

Special Alert

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SBV's guidelines and clarifications on some provisions in relation to lending activities of credit institutions and foreign bank branches

On 8 November 2023, the State Bank of Vietnam ("**SBV**") issued Official Letter No. 8631/NHNN-CSTT ("**OL 8631**") to address several questions related to some provisions of Circular No. 39/2016/TT-NHNN dated 30 December 2016, which as amended and supplemented by Circular No. 06/2023/TT-NHNN dated 28 June 2023 ("**Circular 39**") that regulates lending activities of credit institutions, foreign bank branches (collectively referred to as "**CIs**") with respect to their customers.

OL 8631 was timely issued to meet the needs of CIs in implementing the new regulations of Circular 39. Additionally, this document is considered comprehensive and addresses the majority of questions raised by CIs, and SBV's branches at the provincial and city levels.

This alert focuses on summarizing key points and highlighting important aspects of the responses provided in OL 8631. Accordingly, SBV has categorized the responses into four main issues to address the questions presented below:

Explanation of terminology

To address uncertainties regarding the minimum content of proposals for projects catering to housing needs, including purchasing, constructing, renovating homes, and receiving the transfer of land-use rights for residential construction, OL 8631 to implement based on the internal regulations of CIs.

This can be understood as allowing CIs the flexibility to define the content of proposals and projects that serve lifestyle needs, aligning with the specific business activities of each CI and the borrowing needs of customers. The regulation of content for proposals and projects serving lifestyle needs

enables CIs to assess the repayment capacity of customers and the level of risk associated with the loan, thereby making appropriate lending decisions.

Capital requirements not eligible to loan

Regarding foreign loans in the form of deferred payment for goods purchase, SBV has identified it as a category of foreign loans under the form of delayed payment for imported goods. This regulation aligns with the current provisions on the management of foreign borrowing and repayment by enterprises not guaranteed by the government.

Concerning the loans for purpose of saving deposit, OL 8631 explicitly states that CIs are not allowed to lend for saving deposit, under any form, including deposit certificates issued by the CIs themselves. This regulation aims to limit risks for CIs and the banking system.

In the case of customers borrowing for home purchase, SBV has determined that the disbursement of funds by CIs and the earmarking of the disbursed amount until the customer completes the home purchase procedures are intended to ensure that the loan is used for its designated purpose, not for deposit/ saving purposes. This regulation is in line with the current regulations and practical lending activities of CIs.

Order of debt recovery of principal and interest

SBV has determined that overdue interest on unpaid principal is the interest accrued on the overdue principal amount during the repayment period. This regulation aligns with the practical lending operations of CIs. Accordingly, the interest on the loan is calculated based on the actual outstanding principal amount. When the loan becomes overdue, the outstanding principal of the loan increases due to the accrual of overdue interest. Therefore, overdue interest is also calculated on the overdue outstanding principal.

Regarding the order of repayment for various types of interest on overdue principal, SBV has explained that this matter should be determined by mutual agreement between CIs and their customers. This regulation provides flexibility, aligning with the specific conditions and needs of each CI and its customers. CIs can negotiate with the customers on the order of repayment for various types of interest on overdue principal to ensure the rights and benefits of both parties.

Internal regulations

Concerning the "specificity" of internal regulations, SBV instructs CIs to establish internal regulations on lending that are suitable for the business activities of CIs. These internal regulations must be in line with the characteristics of the loan, the type of lending, and the customer segment while including the minimum requirements specified in Circular 39.

For regulations on consumer loans, CIs are responsible for inspecting and monitoring the use of

disbursed funds in this format by customers. This inspection and monitoring aim to ensure that customers use the borrowed funds for the intended purpose effectively and minimize credit risks.

SBV also clarified that Article 27.4 of Circular 39 does not impose specific limitations on the loan term, and the maximum duration for maintaining the maximum loan limit is not explicitly specified. CIs and their customers can mutually agree on the duration for maintaining the maximum loan limit. However, at least once a year, CIs should review and determine the maximum loan limit and the duration for maintaining this limit. If there is any change, CIs and their customers must re-sign the loan limited agreement.

Lending under electronic measures

Scope of application

According to the provisions in Article 32(b) of Circular 39, lending through electronic means applies only to individual customers borrowing funds for living needs. However, OL 8631 explicitly defines the scope of applying electronic lending in two cases:

- For the provisions in Article 32(b) of Circular 39, which only apply to individual customers borrowing funds for living needs; and
- For other provisions, CIs may consider and decide to apply electronic lending for customers, including both individuals and legal entities.

Outstanding loan balances for individuals borrowing funds for living needs

Concerning the provisions in Article 32(c) of Circular 39, SBV responses also clearly specifies two cases regarding outstanding loan balances for individuals borrowing funds for living needs:

- In cases where customers are verified by CIs electronically as stipulated in Article 32(b) of Circular 39, the borrower's maximum loan balance is limited to VND100 million at one CI; and
- In cases where customers are verified at the transaction counter and undergo other steps of the electronic lending process, the borrower's loan balance is not limited to VND100 million.

Responsibilities of credit institutions

SBV asserts that CIs bear responsibility for the results of appraisal and its lending decisions, even when utilizing third-party platforms/systems for the appraisal and lending decision-making process. This reflects the seriousness of SBV in ensuring the safety of CIs' lending operations.

Use of digital signatures in lending decisions and electronic loan agreements

SBV allows CIs to use electronic signatures in lending decisions, including digital loan agreements (if any). This contributes to modernizing CI lending operations while reducing costs, time, and effort in the storage and management of loan files.

Authority for lending decision signatures in the case of automated credit appraisal and approval

SBV addresses questions about the authority for signatures on lending decisions in the case of automated credit appraisal and approval. In this case, the digital signature of the authorized person making the lending decision is considered the signature of the approver of the lending criteria/conditions for the information system serving the appraisal and lending decision-making process.

Scope of application and classification of disbursed loans into customer payment accounts

CIs have the discretion to decide on disbursing loan funds into customer payment accounts for all customers who have established relationships with the CIs and completed identification and verification procedures in accordance with Article 32(b) of Circular 39.

The loans disbursed into customer's payment accounts are defined as loans disbursed directly to the customers and comply with the ratios specified in Article 8(a) of Circular No. 43/2016/TT-NHNN (amended and supplemented).

Furthermore, SBV also guides cis on implementing electronic lending transactions, in which, allowing the cis to consider and decide on using the electronic measures on the following cases:

- Applying one or several steps or the entire lending process;
- Lending for lifestyle needs, business activities, and other operations; and
- Measures, forms, and technological solutions for verifying customer identification information that align with the information already known about the customer.

Transition provisions

OL 8631 guides on the transition provisions applying to loan agreements signed before 1 September 2023. Accordingly, there are two specific cases as follows:

- In the case of a framework contract / the loan agreement signed before 1 September 2023, which contains all the minimum contents specified in Article 23 of Circular 39, if it fulfills the minimum requirements, CIs and customers shall continue to implement the contents of the

signed loan agreement in accordance with the legal regulations in effect at the time of signing that loan agreement; and

- In the case of a framework contract signed before 1 September 2023 that does not contain all the minimum contents as specified in Article 23 of Circular 39, if disbursement occurs from 1 September 2023, the debt acknowledgment must be amended and supplemented to comply with the provisions of Circular 39.

Conclusion

OL 8631 addresses certain questions about the content of Circular 39. These regulations are designed to ensure the safety of CIs' lending operations, mitigate credit risks, and facilitate the smooth implementation of lending activities for the CIs.

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