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# Legal News

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## FINANCIAL & BANKING LAW

### New Regulations on capital contribution or purchase of shares by credit institutions

#### *Vision & Associates*

On 31 December 2018, the State Bank of Vietnam (“**SBV**”) issued Circular No.51/2018/TT-NHNN (“**Circular 51**”), detailing the conditions, formality and components of application dossier, order and procedures for commercial banks and financial companies (hereinafter collectively called “**Credit Institutions**”) to obtain SBV approval for their contribution of capital to or purchase of shares in entities operating in certain sectors. This Circular will come into effect from 1 March 2019. Some notable provisions of Circular 51 are as below:

#### **1. Transactions requiring SBV approval:**

SBV approval shall be required for:

- (a) A commercial bank contributing capital to or purchasing shares to: (i) establish or acquire a domestic subsidiary or affiliate operating in the following sectors: securities underwriting or securities brokerage, management and distribution of securities investment funds’ certificates, management of securities investment portfolios and sale & purchase of shares, insurance, debt management and asset exploitation, foreign exchange, forex and gold trading, intermediary payment services or credit information; (ii) acquire a domestic subsidiary or affiliate operating in the following sectors: finance leasing, factoring, consumer credit or credit card issuance;
- (b) A commercial bank contributing capital to or purchasing shares in another domestic enterprise operating outside the sectors of insurance, securities, foreign exchange, forex trading, gold trading, factoring, credit card issuance, consumer credit, intermediary payment services or credit information;
- (c) A financial company contributing capital or purchasing shares to establish or acquire a domestic subsidiary or affiliate operating in the following sectors: insurance, securities, debt management and asset exploitation;
- (d) A commercial bank or financial company converting debts into a capital contribution portion/shares in a domestic enterprise operating outside the sectors of insurance, securities, foreign exchange, forex trading, gold trading, factoring, credit card issuance, consumer credit,

payment intermediary services or credit information in order to settle bad debts.

However, please note that:

- (a) Circular 51 does not apply to the case where commercial banks contribute capital or purchase shares to establish a Credit Institution; and
- (b) According to Law on Credit Institutions 2010, as amended in 2017, financial companies are not entitled to establish subsidiaries or affiliates of Credit Institutions.

**2. Principles for preparing and sending application dossiers:**

Application dossiers for Credit Institutions to contribute capital or purchase shares must comply with the following principles:

- (a) The dossier must be made in Vietnamese. In case a document issued by a competent foreign body or organization is notarized or certified, it must be consularly legalized under Vietnamese laws (except for cases of exemption from consular legalization according to the provisions of laws on consular legalization) and translated into Vietnamese;
- (b) Translations from foreign languages into Vietnamese must be notary-certified or with authenticated-signature of translators according to the provisions of laws;
- (c) The submitted dossiers must be the originals or copies issued from the original books or certified copies or copies accompanied by the originals for countercheck; in the event that the credit institution submits a copy together with the original copy for countercheck, the checker must sign on and take responsibility for the accuracy of the copy against the original;
- (d) The Credit Institution's application for the SBV approval must be signed by its legal representative or authorized representative (“lawful representative”). In case of authorised signatory, the application must have an authorization document made in accordance with the provisions of laws.

Application dossiers of Credit Institutions may be sent to the SBV by hand or by post.

**3. Order of and procedures for obtaining the SBV approval:**

Credit Institutions shall make 2 sets of application dossiers as prescribed in this Circular and send them to the SBV via Banking Supervisory Agency (“BSA”).

In the case where the dossier is incomplete or invalid, within 7 days after receiving the dossier, the BSA shall send a written request to the applicant to supplement the dossier.

Within 7 days after receiving a completed and valid application dossier, the BSA shall review the application, seek the opinions of the relevant authorities, including:

- (a) State Bank branch in a province or city where the applicant is headquartered on satisfaction of the conditions for capital contribution or share purchase by a Credit Institution as prescribed in this Circular;
- (b) Units of the State Bank on capital contribution, share purchase, debt conversion into contributed capital of a Credit Institution (if necessary).

Within 10 days from the date of receiving the written opinions of the BSA, the consulted authorities shall send to the BSA their written opinions on the contents to be consulted.

Within 14 days from the date of receiving the comments of the relevant authorities, the BSA shall assess and appraise the dossier and submit it to the SBV Governor for consideration, approval or disapproval.

In brief, the SBV, within 45 days since the date of receiving a completed and valid application dossier, shall issue its written approval for the capital contribution or share purchase or debt conversion by a Credit Institution (or in case of disapproval, shall specify the reasons why the approval is not granted).

**4. Validity of the SBV approval:**

The Credit Institution must complete the capital contribution, share purchase or conversion of debt into capital contribution within 12 months after receiving the written approval from the SBV. After this time limit, the SBV approval shall automatically no longer be effective and must be renewed.

## Highlights

### 1. New criteria for import of used machinery and equipment

*This is the highlight of Decision No. 18/2019/QĐ-TTg dated 19 April 2019 of the Prime Minister, on import of used machinery, equipment and technological lines (“Decision 18”).*

According to the new Decision, used machinery and equipment will be permitted to be imported upon satisfying the following criteria:

- (a) The age of used equipment does not exceed 10 years; with regard to machinery or equipment for certain specific sectors, it may be more than 10 years, but not exceeding 15 years or 20 years (as prescribed in Appendix I to this Decision).

(Decision No. 18 has already provided more details on the age of machinery and equipment in certain specific sectors as compared to Circular No. 23/2015/TT-BKHHCN dated 13 November 2015).

- (b) They must be manufactured in accordance with the following standards:
  - (i) The provisions of Vietnam’s National technical regulations on safety, energy saving and environmental protection;
  - (ii) In case none of Vietnam’s National technical regulations is relevant, used machinery and equipment must be manufactured in conformance to technical criteria of Vietnam’s technical standards or national standards of one of G7 member countries or South Korea on safety, energy saving and environmental protection.

This Decision shall come into force on 15 June 2019.

### 2. New regulations on deposit for purchasing of State-owned enterprise’s shares for initial offering

*This is the remarkable content provided in Circular No. 21/2019/TT-BTC dated 11 April 2019 of the Ministry of Finance, providing guidelines for initial public offering and transfer of State capital in accordance with book building method.*

Pursuant to this Circular, the deposit of the investor shall be managed as follows:

- (a) Public investor must pay a deposit equal to 10% of the value of the subscribed shares at the book opening price.
- (b) Regarding strategic investors, the amount of deposit and escrow must equal to 20% of the value of subscribed shares, calculated at the initial price in the approved equitization plan.

The deposit shall be deducted from the total amount payable for purchase of shares; if the deposit is larger than such payable amount, the difference shall be returned to the investor within 3 days after the expiry date of payment term.

The payment term is 10 days from the date of the public announcement of the book-building result.

If the investor fails to fully pay the amount payable for purchase of shares on time, the deposit shall not be returned to the investor.

This Circular shall take effect on 3 June 2019.

### **3. Requirement for publishing conclusions on denunciation**

*This is one of the provisions of Decree No. 31/2019/ND-CP dated 10 April 2019, detailing a number of articles and providing guidelines for implementation of the Law on Denunciations.*

Accordingly, subject to the actual situation, the nature of the case, etc., conclusion on denunciation must be published, (except for contents classified as State secrets and information about denouncers) by one of the following methods:

- (a) Published at the meeting of the agency or organization where the denounced person works or the agency or organisation dealing with the denunciation, etc.
- (b) Publicly displaying at the head office or the citizen reception area of the agency dealing with the denunciation;
- (c) Posting on a website or internal network of the agency dealing with the denunciation for at least 15 consecutive days;
- (d) Publishing on the mass media (including printed, aural, visual or electronic newspapers) and web portal.

This Decree shall come into force on 28 May 2019.

### **4. List of bidding packages for which contractor selection is allowed in special cases**

*On 8 April 2019, the Government has promulgated Decision No.17/2019/QD-TTg on a number of bidding packages and procurement*

*items to maintain regular operations, for which contractor selection is allowed in special cases.*

Pursuant to the new Decision, a list of bidding packages for which contractor selection is permitted in special cases as specified in Article 26 of the Law on Bidding, includes 21 types; for instance:

- (a) Bidding package for providing specialized and professional training for cadres and public officials;
- (b) Bidding package for transport of goods of national reserve to provide relief or aid when daily delivery is needed;
- (c) Bidding package for organization of special arts programs, which serve political tasks assigned by the Communist Party and the State;
- (d) Bidding package with value not exceeding VND 50,000,000; etc.

This Decision shall take effect on 22 May 2019.

## **5. Cancellation of Circular 134 on extension of the time limit for VAT payment and refund**

*This is the content provided in Circular No. 18/2018/TT-BTC dated 3 April 2019 of the Ministry of Finance ("Circular 18"), which came into force on 20 May 2019.*

Particularly, on 12 September 2014, the Ministry of Finance had issued Circular No. 134/2014/TT-BTC ("**Circular 134**") to provide guidelines for the procedures for extending the time limit for VAT payment and refund regarding imported machinery and equipment constituting fixed assets of investment projects under Resolution No. 63/NQ-CP dated 25 August 2014 ("**Resolution 63**").

However, on 13 December 2018, the Government has promulgated Resolution No. 150/NQ-CP to stop extending the time limit for VAT payment and refund under Resolution 63.

Therefore, in order to implement this content, the Ministry of Finance has promulgated Circular 18 to cancel Circular 134 as from 20 May 2019.

With regard to application dossiers for extending the time limit for VAT payment upon import and application dossiers for VAT refund, which have been submitted to customs authorities prior to 20 May 2019, the customs authorities shall continue to process those dossiers in accordance with Circular 134.

## **Other sectors:**

### **Finance**

- Decree No. 32/2019/ND-CP dated 10 April 2019, on assignment of tasks, ordering or bidding to supply public products and services funded by the State budget from the source of regular expenditures.
- Decision No. 636/QD-BTC dated 11 April 2019 of the Ministry of Finance, on amendments to the Regulation on the operations of the Ministry of Finance's web portal accompanying Decision No. 2131/QD-BTC.
- Decision No. 629/QD-NTC dated 10 April 2019 of the Ministry of Finance, amending Decision No. 1624/QD-BTC, on the list of identification codes of the units directly under the Ministry of Finance serving the connection and exchange of electronic documents through the document management and operating system.
- Consolidated Document No. 14/VBHN-NHNN dated 4 April 2019 of the State Bank of Vietnam, combining the Circulars providing guidelines for implementation of regulations on restricting the use of foreign currency in the territory of Vietnam.

### **Taxation**

- Decision No. 1083/QD-BTC dated 26 April 2019 of the Minister of Industry and Trade, on supplements to the List of machinery, equipment, supplies and materials, which may be domestically manufactured.
- Decision No. 625/QD-BTC dated 10 April 2019 of the Minister of Finance, publishing amended or alternative administrative procedures relating to tax within the scope of management function of the Ministry of Finance.
- Decision No. 618/QD-BTC dated 9 April 2019 of the Minister of Finance, on the price list used for calculation of registration fees applicable to motorcycles and automobiles.
- Circular No. 19/2019/TT-BTC dated 9 April 2019 of the Minister of Finance, cancelling Circular No. 304/2016/TT-BTC on the price list used for calculation of registration fees applicable to motorcycles and automobiles.

### **Trade**

- Decision No. 1406/QD-UBND dated 10 April 2019 of the People's Committee of

Ho Chi Minh City, on approval of the Plan of implementing the Training program for entrepreneurs in Ho Chi Minh City during the period from 2019 to 2020.

- Decision No. 287/QD-BNV dated 4 April 2019 of the Ministry of Home Affairs, on the Plan of implementing the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) of the Ministry of Home Affairs.
- Decision No. 409/QD-BKHDT dated 4 April 2019 of the Minister of Planning and Investment, on the Plan of implementing the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
- Circular No. 22/2019/TT-BTC dated 16 April 2019 of the Minister of Finance, on amendments to Circular No. 12/2015/TT-BTC, providing guidelines for Professional certificate on customs declaration; issuance and revocation of customs broker number; order of and procedures for recognition and operation of customs brokerage agents.
- Circular No. 07/2019/TT-BTC dated 19 April 2019 of the Minister of Industry and Trade, providing for export of textile and garment products to Mexico under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

## **Labour**

- Consolidated Document No. 1313/VBHN-BLDTBXH dated 5 April 2019 of the Ministry of Labour, War invalids and Social Affairs, combining Decrees regulating quality inspection of vocational education.
- Consolidated Document No. 1311/VBHN-BLDTBXH dated 5 April 2019 of the Ministry of Labour, War Invalids and Social Affairs, combining Decrees providing for special allowance, incentive allowance, job responsibility allowance, physical hardship, hazard and danger allowance paid to teachers working in public educational establishments.
- Consolidated Document No. 1307/VBHN-BLDTBXH dated 5 April 2019 of the Ministry of Labour, War invalids and Social Affairs, combining Decrees on sanctioning of administrative violations in the field of vocational education.
- Consolidated Document No. 1310/VBHN-BLDTBXH dated 5 April 2019 of the Ministry of Labour, War invalids and Social Affairs, combining Circulars regulating Charter of intermediate schools.
- Consolidated Document No. 1308/VBHN-BLDTBXH dated 5 April 2019 of the Ministry of Labour, War invalids and Social Affairs, combining Circulars

regulating Charter of junior colleges.

- Decision No. 596/QD-LDTBXH dated 25 April 2019 of the Ministry of Labour, War Invalids and Social Affairs, publishing amended or supplemented administrative procedures in the field of social protection within the scope of State management function of the Ministry of Labour, War Invalids and Social Affairs.
- Decision No. 456/QD-BHXH dated 23 April 2019 of Vietnam Social Insurance on Statistical reporting regime and contents of statistical work of Social Insurance industry.
- Decision No. 454/QD-BHXH dated 23 April 2019 of Vietnam Social Insurance on System of statistical indicators of Social Insurance sector.
- Decision No. 487/QD-LDTBXH dated 4 April 2019 of the Ministry of Labour, War Invalids and Social Affairs, publishing amended or supplemented administrative procedures in the field of overseas labour management within the scope of State management function of the Ministry of Labour, War Invalids and Social Affairs.

## **Health**

- Consolidated Document No. 09/VBHN-BYT dated 4 April 2019 of the Ministry of Health, combining Decrees providing guidelines for the Law on Food Safety.
- Consolidated Document No. 08/VBHN-BYT dated 4 April 2019 of the Ministry of Health, combining Decrees regulating requirements for manufacturing of and trade in foods under the specialized management of the Ministry of Health.
- Decision No. 1480/QD-BYT dated 22 April 2019 of the Minister of Health, on Action plan to implement Resolution No. 17/NQ-CP on certain key tasks and measures of development of the electronic Government for the period 2019-2020 with orientation towards 2025.
- Resolution No. 02/2019/NQ-HDND dated 09 April 2019 of the People's Committee of Hanoi, providing for the prices of medical services outside of the scope of the coverage by the Health insurance fund with regard to State-owned medical examination and treatment establishments of Hanoi.

## **Education**

- Decision No. 820/QD-BGDDT dated 2 April 2019 of the Minister of Education and Training on Certificate on Vietnamese language according to the Vietnamese

Language Ability framework for foreigners.

- Circular No. 06/2019/TT-BGDĐT dated 12 April 2019 of the Minister of Education and Training, on the Code of conducts of pre-schools, general and continuing education institutions.
- Circular No. 05/2019/TT-BGDĐT dated 5 April 2019 of the Minister of Education and Training, on the list of minimum teaching equipment for the 1<sup>st</sup> grade.

### **Transport**

- Decree No. 33/2019/ND-CP dated 23 April 2019, on the management, use and exploitation of road transport infrastructure assets.
- Decision No. 634/QĐ-BGTĐT dated 11 April 2019 of the Minister of Transport, on Plan of implementation of the Scheme for controlling the quality of transportation services and ensuring traffic safety for tourists.
- Decision No. 616/QĐ-BGTĐT dated 9 April 2019 of the Minister of Transport, publishing the list of harbours of seaports of Vietnam.
- Circular No. 15/2019/TT-BGTĐT dated 26 April 2019 of the Minister of Transport, publishing the National technical regulations on material facilities and training equipment of seafarer's training establishments.

### **Natural Resources - Environment**

- Decision No. 2142/QĐ-UBND dated 26 April 2019 of the People's Committee of Hanoi, publishing the list of amended or cancelled administrative procedures in the environment field within the scope of management function of the Department of Natural Resources and Environment of Hanoi.
- Decision No. 964/QĐ-BTNMT dated 17 April 2019 of the Minister of Natural Resources and Environment, on Action plan to implement Resolution No.17/NQ-CP on certain key tasks and measures of development of the electronic Government for the period 2019-2020 with orientation towards 2025.
- Decision No. 818/QĐ-BTNMT dated 3 April 2019 of the Ministry of Natural Resources and Environment, publishing new, replaced or cancelled administrative procedures in the fields of measurement, mapping and geographic information within the scope of management function of the Ministry of Natural Resources and Environment.

**Administration - Judiciary**

- Decision No. 428/QD-TTg dated 18 April 2019 of the Prime Minister, on approval of the Scheme for "Improving competencies of grassroots conciliators during the period 2019-2022".
- Decision No. 358/QD-TTg dated 2 April 2019 of the Prime Minister, on the Plan of implementation of the Memorandum executed between Vietnam and the United Kingdom on cooperation in human trafficking prevention and combat.
- Circular No. 23/2019/TT-BTC dated 19 April 2019 of the Minister of Finance, on amendments to Circular No. 218/2016/TT-BTC, providing guidelines for the collection rates, and regime of collection, payment, management and use of charges for evaluation of conditions in the field of security; charges for examination and grant of security guard certificates; fees for grant of permit for management of fireworks; and fees for grant of permit for management of weapons, explosive materials and supportive tools.
- Circular No. 01/2019/TT-VPCP dated 9 April 2019 of the Minister, Chairman of the Government Office on amendments to Article 11.2.dd of Circular No.01/2017/TT-VPCP, providing guidelines for implementation of regulations on Official Gazette in Decree No. 34/2016/ND-CP, providing guidelines for Law on Issuance of legal documents.

**Agriculture - Forestry - Fishery**

- Decree No. 35/2019/ND-CP dated 25 April 2019, providing penalties for administrative violations in the field of Forestry.
- Decision No. 1312/QD-BNN-QLCL dated 22 April 2019, publishing replaced or cancelled administrative procedures in the field of quality management of agricultural, forestry and aquacultural products within the scope of the management function of the Ministry of Agriculture and Rural Development.
- Decision No. 1186/QD-BNN-BVTV dated 10 April 2019 of the Minister of Agriculture and Rural Development, on removal of agrochemicals containing Glyphosate from the list of agrochemicals permissible to use in Vietnam.
- Decision No. 1154/QD-BNN-TCTS dated 5 April 2019 of the Ministry of Agriculture and Rural Development, publishing new, replaced or cancelled administrative procedures in the field of fishery within the scope of management function of the Ministry of Agriculture and Rural Development.

- Circular No. 04/2019/TT-BNNPTNT dated 1 April 2019 of the Minister of Agriculture and Rural Development, on amendments to Circular No. 05/2017/TT-BNNPTNT, providing guidelines for implementation of the National target program on building a new countryside during the period 2016-2020.

### Miscellaneous

- Decree No. 36/2019/ND-CP dated 29 April 2019, providing guidelines for the amended Law on Physical training and Sports.
- Decision No. 471/QĐ-TTg dated 26 April 2019 of the Prime Minister, approving the Scheme for "Enhancing the application of information technology in legal popularization and education during the period 2019-2020".
- Decision No. 1753/QĐ-UBND dated 10 April 2019 of the People's Committee of Hanoi, publishing the list of administrative procedures, and cancelled administrative procedures under the jurisdiction of the Department of Science and Technology of Hanoi.
- Decision No. 362/QĐ-TTg dated 3 April 2019 of the Prime Minister, approving the Nationwide press development and management planning until 2025.
- Circular No. 07/2019/TT-BKHDT dated 8 April 2019 of the Minister of Planning and Investment, amending Circular No. 03/2014/TT-BKHDT, on the registration of cooperatives and the system for reporting on cooperatives' operation status.

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