NOTABLE NEW PROVISIONS ON LENDING ACTIVITIES OF CREDIT INSTITUTIONS, FOREIGN BANK BRANCHES

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On June 28, 2023, Circular 06/2023/TT-NHNN (**Circular 06**) was issued to amend and supplement several provisions of Circular 39/2016/TT-NHNN (**Circular 39**) which stipulates lending activities of credit institutions and foreign bank branches. After that, on August 23, 2023, the State Bank issued Circular 10/2023/TT-NHNN (**Circular 10**) suspending the implementation of some provisions in Circular 39. Circular 06 and Circular 10 both take effect from September 1, 2023 with the following notable contents:

Firstly, amending and supplementing several provisions related to the need for borrowing capital. Previously, credit institutions and foreign bank branches were not allowed to grant loans to clients demanding capital to repay foreign loans. Currently, under Circular 06, if a client applies for a loan to repay a foreign loan in the form of deferred payment for goods purchase, it will be considered a demand for capital, which is eligible for consideration to grant the loan. In addition, in the case of lending to repay debts before maturity, to be considered as an eligible capital demand, the loan only needs to meet 02 conditions, including (i) the term of the loan does not exceed the remaining term of the old loan; and (ii) the loan has not undergone repayment term restructure. Therefore, compared to Circular 39, Circular 06 has eliminated the condition that "the loan must serve business activities". Furthermore, Circular 06 also adds borrowing capital "for deposit" as one of the capital demands rejected for lending. It should be noted that other capital needs that are not allowed to lend added in Circular 06 such as "for making capital contribution, purchasing capital contribution, and receiving the transfer of capital contribution of limited liability companies and partnerships", "for financial offsetting" have had their effectiveness suspended under the provisions of Circular 10.

Secondly, supplementing some regulations related to debt repayment activities. Specifically, Circular 06 supplements regulations on debt repayment currency in the case where a debt is repaid in a currency different from the lending currency of the loan, whereby the debt repayment currency can be based on the agreement between the credit institution and the client in accordance with relevant legal regulations. In addition, regarding the collection order of loan principal and interest if a loan has one or multiple overdue repayment terms, the credit institutions shall collect debts in the order of overdue principals, interest on overdue principals that remain unpaid, due principals, and interest on outstanding principals as due.

Thirdly, supplementing the guidelines related to lending activities by electronic means. Accordingly, the lending balance for an individual client must not exceed 100 million Viet Nam dong at a credit institution for those who borrow money to serve their daily needs and whose client identification information is identified and verified under regulations of laws. At the same time, when there is a need to borrow capital, clients shall send the relevant credit institutions the documents and data proving their eligibility for loans in accordance with Article 7 of Circular 39 and other documents and data according to the instruction of the credit institutions.

Besides the new regulations mentioned above, Circular 06 also introduces a number of professional instructions related to the lending and supervision process of credit institutions in the procedures for appraisal, approval, lending decision-making and the process of checking and monitoring capital borrowing, loan capital use and debt repayment by clients.

Comments and recommendations

Circular 06 is issued to improve the legal regulations on lending activities of credit institutions, thereby ensuring safety and efficiency as well as reducing any risks that may arise during credit institutions' lending activities to clients, controlling clients' use of loans for the right purposes, improving credit quality and aligning with practical requirements. With the goal of alleviating difficulties in the current credit relationship and promoting economic growth, the State Bank of Viet Nam has promptly issued Circular 10 to suspend the application of regulations in some cases where credit loans are not allowed in Circular 06. Apart from some adjustments on loan conditions and more specific regulations on debt repayment, Circular 06 also supplements the form of lending by electronic means to facilitate banks and borrowers. Therefore, businesses and individuals should update new regulations of Circular 06 and Circular 10 to appropriately apply in the process of borrowing capital from credit institutions.