

SOME NEW POINTS RELATED TO BANK GUARANTEE

HAI LINH

Circular 11/2022/TT-NHNN regulating the bank guarantee (**Circular 11**) has been issued to replace Circular 07/2015/TT-NHNN stipulating the bank guarantee and Circular 13/2017/TT-NHNN amending and supplementing a number of articles of Circular 07/2015/TT-NHNN. Circular 11 will take effect from April 1, 2023. The following are some new points of Circular 11 that may affect the operation of enterprises:

Firstly, supplementing the form of electronic guarantee. Accordingly, customers and credit institutions, foreign bank branches can choose to carry out bank guarantee activities via electronic means. In case of identifying and verifying customer identification information via electronic means, the value of each guarantee commitment for institutional customers must not exceed 45 billion Viet Nam dong, except for some cases where: (i) customer identification information is authenticated by a competent state agency or electronically authenticated by an organization providing electronic authentication services in accordance with the laws on electronic identification and authentication; (ii) customer information and guaranteed obligations are the same as the information in the Customs e-payment portal or the national bidding network system; (iii) customers use legitimate digital signatures as prescribed by law when applying for guarantee grant or signing guarantee agreements with credit institutions, foreign bank branches.

Secondly, providing specific guidance on cases where it is permitted to use a foreign language as the language of a guarantee agreement or guarantee commitment, including:

- (i)** Guarantee transactions in cases of civil relations involving foreign elements as prescribed in the Civil Code;
- (ii)** Guaranteed obligations arising when implementing projects funded from international financial institutions (The list of international financial institutions is specified in the regulations of the State Bank of Viet Nam);
- (iii)** Guaranteed obligations arising when customers participate in international bidding packages.

It should be noted that in the case of using foreign languages, the Vietnamese translation version of documents or data messages *can be notarized or authenticated, enclosed with the foreign language version* in addition to obtaining the certification by the lawful representative of credit institutions, foreign bank branches.

Thirdly, amending and supplementing a number of specific regulations when conducting guarantee activities, including:

- (i)** Supplementing the regulation not to apply bank guarantee to bond payment obligation of issuing enterprises for the purpose of: restructuring debts of the issuing enterprises; contributing capital, buying shares at other enterprises; and increasing the size of working capital;
- (ii)** Specifying that in the case where no applicable law is specified in a guarantee agreement, guarantee commitment, it automatically means that the parties agree to apply Vietnamese law;
- (iii)** Specifying that the termination of guarantee obligation in the case where the guarantee is canceled or replaced by another security interest shall comply with the agreement of the obligee and the guarantor, other related parties (if any);
- (iv)** Supplementing the provision that an obligee could lodge a complaint against the guarantor or the party confirming guarantee within 5 business days after the date of receiving the refusal notice from the guarantor or the party confirming guarantee if the reasons for the parties' refusal to perform the guarantee obligations are not consistent with the conditions for performance of guarantee obligations in the guarantee commitment.



Comments and recommendations

Circular 11 is promulgated to complete the legal framework, ensuring the compliance with international practices as well as complying with relevant applicable legal provisions, overcoming shortcomings and meeting practical requirements. It should be noted that the agreements to grant guarantee and guarantee commitments signed and taking effect before the effective date of Circular 11 will continue to be performed according to the signed agreements and commitments until the guarantee obligations are terminated. Any amendment or supplement to the above-mentioned guarantee agreements, commitments could only be done if their contents are consistent with the provisions of Circular 11. Enterprises should update and research the provisions of Circular 11 for their possible engagement in bank guarantee in the future.