

Special Alert

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Domestic lending restrictions, business voices and the cessation of regulatory effectiveness

After nearly two months of amendments of domestic lending restrictions, which will be effective from 01 September 2023, the State Bank of Vietnam (“**SBV**”) has overruled itself and just ceased the effectiveness of some domestic lending restrictions under Circular No. 10/2023/TT-NHNN dated 23 August 2023 (“**Circular 10**”).

Background

On 28 June 2023, SBV issued Circular No. 06/2023/TT-NHNN (“**Circular 06**”) amending Circular No. 39/2016/TT-NHNN dated 30 December 2016 (“**Circular 39**”) on numbers regulations of domestic lending of credit institutions, which will be effective from 01 September 2023.

Circular 06 has amended domestic lending regulations, to be in line with the digital transformation process in banking activities and other regulations to remove and create more favorable conditions for customers to access bank loans. At the same time, Circular 06 also supplements a number of regulations to control risks arising in lending activities and to ensure the operational safety of the system of credit institutions.

Among the supplements, Circular 06 notably restricts the following lending purposes (the “**Restrictions**”):¹

- To pay for capital contribution, purchase, receive and transfer capital contributions of limited liability companies or partnerships; contribute capital, purchase, receive and transfer shares

¹ Those Restrictions are under Articles 8.8, 8.9 and 8.10 of Circular 39 (as amended by Article 1.2 of Circular 06).

of joint-stock companies that have not been listed on the stock market or have not been registered for trading on the UPCoM trading system.

- To pay the capital contribution under the capital contribution contract, investment cooperation contract or business cooperation contract for the implementation of an investment project that has not yet been eligible to be put into business as prescribed by law at the time credit institutions decide to lend.
- For financial shortfalls, unless the loan fully meets the following conditions:
 - The customer has advanced the customer's own capital to pay and pay the cost of implementing the business project, which the costs of implementing this business project have been incurred up to the date of payment less than 12 months at the time credit institutions decide to lend; and
 - Expenses paid and paid with the customer's own capital in order to carry out the business project are the expenses using the loan source of the credit institution according to the capital use plan submitted to the credit institutions to be considered for medium and long-term loans for implementing that business project.

Business voices and instructions of the Prime Minister

Since the issuance of Circular 06, Ho Chi Minh City Real Estate Association (“**HoREA**”) raised its voice loudly to various business forums, ministries, and the Government and the Prime Minister. Their voices mainly aim to amend or cease the effectiveness of the above Restrictions.

Numbers of letters and events have been since then, notably:

- On 16 July 2023, HoREA sent an official letter no. 108/2023/CV-HoREA to the Prime Minister and SBV proposing SBV to amend numbers of SBV’s Circulars, including Circular 06.
- Again, on 28 July 2023, HoREA sent another official letter no. 110/2023/CV-HoREA the Prime Minister and SBV commenting on the explanatory of SBV dated 18 June 2023 to finalize Circular 06 to create favorable conditions for customers to obtain loans.
- On 17 August 2023, under the direction of the Prime Minister, at the meeting chaired by Deputy Prime Minister Le Minh Khai, representatives of associations, including real estate associations, business representatives requested SBV per its regulatory authority and power to consider and amend the Restrictions.
- On 23 August 2023, numbers of media reported that the Prime Minister signed document no. 756/TTg-KTTH requesting SBV to urgently review and amend Circular 06 in the direction of

suspension of the enforcement of regulations causing difficulties by 25 August 2023.²

- Later, on the same date, 23 August 2023, SBV issues Circular No. 10/2023/TT-NHNN (Circular 10), which ceases the effectiveness of the Restrictions.

Domestic lending restrictions and the cessation of regulatory effectiveness

Circular 10 follows the Prime Minister's direction and settles the business voices of the same. Circular 10 ceases the effectiveness of Restrictions as stipulated in Articles 8.8, 8.9 and 8.10 of Circular 39 (as amended by Article 1.2 of Circular 06) from 01 September 2023 until the effective date of a new legal instrument regulating these issues.

In Circular 10, SBV explains its position and ruling that in the context of the economy still facing many difficulties, in order to give more priority to promoting economic growth, hence, it shall give priority to economic growth.

² <https://baodautu.vn/ngung-hieu-luc-thi-hanh-mot-so-quy-dinh-thong-tu-06-de-go-kho-tin-dung-bat-dong-san-d197031.html>; <https://baophapluat.vn/thu-tuong-yeu-cau-nhnn-sua-thong-tu-06-ngung-hieu-luc-thi-hanh-cac-quy-dinh-gay-kho-khan-trong-ngay-258-post485617.html>; and <https://tapchitaichinh.vn/khan-truong-sua-thong-tu-so-06-2023-tt-nhnn-tao-thuan-loi-cho-doanh-nghiep-tiep-can-von-vay.html>, accessed on 24 August 2023.

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