

2010 Law on Credit Institutions

The 12th National Assembly of Vietnam (“NA”) passed the new Law on Credit Institutions at its seventh session on 16 June 2010 (“2010 Law on Credit Institutions” or “New Law”).

The 2010 Law on Credit Institutions aims at ensuring safe and effective operation of the nation’s banking system.

Once effective on 1 January 2011, the 2010 Law on Credit Institutions will replace the 1997 Law on Credit Institutions (“1997 Law on Credit Institutions”).

This legal update summarises the 2010 Law on Credit Institutions, chapter by chapter, and tries to highlight its new key points by comparing it with the 1997 Law on Credit Institutions.

Chapter I: General provisions (Articles 1 to 17)

This chapter covers the governing scope; applicability; application of the Law on Credit Institutions, international treaties, international commercial practice and relevant laws; interpretation of terms; use of terms related to banking operation; organisational forms of a credit institution; autonomy in conduct of operations; right to conduct banking operations; co-operation and competition in banking operations; protection of interests of clients; responsibility to prevent and fight against money laundering or funding for terrorism; legal representative of a credit institution; provision of information; confidentiality of information; stand-by database and information; purchase of shares by foreign investors; and policy banks.

Under the 2010 Law on Credit Institutions, the various forms of banks comprise commercial banks, co-operative banks and policy banks. At variance with commercial banks which operate for profitable purpose, policy banks are established by the Government to conduct operations for non-profitable purpose aimed at implementing State socio and economic policies.

What’s new in the 2010 Law on Credit Institutions? The following are some new main points which can be found in the New Law.

GOVERNING SCOPE

The 2010 Law on Credit Institutions regulates:

- i. the establishment, organisation, operation, special control, re-organisation and dissolution of credit institutions; and
- ii. the establishment, organisation, management and operation of foreign bank branches and representative offices of foreign credit institutions and of other foreign organisations conducting banking operations.

The 2010 Law on Credit Institutions expands the governing scope. Not only does the New Law govern the organisation and operation of credit institutions as in the 1997 Law on Credit Institutions but it also regulates the establishment, re-organisation and dissolution of credit institutions.

LINE TO DISTINGUISH BETWEEN OPERATIONS BETWEEN BANKS AND NON-BANKING CREDIT INSTITUTIONS

The line to distinguish operations between

commercial banks and non-banking credit institutions is clearly delineated. Non-banking credit institutions are not allowed to perform the following services: accepting deposits from individuals and providing payment services via clients' bank accounts.

NEW BASIC CONCEPTS

The 2010 Law on Credit Institutions sets out the criteria as to what comprises "banking operations." The New Law provides that "banking operations" comprise receipt of deposits, extension of credit and provision of payment services via accounts. As compared with the 1997 Law on Credit Institutions, the fundamental change is that only credit institutions are permitted to carry out banking operations.

The 2010 Law on Credit Institutions supplements some important terms and expressions such as "investments in the form of capital contribution or purchase of shares in order to hold control of an enterprise", "related person", "manager", "executive official" for the purpose of meeting demand for management, which provisions are stricter than the counterpart provisions in the Law on Enterprises.

PRINCIPLE OF LAW APPLICATION

This principle is expressed in Article 3.2 of the New Law: Where the 2010 Law on Credit Institutions and another law contain different provisions on establishment, organisation, operation, special control, re-organisation, dissolution of credit institutions; and establishment, organisation, and operation of foreign bank branches and representative offices of foreign credit institutions and of other foreign organisations conducting banking operations, the provisions of the 2010 Law on Credit Institutions shall prevail.

ORGANISATIONAL FORMS OF CREDIT INSTITUTION

Domestic commercial banks shall be established and

organised in the form of a shareholding company, except that State-owned commercial banks shall be established and organised in the form of a one member limited liability company where 100 percent of the charter capital is owned by the State.

Domestic non-banking credit institutions shall be established and organised in the form of a shareholding company or a limited liability company.

Joint venture credit institutions or credit institutions with 100 percent foreign owned capital shall be established and organised in the form of a limited liability company.

Co-operative banks and people's credit funds shall be established and organised in the form of a co-operative.

Micro-finance institutions shall be established and organised in the form of a limited liability company.

Chapter II: Licences (Articles 18-29)

Chapter II provides for the authority to issue and revoke licences; legal capital; conditions for issuance of licences; file, order and procedures for application for issuance of licences; time-limit for issuance of licences; fees for issuance of licences; business registration and registration of operations; publication on operations; conditions for commencement of operations; use of licences, revocation of licences; and changes for which approval of the State Bank of Vietnam ("SBV") must be obtained.

The 2010 Law on Credit Institutions stipulates the licensing of credit institutions under the direction of heightening the requirements, criteria and conditions to ensure safety for each credit institution and for the whole system of credit institutions.

On the other hand, the 2010 Law on Credit Institutions simplifies administrative procedures by eliminating provisions on approving changes in key

personnel and reducing the cases of applying for prior approval by the SBV.

Chapter III: Organisation, management and administration of credit institutions (Articles 30-89)

While the 1997 Law on Credit Institutions has only five articles on the organisation, management and administration of credit institutions (Articles 36-40), the 2010 Law on Credit Institutions devotes a whole new chapter of 60 articles to providing specific regulations on the matter.

The main points of this chapter are summarised below.

GENERAL PROVISIONS ON MANAGEMENT AND ADMINISTRATION APPLICABLE TO ALL TYPES OF CREDIT INSTITUTION

This section sets out provisions applicable to all types of credit institutions, including provisions on the establishment of a branch, a representative office, a professional entity and a commercial presence of credit institutions; charter of credit institutions; organisational and management structure of credit institutions; persons not permitted to hold positions; persons not permitted to concurrently hold various positions; automatic loss of status; removal and dismissal; suspension or suspension for definite period of positions in the board of management, members' council or board of controllers and general director (director); rights and obligations of managers and executive officials of credit institutions; responsibility to publish related interests; internal control system; internal audit; and independent auditor.

SPECIFIC PROVISIONS ON MANAGEMENT AND ADMINISTRATION APPLICABLE TO EACH TYPE OF CREDIT INSTITUTION

- **Provisions on management and administration applicable to credit institutions being**

shareholding companies or limited liability companies

The list of proposed persons to be elected or appointed as members of the board of management or the members' council, members of the board of controllers, the general director (director) of a credit institution must be approved in writing by the SBV before election or appointment to such positions. Persons who are elected to or appointed as members of the board of management or the members' council, members of the board of controllers, the general director (director) of the credit institution must be those in the list approved by the SBV (Article 51).

To ensure transparency and impartiality, the 2010 Law on Credit Institutions prescribes that at least half of the number of members of the board of management must be independent members and members who are not executive officials of the credit institution (Article 60.1). The New Law also prescribes conditions for independent members of the board of management (Article 50.2).

The 2010 Law on Credit Institutions places specific restrictions on ownership ratios in credit institutions. An individual shareholder in a credit institution is not allowed to hold a stake of more than 5 percent, and no institutional shareholder may hold an interest greater than 15 percent except for these cases: ownership of shares as decided by the SBV in order to deal with a credit institution suffering difficulties and to ensure safety of the system of credit institutions; ownership of shares held by the State in equitised credit institutions; ownership of shares by foreign investors. A shareholder and related persons of such shareholder shall not be permitted to own over 20 percent of the charter capital of a credit institution (Article 55).

In a credit institution organised as a limited liability company, each member must be a legal entity as prescribed by the law of Vietnam, and

the maximum capital ownership of any member and its affiliates would not be allowed to exceed 50 percent of the charter capital.

- **Provisions on management and administration applicable to credit institutions being co-operatives**

The 2010 Law on Credit Institutions sets out stricter provisions on the organisation, management and administration of credit institutions being co-operatives. To be specific, the 2010 Law on Credit Institutions provides for the nature and objectives of operation, establishment of a credit institution being a co-operative, organisational structure, charter capital, charter of a credit institution being a co-operative, rights of the members, obligations of members, general meeting of members, board of management, duties and powers of the board of management, organisation and operation of the board of controllers, duties and powers of the board of controllers, general director (director) of the co-operative bank or the people's credit fund, rights and obligations of general director (director).

- **Provisions on management and administration applicable to credit institutions being micro-finance institutions**

A micro-finance institution is a form of credit institution which mainly conducts a number of banking operations aimed at satisfying requirements of individuals, low-income households and super-small enterprises. Due to this characteristic of a micro-finance institution, the SBV will provide regulations on capital contribution of foreign organisations and individuals for establishment of micro-finance institutions; the number of capital contributing members; ratio of ownership of shares or contributed capital of domestic and foreign organisations and individuals in micro-finance

institutions; provisions on organisational structure of a network or operating localities of micro-finance institutions.

- **Provisions on management and administration applicable to foreign bank branches**

A foreign bank branch, a dependent unit of a foreign bank is not a legal entity but the foreign bank guarantees to be responsible for all obligations and undertakings of such branch in Vietnam. The foreign bank is permitted to make decisions on the structure of management and administration of a foreign bank branch in Vietnam in accordance with the law of the country where the head office of the foreign bank is located, but the foreign bank must satisfy the provisions of the 2010 Law on Credit Institutions in relation to organisational structure, administration, inspection, control and internal audit and must obtain written approval of the SBV before implementation (Article 89.1).

Chapter IV: Operation of Credit Institutions (Articles 90-123)

SCOPE OF OPERATIONS OF CREDIT INSTITUTIONS

In the licence issued to each credit institution, the SBV will specify the scope, form and contents of banking operations and other business operations of a credit institution.

A credit institution must conduct its banking operations and other business operations specified in its licence issued by the SBV.

Based on the criteria for the classification of credit institutions, the 2010 Law on Credit Institutions specifies the scope of operations of each type of credit institution, in which the operations of commercial banks are considered as the reference to the specified scope of operations of other credit institutions. Finance companies and finance leasing companies are not allowed to receive deposits from individuals

and carry out payment services. The scope of operations of a micro-finance institution mainly focuses on providing simple banking services to individuals, low-income households and super-small enterprises.

GENERAL PROVISIONS ON OPERATION APPLICABLE TO ALL TYPES OF CREDIT INSTITUTION (ARTICLES 90-97)

The 2010 Law on Credit Institutions sets out general provisions applicable to all types of credit institutions, including scope of permissible operations of credit institutions; charges and rates of interest in business operation of credit institutions; issuance of deposit certificates, bills, notes and bonds by credit institutions; internal rules; consideration and approval of extension of credit and inspection of use of loans; termination of extensions of credit, dealing with debts and exemption and reduction of rates of interest; maintenance of credit files; and E-banking operations.

OPERATION OF COMMERCIAL BANKS (ARTICLES 98-107)

This section comprises articles on banking operations of commercial banks; borrowing funds from the SBV; borrowing funds from credit institutions and financial institutions; opening of accounts; organisation and participation in payment systems; contribution of capital and purchase of shares; participation in monetary markets; trading and provision of foreign exchange services and derivative products; trust and agency operations; and other business operations of commercial banks.

Commercial banks are permitted to carry out all banking operations and some other business operations for profit-making purpose. The 2010 Law on Credit Institutions also specifies operations which credit institutions are *de facto* allowed to perform, operations with SBV permission, operations for credit institutions with required subsidiaries and associates, and operations which credit institutions

are not allowed to perform.

With respect to capital contribution and share purchase, a commercial bank must establish or acquire subsidiary companies or affiliated companies to carry out the following business operations: underwriting for issue of securities; securities broking; management and distribution of securities investment fund certificates; management of securities investment portfolio; and sale or purchase of shares; finance leasing; and insurance. A commercial bank may establish and acquire a subsidiary company or affiliated company to carry out management of security property, foreign currency remitted by Vietnamese abroad, trading of foreign exchange or gold, factoring, issuance of credit cards, consumption credit, payment intermediary services and credit information.

The establishment and acquisition of a subsidiary company or affiliated company as mentioned above and any capital contribution or purchase of shares by a commercial bank in other sectors require the prior written approval of the SBV.

OPERATION OF FINANCE COMPANIES (ARTICLES 108-111)

This section provides for banking operations of finance companies; opening of accounts of finance companies; capital contribution and purchase of shares by finance companies; and other business operations of finance companies.

With respect to capital raising, finance companies may receive deposits from organisations only. Finance companies may issue deposit certificates, bills, notes and bonds in order to raise capital also from organisations only.

A finance company shall only be permitted to use its charter capital and other reserve funds to make capital contribution or purchase shares. A finance company shall only be permitted to establish and acquire a subsidiary company or affiliated company

operating in the sectors of insurance, securities, or management of security property after obtaining the written approval of the SBV.

OPERATION OF FINANCE LEASING COMPANIES (ARTICLES 112-116)

The 2010 Law on Credit Institutions stipulates that finance leasing companies may receive deposits from organisations only and issue deposit certificates, bills, notes and bonds in order to raise capital also from organisations only. Its main function being to carry out finance leasing, a finance leasing company is prescribed by law to carry out operating leases with condition that the total value of assets under operating leases shall not exceed 30 percent of the current assets of the finance leasing company.

OPERATION OF CREDIT INSTITUTIONS BEING CO-OPERATIVES (ARTICLES 117-118)

The 2010 Law on Credit Institutions supplements provisions on establishment and operations of co-operative banks and empowers the SBV to restrict people's credit funds to provide loans to non-member clients depending on specific situations, thereby restricting conflict of interests that may arise in this model of operation.

OPERATION OF CREDIT INSTITUTIONS BEING MICRO-FINANCE INSTITUTIONS (ARTICLES 119-122)

This section comprises articles on raising capital by micro-finance institutions; extension of credit by micro-finance institutions; opening of accounts of micro-finance institutions; and other operations of micro-finance institutions.

OPERATION OF FOREIGN BANK BRANCHES (ARTICLE 123)

Subject to the form of the foreign bank, a foreign bank branch may conduct the operations of a commercial bank in Vietnam except for the operation of establishing a subsidiary or affiliated company to conduct the business of securities, insurance and

finance leasing, and the operations that the foreign bank is not permitted to conduct in its own foreign country. In addition, a foreign bank branch shall only be permitted to provide a number of foreign exchange services in the international market to clients in Vietnam in accordance with the law on foreign exchange.

Chapter V: Representative offices of foreign institutions and other institutions engaged in banking operations (Articles 124 and 125)

Chapter V provides for the establishment of representative offices in Vietnam and operations of representative offices of foreign credit institutions and other institutions engaged in banking operations.

Chapter VI: Restrictions to ensure security for operations of credit institutions (Articles 126-135)

This chapter comprises articles on individuals to whom or organisations to which credit institutions shall not be permitted to extend credit; restrictions on extension of credit; limits on extension of credit; limits for contribution of capital and purchase of shares; prudential limits; contingencies; real estate business; requirements for safety in e-banking operations; rights and responsibilities of controlling company; and capital contribution and purchase of shares among subsidiary companies, affiliates and controlling company.

The 2010 Law on Credit Institutions stipulates a specific restriction and control not allowing credit institutions to engage their operations in too many unrelated areas, since this undertaking may negatively affect the competitiveness and safety of credit institutions over the time. The New Law stipulates how credit institutions may set up subsidiaries and affiliated companies, contribute capital and purchase shares.

The 2010 Law on Credit Institutions stipulates groups of rules to mitigate excessive risks of credit institutions on a single client or a group of clients. In comparison with the 1997 Law on Credit Institutions, the New Law makes an important adjustment: not to determine a credit line for a client in each type of credit, but instead, to offer an aggregate credit line for a client. This provision is proper in that it helps mitigate risks for credit institutions, since the fact shows that risks of credit institutions only depend on credit risks of clients themselves.

The 2010 Law on Credit Institutions also tries to prevent conflicts of interest through credit relations, capital contribution or cross share purchase, or share purchase among credit institutions, subsidiaries, associates and holding companies.

The level of capital contribution to, or purchase of shares in, a single enterprise engaged in such sectors as insurance, securities, management of security property, foreign currency remitted by Vietnamese abroad, trading of foreign exchange or gold, factoring, issuance of credit cards, consumption credit, payment intermediary services or credit information by a commercial bank and its subsidiary companies and affiliated companies must not exceed 11 percent of the charter capital of the enterprise receiving the contributed capital.

The total level of capital contribution to, or purchase of shares in, enterprises by a commercial bank, including its subsidiary companies and affiliated companies must not exceed 40 percent of the charter capital and reserve fund of the commercial bank.

Chapter VII: Finance, cost accounting and reporting (Articles 136-144)

This chapter provides for finance regime; fiscal year; cost accounting; reserve fund; purchase of and investment in fixed assets; reports of credit

institutions and foreign bank branches; reports of controlling company; publication of financial statements and overseas remittance of profits and assets.

Chapter VIII: Special control, re-organisation, bankruptcy, dissolution and liquidation of credit institutions (Articles 145-157)

SPECIAL CONTROL

The provisions on special control are stipulated in detail and increase authority for the SBV in applying necessary measures to credit institutions placed under special control. The provisions on special control over credit institutions include: reports on insolvency; application of special control; decisions on special control; duties, powers and responsibilities of special controlling boards; powers of the SBV over credit institutions subject to special control; responsibilities of credit institutions subject to special control; special loans and termination of special control.

RE-ORGANISATION, DISSOLUTION, BANKRUPTCY OF CREDIT INSTITUTIONS AND LIQUIDATION OF ASSETS OF CREDIT INSTITUTIONS

The 2010 Law on Credit Institutions supplements cases where a credit institution may be placed under special control so that the SBV may intervene in time when discovering weaknesses of such credit institution, in order to mitigate risks for the whole system.

Chapter IX: State administration bodies (Articles 157-160)

This chapter regulates State administrative bodies; power to inspect supervise and examine; rights and obligations of entities subject to inspection and supervision.

Chapter X: Implementing Provisions (Articles 161-163)

This chapter comprises a grandfather clause, the effectiveness and the detailed regulations and guidelines for implementation.

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