

Highlights of the Law on Credit Institutions 2024

The newly issued Law on Credit Institutions No. 32/2024/QH15, passed by the National Assembly on 18 January 2024 (“LCI 2024”), has become effective on 01 July 2024 (except for some clauses regarding the transfer of the whole or a part of real estate project as collateral arrangement, which has been delayed to take effect on 01 August 2024). LCI 2024 has replaced the former Law on Credit Institutions No.47/2010/QH12 adopted by the National Assembly on 16 June 2010, as amended by Law No.17/2017/QH14 dated 20 November 2017) (“LCI 2010”), creating a legal corridor to enhance a stable and transparent system of banking operations and in line with international standards.

In order for our clients to get further insights on the LCI 2024, we have highlighted some key changes to banking operations in Vietnam as set out below.

A. Credit Extension Activities

1. Lower Credit Extension Limits

The LCI 2024:

(a) provides new regulations on gradual reduction of credit limits to the clients of credit institutions from time to time. In particular:

(i) the total balance of credit extended by commercial banks, cooperative banks, foreign bank branches, people’s credit funds, and microfinance institutions is capped at:

- 14% of the credit institution’s equity capital for the period from the effective date of the LCI 2024 (i.e. 01 July 2024) to 31 December 2025, which shall be decreased by 1%

annually in 2026, 2027 and 2028, before being capped at 10% from 01 January 2029 for a single client (in lieu of 15% fixed under the LCI 2010); and

- 23% of the credit institution's equity capital for the period from the effective date of LCI 2024 (i.e. 01 July 2024) to 31 December 2025, which shall be decreased by 2% annually in 2026, 2027 and 2028, before being capped at 15% from 01 January 2029 for a client and related persons (in lieu of 25% fixed under the LCI 2010).

(ii) the total balance of credit extended by non-bank credit institutions (i.e., general finance companies and specialized finance companies) is capped at:

- 15% of the credit institution's equity capital applicable from the effective date of LCI 2024 (i.e. 01 July 2024) for a single client (in lieu of 25% fixed under the LCI 2010); and
- 25% of the credit institution's equity capital applicable from the effective date of LCI 2024 (i.e. 01 July 2024) for a client and related persons of that client (in lieu of 50% fixed under the LCI 2010).

It is further noted that the above-mentioned credit extension limits shall not include (1) entrusted loans for which the entrusted credit institution or foreign bank branch does not bear risk, (2) loans where the borrower is another credit institution or foreign bank branch, or (3) loans for the purpose of socio-economic development subject to a higher credit limit approved by the Prime Minister.

2. Recognition of Security Agent Services

Previously, the LCI 2010 was silent on whether a local commercial bank is permitted to act as an independent security agent in a lending transaction. In practice, the local commercial bank would need to act simultaneously as a co-lender to provide security agent services for other lenders in a syndicated loan. Such a silence would expose the security

agents to more potential risk in their financing activities and limit the scope of provision of security agent services only within the context of syndicated loans.

The LCI 2024 has resolved this matter by explicitly allowing a third-party security agent services to be provided by commercial banks in order to manage security assets on behalf of lenders (i.e. international financial institutions, foreign credit institutions, local credit institutions (including banks, non-bank credit institutions, microfinance institutions, people's credit funds), and foreign bank branches) in compliance with applicable laws. In doing so, local commercial banks acting as security agents shall be no longer required to engage in a syndicated loan as a co-lender.

3. Disclosure of information about clients' related parties

Apart from other conditions/ requirements already provided by the LCI 2010 for credit institutions to consider and approve credit extension, the LCI 2024 additionally provides that clients when seeking credit extension from a credit institution must disclose to the credit institution, among others, information of their related parties. The new regulation on disclosure of clients' related parties may help credit institutions to better assessment, approval and supervision of clients in the course of credit extension.

Furthermore, it is worth noting that the LCI 2024 also broadens the definition of "related parties" of an entity, which additionally cover the following subjects:

- (a) parent company of a parent company of an entity;
- (b) subsidiary of a subsidiary of a credit institution; and
- (c) adoptive parents, stepfather, stepmother, parents-in-law; adopted children, stepchildren of spouses, daughters-in-law, sons-in-law; half-siblings; brother-in-law, sister-in-law of sibling or half-sibling; grandparents; grandchildren; uncles, aunts, nieces, and nephews.

4. Disposal of Real Estate Project as Collateral

In order to facilitate debt recovery, the LCI 2024 permits credit institutions, foreign bank branches, debt management and asset exploitation company of credit institutions, asset management company of credit institutions to transfer real estate projects (in whole or in part) which are collaterals for the purpose of loan recovery. Such transfer shall be in compliance with provisions of the Law on Real Estate Business. However, the notable point is that the transferor shall not be required to satisfy the statutory conditions normally applicable to transferors in other cases as required by law (i.e. the transferor must (i) obtain a decision on land allocation, land lease, permission to change land use purpose for project implementation from a competent State agency; and (ii) fulfill all financial obligations on land (if any) to the State with respect to the whole project or the relevant part of project to be transferred). Hopefully, this new regulation will create an effective mechanism for both banks and real estate developers in practice, to not only generate their cash flow but also resolve outstanding loans regarding large-scaled real estate projects.

B. Shareholding and investment in credit institutions

1. Lower ownership ratio cap in a joint stock credit institution

The LCI 2024 has reduced the caps on ownership ratio of corporate shareholders in a credit institution, whereby:

- (a) 10% is now capped for a corporate shareholder (from 15% permissible under the LCI 2010); and
- (b) 15% is now capped for a corporate shareholder and its related parties (from 20% permissible under the LCI 2010).

With respect to shareholders (and their related parties) whose shareholding (before the LCI 2024's effective date) is already beyond the new cap provided by the LCI 2024, such shareholders

shall be entitled to maintain their shareholding, but not permitted to increase their shareholding (except for the case of dividend stock shares) until they comply with the regulation on the said new cap provided by the LCI 2024.

It is further noted that the said new cap shall not be applicable to foreign shareholders as the limits on ownership ratio of foreign shareholders and their related parties in a Vietnamese credit institution are separately regulated by the Government.

2. Stricter restrictions on capital contribution and/or share acquisition

According to the LCI 2010, a credit institution is not permitted to make capital contribution into or acquire shares (as the case maybe) of a company or another credit institution being a shareholder/member of the credit institution.

Whereas, under the LCI 2024, the similar restriction on capital contribution/shares acquisition is applicable to not only the credit institution but also its subsidiary. In particular, the LCI 2024 prohibits a credit institution and its subsidiaries from making capital contribution or acquiring shares of another company or another credit institution which is either a shareholder/member of the credit institution or a related party of a major shareholder/member of the credit institution.

3. Disclosure of information about shareholders and their related persons

Another new regulation in the LCI 2024 is that any shareholder of a credit institution holding from 1% of shares must disclose, in writing, certain information (i.e. background information, number of shares, ownership ratio of the shareholder and its related parties (if any)) to the credit institution and inform any changes of the provided information to the credit institution within 07 business days from the

date of emergence/change of information. The shareholder shall be liable for the accuracy of any information disclosed/provided; and the credit institution shall be obliged:

(a) To post and store information at its headquarter and send a written report to the State Bank of Vietnam ("SBV") within 07 working days from the date on which the credit institution receives the provided information.

(b) to annually disclose information to its General Meeting of Shareholders, General Meeting of Members and the Board of Members,

(c) to publish information about full name of the shareholder, his/her/its holdings in the credit institution, and his/her/its related person's holdings in the credit institution on its website within 07 business days upon receipt of information from the shareholders.

C. Operations of credit institutions

1. Bank run

The LCI 2024 has introduced a new matter of law called "bank run" which refers to a scenario where a large number of depositors simultaneously withdraw their funds from a credit institution (so called "massive withdrawal") which result in the insolvency or potential insolvency of the credit institution.

In the occurrence of a bank run, the affected credit institution must notify the SBV and promptly take the following measures: (i) Cease paying dividends in cash; (ii) Suspend or limit credit extensions and other activities utilizing the credit institution's funds; (iii) Other measures to satisfy deposit repayment demand of clients; (iv) Implement measures specified in the remedial plan in the occurrence of a bank run; (v) Update and adjust the plan if necessary.

If that is the case, the SBV may decide to (i) exercise early

intervention or (ii) impose special control over such credit institution to help resolve financial difficulties and regain a certain level of liquidity for the affected credit institution.

2. Early intervention

As earlier discussed, the LCI 2024 has created a new mechanism in order to facilitate the SBV in supporting credit institutions/foreign bank branches in their difficult situation on a case by case basis whereby the SBV is entitled to apply requirements and restrictive measures to the credit institutions/foreign bank branches and request such credit institutions/foreign bank branches to implement a remedial plan under supervision of the SBV to overcome the situation which subject to early intervention as stipulated by laws.

In particular, the following situations may be subject to early intervention of the SBV:

- (a) the accumulated loss of a credit institution/foreign bank branch is greater than 15% of the value of its charter capital, allocated capital and reserve funds as recorded in the most recent audited financial statements of the credit institution/foreign bank branch or the inspection/audit conclusions of competent authorities and such credit institution/foreign bank branch has violated the minimum capital safety ratio as prescribed by law;
- (b) the credit institution/foreign bank branch is ranked below the average as stipulated by the Governor of the SBV;
- (c) the credit institution/foreign bank branch has violated the solvency ratio as prescribed by law for 30 consecutive days;
- (d) the credit institution/foreign bank branch has violated the minimum capital safety ratio as prescribed by law for 06 consecutive months; and
- (e) the occurrence of a bank run and which has been reported to the SBV.

Given the context of recent incidents happened to some credit institutions in Vietnam, this new mechanism of early intervention establishes a legal framework for the SBV to better control the stability of credit institutions/foreign bank branches as well as to foresee and prepare in advance substantial assistance for credit institutions/foreign bank branches in their difficult situations before they are beyond rescue.

3. Regulatory Sandbox

Under the LCI 2024, for the first time, the Government has allowed organizations to apply a controlled regulatory sandbox mechanism in banking sector to create an experimental domain for participating organizations to apply technology and deploy new products, services, and business models within predefined boundaries concerning scope, spatial constraints, and duration. The participating organizations must satisfy certain criteria and conditions and under the supervision of competent State authorities. Further guidelines on the controlled regulatory sandbox mechanism in banking sector will be provided by the Government at the later stage.

4. Business registration license

Previously, according to the LCI 2010, after being granted with an operating license by the SBV, a new credit institution/ foreign bank branch must carry out procedures for obtaining a business registration license as required by applicable law (e.g. enterprise registration certificate from the business registration authority where it is located in case of a bank; representative office establishment license from the SBV in case of a representative office of a foreign credit institution).

However, under the LCI 2024, the establishment and operating license shall serve concurrently as the enterprise registration license of a credit institution and the

establishment license shall serve concurrently as the operating registration certificate of a foreign bank branch/representative office.
