) purchase of shares in unlisted companies; and (iv) financial offsetting.
- For the first time, the State Bank provides the legal framework for digital lending in Vietnam.

On 28 June 2023, the State Bank of Vietnam (“**SBV**”) issued Circular No. 06/2023/TT-NHNN (“**Circular 06**”) amending Circular No. 39/2016/TT-NHNN dated 30 December 2016 on lending activities of credit institutions<sup>1</sup> in Vietnam in Vietnam (“**Circular 39**”). This article briefly explains the new requirements and their rationale provided in Circular 06.

### Addition of Prohibited Loan Purposes

The current list of loan purposes which credit institutions are prohibited from lending to Vietnam-based borrowers include six categories.<sup>2</sup> Circular 06 adds four prohibitive purposes namely:<sup>3</sup>

- (a) Loans for deposits [with a third party];
- (b) Loans for payments of capital contribution to or acquisition of equity in limited liability and unlisted joint stock companies;
- (c) Loans for payments of capital contribution with another partner(s) via the form of capital contribution agreement in projects which are legally illegible to implement; and

<sup>1</sup> For the purpose of this article, the term “credit institutions” include Vietnam-based banks and foreign bank branches in Vietnam.

<sup>2</sup> This list is given in Article 8 of Circular 39.

<sup>3</sup> Article 1.2 of Circular 06.

- (d) Loans for financial offsetting<sup>4</sup> with an exception.<sup>5</sup>

As one may notice, the additional purposes are aimed at preventing loans which have been causing risks to the banking and financial sectors of Vietnam. More specifically, the new prohibitive purposes may help to reduce the issues of overusing loans for careless investments.

## New Regulations on Lending via Electronic Means

The plan for regulating lending via electronic means has been outlined in the SBV's "Plan for Digital Transformation of the Banking Sector by 2025 with Orientations towards 2030" which was issued in 2021.<sup>6</sup> For the first time, Circular 06 puts forth a legal framework for this form of lending. Although Circular 06 does not define what "electronic means" comprise of, this term is defined under the Law on E-transactions of 2005 as "means which operate based on electric, electronic, digital, magnetic, wireless, optical, electro-magnetic technologies or similar technologies."<sup>7</sup> Thus, lending via electronic means can be conducted through various mediums such as mobile applications, websites, etc.

Key new requirements and provisions for lending via electronic means under Circular 06 include the following:

- (a) The information system must satisfy at least level 3 of security requirements laid down in the Government's regulations on the levels of security of information systems,<sup>8</sup> and SBV's regulations<sup>9</sup> on security of information systems in banking operations;<sup>10</sup>
- (b) Each credit institution must file and preserve information and data in accordance with regulations on archives and electronic transactions. Information and data must be stored safely, kept confidential, duly backed up, ensuring their adequacy and integrity in order to facilitate access or use, where necessary, or to serve the inspection, verification and resolution of trace requests, complaints or disputes, or to be provided at the request of the authorities;<sup>11</sup>
- (c) Each credit institution must adopt necessary measures, forms and technologies, accept risks that may arise from lending via electronic means. In addition, a credit institution must meet the following minimum requirements:<sup>12</sup>

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<sup>4</sup> A loan for financial offsetting is defined in Article 1.1(b) of Circular 06 as "loan to a customer to offset that customer's own funds or funds borrowed from another individual or organization (other than the credit institution) used for paying or covering its costs incurred from a plan or project serving business purpose or living purpose."

<sup>5</sup> Article 1.2 of Circular 06. An exception is applicable to a loan which meets the conditions: (i) the borrower has advanced his/her/its money to pay the expenses for the project of the borrower, which are incurred less than 12 months from the time which the credit institution decides to grant the loan (including medium- and long-term loans only); and (ii) the expenses have been considered by the credit institution in granting the loan.

<sup>6</sup> See Article 2.2.2, Item IV of Decision No. 810/QD-NHNN of the SBV dated 11 May 2021.

<sup>7</sup> Article 4.10 of the Law on E-transactions.

<sup>8</sup> It is Decree No. 85/2016/ND-CP of the Government dated 1 July 2016 on the security of information systems by classifications.

<sup>9</sup> It is Circular No. 09/2020/TT-NHNN of the SBV dated 21 October 2020 on security of the information systems in banking operations.

<sup>10</sup> New Article 32a.2 of Circular 39.

<sup>11</sup> *Id.*, New Article 32a.3.

<sup>12</sup> *Id.*, New Article 32a.4. These are general requirements for a credit institution. Circular 06 does not spell

- (i) It has adopted solutions and technologies for ensuring the accuracy, confidentiality and safety during the collection, use and verification of information and data;
  - (ii) It has adopted measures for examining, checking, updating and verifying information and data; measures for preventing acts of forging, intervening and falsifying information and data;<sup>13</sup>
  - (iii) It has developed measures for monitoring, identifying, measuring and controlling risks, and risk treatments;<sup>14</sup> and
  - (iv) It has assigned responsibilities to each individual or department for performance of lending via electronic means, and risk management and control.
- (d) Loan agreements can be made in writing or via an electronic form in accordance with the Law on E-transactions.
- (e) Maximum loan amount for living purposes granted by a credit institution to an individual customer who has been identified or has his/her identification information verified by electronic means (e.g., eKYC) must not exceed VND 100,000,000 (approx. USD 4,255).<sup>15</sup>

## Impacts of Circular 06

Circular 06 will take effect from 1 September 2023. Loan agreements which are entered into prior to this date are not required to follow the new requirements of Circular 06. Nevertheless, an amendment to be made after this date must comply with Circular 06. In our estimate, once Circular 06 comes into force, it will establish a legal framework for credit institutions in Vietnam to formally employ a new form of lending (i.e., digital lending) which can boost their lending services while reducing administrative costs.

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out guidance or specific requirements except those that we explain in the below two footnotes.

<sup>13</sup> This requirement is further guided in New Article 32.b of Circular 39.

<sup>14</sup> *Id.*

<sup>15</sup> New Article 32c of Circular 39. The exchange rate is USD 1 equivalent to VND 23,500.

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