FRASERS
LAW COMPANY

New Law on Credit Institutions

Legal Update | March 2024

Introduction

Beginning 1 July 2024, the Law on Credit Institutions No. 32/2024/QH15 passed by the National Assembly on 18 January 2024 (***New Law on Credit Institutions***) will replace the currently effective Law on Credit Institutions No. 47/2010/QH12[1] (***Current Law on Credit Institutions***). The New Law on Credit Institutions proposes significant modifications mainly affecting the operation of commercial banks and foreign bank branches. This revision aims to fortify the stability of credit institutions, support economic growth, and drive innovation in the country's banking operations.

The New Law on Credit Institutions signifies a significant overhaul of the Vietnamese banking regulatory framework. It introduces several new provisions such as: regulations on enhancing safety in the operations and business activities of credit institutions and foreign bank branches; early intervention measures for troubled banks; application of technology in the banking sector; and bad debt settlement policies.

This update seeks to present notable provisions under the New Law on Credit Institutions categorised into two main groups: (i) regulations coming to exist for the first time and (ii) revisions to existing regulations under the Current Law on Credit Institutions and relevant legislation.

New regulations

1. Dealing with bank runs

In response to certain incidents in the banking sector in recent years, the New Law on Credit Institutions addresses matters concerning bank runs. A bank run, according to the New Law on Credit Institutions, refers to a situation where a large number of depositors rush to withdraw their deposits en masse, rendering the liquidity or solvency of the relevant credit institution/foreign bank branch impaired or on the brink of being impaired.[2]

In the event of a bank run, the relevant credit institution/foreign bank branch is obliged to report the situation to the State Bank of Vietnam (***SBV***) thereby the SBV may decide to (i) intervene early or (ii) impose special control over such credit institution/foreign bank branch.[3] Accordingly, the relevant credit institution/foreign bank branch must adhere to the legal remedies for its financial difficulties and may avail itself of support measures primarily provided by the SBV to regain a certain level of liquidity.[4]

2. Early intervention of the SBV

The New Law on Credit Institutions introduces a whole chapter comprising six articles (from Article 156 to Article 161) stipulating the early intervention of the SBV into weak credit institutions and foreign bank branches.

Early intervention is when the SBV applies requirements and restrictive measures to credit institutions, foreign bank branches and requires credit institutions, foreign bank branches to implement a remedial plan under the supervision of the SBV to overcome the situation triggers the early intervention.[5]

Either of following situations may trigger early intervention of the SBV:[6]

i. the accumulated loss of a credit institution or foreign bank branch is greater than 15% of the value of its charter capital, allocated capital and reserve funds recorded

---

[1] The Current Law on Credit Institutions was passed by the National Assembly in June 2010 and amended in November 2017.
[2] Article 4.31 of the New Law on Credit Institutions.
[3] Articles 156.1(dd), 162.1(dd), 191.1, and 191.2 of the New Law on Credit Institutions.
[4] Article 191 of the New Law on Credit Institutions.
[5] Article 4.3 of the New Law on Credit Institutions.
[6] Article 156.1 of the New Law on Credit Institutions.

in the most recent audited financial report of the credit institution or foreign bank branch or according to inspection and audit conclusions of empowered State authorities; and the credit institution, the foreign bank branch is in violation of the minimum capital safety ratio as prescribed by law;[7]

ii. the credit institution, the foreign bank branch is ranked below the average as stipulated by the Governor of the SBV;

iii. the credit institution, the foreign bank branch is in violation of the solvency ratio as prescribed by law for 30 consecutive days;

iv. the credit institution, the foreign bank branch is in violation of the minimum capital safety ratio as prescribed by law for six consecutive months; and

v. a bank run happens.

Restrictive measures for credit institutions and foreign bank branches subject to early intervention of the SBV include:[8]

i. prohibition on dividend/profit payments, or of distribution of after-tax profits subsequent to the allocation of reserves or repatriation of profits to the home country; restrictions on transfer of shares, capital contributions, and asset transfers;

ii. imposition of restrictions on ineffective and high-risk business activities; reduction in thresholds for credit extension, capital contribution, and share acquisition; imposition of constraints on credit expansion;

iii. temporary suspension or cessation of one or more banking activities or other business operations that may potentially contravene regulations; prohibition of new banking or business ventures, and expansion of operational networks;

iv. suspension of executives and managers who breach legal regulations or pose significant operational risks to credit institutions or foreign bank branches; appointment or election of new executives or managers to assume their roles; and

v. implementation of additional measures deemed necessary by the SBV.

3. Disclosure of information of shareholders

Any shareholder holding **1%** or greater of shares of a credit institution must disclose, in writing, certain information to the credit institution within a seven-day period following the emergence of the information.[9] The shareholder is also obliged to send a written notice to the credit institution informing any change in the general information disclosed, and/or any increase/decrease by 1% or more in the percentage of ownership of shares held by the shareholder and/or the related parties of the shareholder.

4. Bancassurance

The New Law on Credit Institutions explicitly prohibits credit institutions, foreign bank branches, and their staff from selling non-compulsory insurance products in conjunction with providing banking products and services.[10]

5. Disclosure of information of customers' related parties

Customers seeking credit extension from a credit institution must disclose to the credit institution information of their related parties.[11]

---

[7] As per Article 138.1(b) of the New Law on Credit Institutions, the minimum capital safety ratio is 8% or more as stipulated by the Governor of SBV from time to time.
[8] Article 157.2 of the New Law on Credit Institutions.
[9] Article 49 of the New Law on Credit Institutions.
[10] Article 15.5 of the New Law on Credit Institutions.
[11] Article 102.3 of the Current Law on Credit Institutions.

6. Controlled pilot mechanism

The introduction of the controlled pilot mechanism is a notable feature within the New Law on Credit Institutions. This mechanism in the banking sector serves as an experimental domain wherein organisations can apply technology and deploy new products, services, and business models within predefined boundaries concerning scope, spatial constraints, and duration. Participation in this mechanism necessitates adherence to specific approval criteria and oversight by the relevant State authority. Guidelines regarding the controlled pilot mechanism in the banking sector will be further issued by the Government.[12]

7. Security agent

Commercial banks are now expressly permitted to engage in business operations as agents tasked with managing security assets on behalf of lenders, including international financial institutions, foreign credit institutions, credit institutions, and foreign bank branches, in compliance with applicable laws.[13] This is a good signal given that such role has been previously regulated in the context of syndicated loans only.

8. Identification of bad debts

Another significant addition to the regulatory framework within the New Law on Credit Institutions pertains to the definition of bad debts. Bad debts of credit institutions and foreign bank branches encompass those recorded in the balance sheet as per the directives of the Governor of the SBV, as well as debts for which allocated reserves have been utilised but remain unrecovered and are under off-balance sheet monitoring. Additionally, bad debts include those purchased by debt trading and processing organisations from credit institutions and foreign bank branches but remain unrecovered.[14]

Revised regulations

9. Lower caps on ownership over shares in joint stock credit institutions

The adjustment involves lowering the caps on ownership (including indirect ownership) over shares of credit institutions as follows:

Relevant entities	Current Law on Credit Institutions	New Law on Credit Institutions
One corporate shareholder (excluding foreign shareholder)	15%[15]	10%[16]
One shareholder (excluding foreign shareholders) and its related persons	20%[17]	15%[18]

Notwithstanding, shareholders and/or their related persons who have already surpassed the ownership percentage cap are permitted to maintain their current shares as of the effective date of the New Law on Credit Institutions. Nevertheless, they will be prohibited

[12] Article 106 of the New Law on Credit Institutions.
[13] Article 114.2 of the New Law on Credit Institutions.
[14] Article 195 of the New Law on Credit Institutions.
[15] Article 55.2 of the Current Law on Credit Institutions.
[16] Article 63.2 of the New Law on Credit Institutions.
[17] Article 55.3 of the Current Law on Credit Institutions.
[18] Article 63.3 of the New Law on Credit Institutions.

from further augmenting their share ownership percentage until they comply with the new ownership regulations, except for receiving additional shares issued as dividends.[19]

Limits on ownership over shares apply to foreign shareholders will be further stipulated by the Government at a later stage.[20]

10. Broaden the definition of related parties

In addition to the entities identified as related parties of one another under the Current Law on Credit Institutions (which remain unchanged under the New Law on Credit Institutions), the expanded list of related parties under the New Law on Credit Institutions encompasses a broader range of entities also covering:[21]

i. parent company of a parent company of an entity;

ii. subsidiary of a subsidiary of a credit institution; and

iii. 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.

11. The credit extension limits decrease[22]

Relevant entities	Current Law on Credit Institutions[23]	New Law on Credit Institutions[24]	
	Credit extension limits	Credit extension limits	Note
A single client	Capped at **15%** capital of bank	Capped at **14%** capital of bank	The cap shall be decreased by one percent every year until 2029.
A single client and their related parties	Capped at **25%** capital of bank	Capped at **23%** capital of bank	The cap shall be decreased by two percent every year until 2029.

12. More stringent limitations on capital contribution and on share acquisition

The Current Law on Credit Institutions prohibits a credit institution from making capital contribution into or acquiring shares of (as appropriate) a company or another credit institution which is a shareholder/member of the credit institution.[25]

Whereas, under the New Law on Credit Institutions, not only a credit institution but also its subsidiary is prohibited from making capital contribution into or acquiring shares of (as appropriate) another company or another credit institution which is either a

[19] Article 210.11 of the New Law on Credit Institutions.
[20] Article 63.7 of the New Law on Credit Institutions.
[21] Article 4.24 of the New Law on Credit Institutions.
[22] This cap does not apply for non-bank credit institutions except people's credit funds and micro financial institutions.
[23] Article 128 of the Current Law on Credit Institutions.
[24] Article 136 of the New Law on Credit Institutions.
[25] Article 129.5 of the Current Law on Credit Institutions.

shareholder/member of the credit institution or a related party of a major shareholder/member of the credit institution.[26]

If a credit institution or a subsidiary of the credit institution has already owned any shares or capital contribution not in line with the above regulations before 1 July 2024, the credit institution or the subsidiary of the credit institution must form and implement an initiative for ensuring compliance with such new regulations under the New Law on Credit Institutions as guided by the Governor of SBV.[27]

13. Waterfall payment structure in realisation of collaterals of bad debts

The New Law on Credit Institutions delineates a more explicit waterfall payment structure for allocating proceeds from the realisation of collateral assets of bad debts among various stakeholders, compared to the corresponding stipulation outlined in Resolution No. 42/2017/QH14 issued by the National Assembly on 21 June 2017 and expired on 1 January 2024 (***Resolution 42***).

Under Article 199.1 of the New Law on Credit Institutions, the distribution of proceeds derived from the realisation of collateral assets associated with bad debts shall adhere to the following hierarchical sequence:

i. expenses incurred for the preservation of collateral assets;

ii. expenditures associated with the seizure and liquidation of collateral assets;

iii. court fees pertaining to judgments and decisions related to the liquidation of collateral assets;

iv. taxes and fees directly linked to the transfer of collateral assets, encompassing personal income tax and stamp duty;

v. secured liabilities owed to credit institutions, foreign bank branches, and organisations involved in debt trading and processing; and

vi. other unsecured obligations as prescribed by law.

14. Silence on right to seize collateral assets

The primary regulation outlined in Resolution 42 concerning the handling of bad debts pertains to the legal authority granted to credit institutions, contingent upon specific statutory conditions, to seize collateral assets if the party securing or holding those assets fails to transfer them to the credit institutions, among other entities, for the purpose of asset liquidation.[28]

Despite the expectation that the provisions outlined in Resolution 42 would be integrated into the new regulatory framework of the banking sector to promote consistency, the New Law on Credit Institutions does not include any similar provision acknowledging the legal authority of credit institutions to seize collateral assets.

15. Transfer of real estate projects for loan recovery purpose

The New Law on Credit Institutions[29] permits credit institutions, foreign bank branches, debt management and asset exploitation company of credit institutions, asset management company of credit institutions to transfer collateral assets being real estate projects, for loan recovery purpose without the requirement to satisfy conditions for a transferor in real estate business, provided that:

[26] Article 137.5 of the New Law on Credit Institutions.
[27] Article 210.5 of the New Law on Credit Institutions.
[28] Article 7 of Resolution 42.
[29] Articles 200 and 210.15 of the New Law on Credit Institutions.

i. the concerned real estate project meets certain conditions as prescribed by law for it to be legally transferred and is subject to decisions on allocation or lease of land duly issued by empowered State authorities; and

ii. the transferees meet conditions as prescribed by law.

FRASERS
LAW COMPANY

Authors

Ho Thuy Ngoc Tram
Partner
tram.ho@frasersvn.com

Le Huynh Ngoc Linh
Legal Assistant
linh.le@frasersvn.com

Ho Chi Minh City

19th Floor, Deutsches Haus
33 Le Duan Boulevard, District 1
Ho Chi Minh City, Vietnam
T: +84 28 3824 2733

Hanoi

12th Floor, Pacific Place
83B Ly Thuong Kiet Street, Hoan Kiem District
Hanoi, Vietnam
T: +84 24 3946 1203

Website www.frasersvn.com
Email legalenquiries@frasersvn.com

This material provides only a summary of the subject matter covered, without the assumption of a duty of care by Frasers Law Company. The summary is not intended to be nor should be relied on as a substitute for legal or other professional advice.

© Copyright in this article is owned by Frasers Law Company