

Vietnam: New Law on credit institutions

In brief

On 18 January 2024, the National Assembly of Vietnam passed the new Law No. 32/2024/QH15 on Credit Institutions ("**New Law**") at the fifth extraordinary meeting of the National Assembly. The New Law will have a major impact on the development of the banking sector in Vietnam.

The New Law will come into effect and replace the Current Law¹ from 1 July 2024, except for the provisions on enforcement of security over real estate, which will take effect from 1 January 2025, and certain transitional provisions regarding the operation of credit institutions.

Key takeaways

The New Law has introduced various significant changes, with the following highlights:

- The shareholding of organizational shareholders, and of a shareholder and its related persons in a credit institution being a joint-stock company, has been reduced from 15% and 20% to 10% and 15% of the charter capital of the credit institution, respectively. For shareholders whose shareholdings are higher than the new limit mentioned above, they are allowed to retain their shareholding but are not allowed to increase their shareholding until they have complied with the limit above, except when the increase is due to the distribution of dividend by shares.
- The limit on the total balance of extension of credit to credit institution's customers will be lowered gradually until 1 January 2029.
- The New Law has set out new provisions on the mechanism for dealing with mass cash withdrawal (or bank run).
- The role of security agent, as carried out by Vietnamese banks in international financing transaction, is clearly recognized as a banking business under the New Law.
- The regime on providing information and disclosure requirements applicable to credit institutions' management personnel has been enhanced. Members of the board of management/members' council ("**Board Members**"), controllers, (general) director, deputy (general) director and shareholders owning at least 1% of the charter capital of credit institutions must provide to the credit institutions information on their related persons; and such information must be published and recorded at the head office of the credit institutions and disclosed to the general meeting of shareholders and the board of management/members' council.

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¹ Law No. 47/2010/QH12 on Credit Institutions was passed by the National Assembly on 16 June 2010, as amended and supplemented by Law No. 17/2017/QH 14 on amendment and supplement of a number of articles of the Law on Credit Institutions passed by the National Assembly on 20 November 2017 ("**Current Law**").

- Under the New Law, the credit institution's license will concurrently serve as the enterprise registration certificate. This means that credit institutions will no longer be required to register or go through the licensing process at the Department of Planning and Investment, which will relieve the administrative burden for credit institutions.
- The New Law clearly specifies that credit institutions are prohibited from attaching insurance products as part of a banking products.
- From 1 January 2025, credit institutions can transfer land use rights or assets attached to land as a method of security enforcement without needing to satisfy conditions under regulations on real estate business.
- The New Law specifies circumstances in which the State Bank of Vietnam (SBV) will apply the early intervention measure on credit institutions and foreign bank branches.
- The Government shall provide a regulatory sandbox on the application of technology and the launch of the products, services or new business model in the banking sector.

In depth

1. Reduce shareholding of shareholders in a credit institution that is a joint-stock company

The New Law provides for a decrease of the shareholding of an organizational shareholder and of the shareholding of a shareholder and its related persons. In particular, while the maximum shareholding of an individual in a joint-stock credit institution remains at 5% of the charter capital of a credit institution under the New Law, the shareholding of the organization is adjusted from 15% (as stipulated under the Current Law) to 10% of the charter capital of the credit institution, and the shareholding of a shareholder and its related persons decreased from 20% (as stipulated under the Current Law) to 15% of the charter capital of the credit institution.

The reduction of shareholding as mentioned above **excludes, among others, the shareholding of foreign investors (the information on which will be provided in more detail by the Government including the maximum foreign ownership and conditions applicable to foreign investors)**. The current shareholding of foreign investors in credit institutions is provided under Decree No. 01/2014/ND-CP; accordingly, the maximum shareholding of a foreign organizational shareholder is 15% of the charter capital of the credit institution, the maximum shareholding of a foreign investor and its related persons is 20% of the charter capital of the credit institutions, and the total shareholding of all foreign shareholders in a credit institution that is a joint-stock company must not exceed 30% of the charter capital of credit institutions. As the New Law has been passed, and SBV is in the process of drafting a new decree to amend Decree No. 01/2014/ND-CP. It is uncertain how the SBV will finally decide if there is any change to the maximum shareholding of foreign shareholders in the future, which will be dealt with in the new decree to amend Decree No. 01/2014/ND-CP.

The shareholding as mentioned in the New Law includes the shareholder's indirect ownership. Accordingly, the New Law provides for a more detailed definition of "indirect ownership" compared to the Current Law; particularly, "indirect ownership" means the ownership of the charter capital or share capital of a credit institution through an investment trust or through enterprises in which the shareholders own more than 50% of the charter capital. The shareholding also includes the shares entrusted by the shareholder to another organization or an individual to acquire shares of the credit institution, but does not include the shareholding of the related person being the subsidiary of the shareholder.

The New Law also provides that for shareholders whose shareholdings are higher than the limit mentioned above, they are allowed to retain their shareholding but are not allowed to increase their shareholding until they have complied with the limit above, except when the increase is due to the distribution of dividend by shares.

2. Lower limit on total balance of extension of credit

The New Law provides for a reduction of the limit on credit extension to a customer and the total balance of extension of credit to a single customer and their related persons compared to the Current Law.

Accordingly, for commercial banks and foreign banks' branches, the total balance of extension of credit to a single customer and to a single customer and their related persons must not exceed 10% (reduced from 15% under the Current Law) and 15% (reduced from 25% under the Current Law) of the equity of commercial banks and foreign banks' branches respectively from 1 January 2029. The New Law sets out a milestone for commercial banks and foreign banks' branches to follow in order to meet the reduced total balance of extension of credit as follows:

Milestone	Total balance of extension of credit of a single customer	Total balance of extension of credit to a single customer and their related persons
From 1 July 2024 to before 1 January 2026	14%	23%
From 1 January 2026 to before 1 January 2027	13%	21%
From 1 January 2027 to before 1 January 2028	12%	19%
From 1 January 2028 to before 1 January 2029	11%	17%
From 1 January 2029	10%	15%

For non-bank credit institutions, the total balance of extension of credit to a single customer must not exceed 15% of equity of the nonbank credit institution (reduced from 25% of equity under the Current Law), and the total balance of extension of credit to a single customer and their related persons must not exceed 25% of equity of the nonbank credit institution (reduced from 50% of equity under the Current Law).

3. Enhance regulations for bank overhaul and mass cash withdrawal (or bank run)

In the context of certain banks having weak/distressed operations in the past few years, the Government has established a merger mechanism as part of its policy on restructuring the economy, including credit institutions and enterprises. Although the Government has set a goal to finalize the process, the merger of credit institutions has been slow for many reasons.

The New Law has set out more provisions that give detailed guidance on how to deal with weak/distressed credit institutions, such as Chapter IX on early intervention, Chapter X on special control over banks, dissolution and bank run. These new provisions are expected to set a clearer basis to accelerate the restructuring process in the banking sectors.

Mass cash withdrawal (or bank run) is a new chapter in the New Law. The New Law presents a new mechanism for credit institutions to deal with the situation where there is a mass cash withdrawal conducted by their customers.

If a mass cash withdrawal occurs, the affected credit institution must report to the SBV and promptly implement the following measures:

- Not distribute dividends in cash
- Cease or limit the credit extension activities and other activities using the credit institution's cash
- Apply other solutions to meet the demands to pay the customers
- Implement the measures in the remedial plan for mass cash withdrawal and update the plan if necessary

The affected credit institution is allowed to apply the following supportive measures:

- It is allowed to sell valuable papers to the SBV on the open market with the interest of 0%.
- It can conduct foreign exchange transactions with the SBV to ensure the liquidity per guidance of the SBV's Governor.
- Commercial banks, cooperative banks, peoples' credit funds and microfinance companies are allowed to borrow from the SBV, or from deposit insurance organization in accordance with the regulations on deposit insurance, or from other credit institutions.

4. Transitional provisions

The New Law will take effect and replace the Current Law from 1 July 2024 ("**Effective Date**"), except for, among others, the following key circumstances:

- Credit institutions, foreign banks' branches and representative offices of foreign banks that are licensed before the effective date of the New Law can continue operating without the need to amend their licenses. If any amendments or additions to the licenses are needed, the amendments and additions must comply with the New Law.
- Terms and conditions under contracts, agreements or any transactional documents entered into before the Effective Date that are ongoing under their term can continue being applied until the expiry of such contracts, agreements or transactional documents. If any amendments, additions or renewals of such contracts, agreements or transactional documents are required, those amendments, additions and renewals must comply with the New Law, except for the restructuring of debt repayment of such contracts, agreements or agreement on credit extension that is compliant with the banking regulations.
- If any contracts, agreements or any transactional documents entered into before the Effective Date have an indefinite term and the terms and conditions of such contracts, agreements or any transactional documents are not compliant with the New Law, credit institutions or foreign banks' branches can continue the performance of such contracts, agreements or any transactional documents until 30 June 2025. After this time, such contracts, agreements or any transactional documents must be amended or supplemented to be compliant with the New Law.
- Any managers or executives of credit institutions who are appointed before the Effective Date but do not satisfy the conditions under the New Law can continue holding such positions until the expiry of their term of office.

5. Other key provisions

(a) Legal basis for certain new business activities of commercial banks

The New Law adds certain new business lines in the regulations on business activities of the credit institution, which will help to set out the clear basis for the operation of certain ongoing business of the credit institutions that is not yet mentioned under the Current Law. Notably, issuance of a letter of credit is considered as a form of credit extension under the New Law, rather than a form of other payment services as mentioned under the Current Law.

The New Law also refers to the business activity of being a security agent on behalf of lenders that are international financial institutions, offshore credit institutions, [onshore] credit institutions and foreign banks' branches, which a bank is only allowed to perform in accordance with the relevant regulations. Therefore, subject to the banking license of the [onshore] credit institutions and foreign banks' branches, they can act as the security agent in the offshore financing transactions.

(b) Enhancing regime on providing information and disclosure requirement applicable to management personnel of credit institutions

Under the New Law, Board Members, controllers, (general) director and deputy (general) director of credit institutions are required to provide the following information to the credit institutions:

- Details of enterprises or organizations of which the above persons and their related parties own at least 5% of the charter capital, including contributed capital and entrust capital to other organizations or individuals
- Details of enterprises or organizations of which the above persons and their related parties are Board Members, controllers and/or (general) director
- Information about the related parties of the above persons

In addition, shareholders owning at least 1% of the charter capital of a credit institution must provide to the credit institutions its information (name, identification/corporate document), information about the related parties of the shareholder, quantity and shareholding of the shareholder and its related parties at the credit institutions.

Regarding the quantity and shareholding of the shareholder and its related parties, any changes in their shareholding of at least 1% of the charter capital compared to the time the information was previously provided will need to be provided to the credit institutions.

Information provided by the Board Members, controllers, (general) director, deputy (general) director and shareholders owning at least 1% of the charter capital of credit institutions must be (i) published and recorded at the head office of the credit institutions, (ii) reported to the SBV within seven working days from the date when the credit institutions receive the information from the relevant entities/persons and (iii) disclosed to the General Meeting of Shareholders/Board of Management/Members' Council on an annual basis.

(c) Simplification of the licensing process at the department of planning and investment

Under the Current Law, licenses of credit institutions would include, in addition to the Establishment and Operation License issued by the SBV ("**License**"), the enterprise registration certificates to be issued by the Department of Planning and Investment of the city where the head office of the credit institution is located. However, under the New Law, the License will concurrently serve as the enterprise registration certificate. This means that credit institutions will no longer be required to register or carry out the licensing process at the Department of Planning and Investment, which will relieve the administrative burden for credit institutions. However, certain changes to the operation of credit institutions, such as amendments to the License or changes to legal representative, still need to be notified to the business registration office under the Department of Planning and Investment. The SBV's Governor will issue guidance on the notification process in a separate legal document.

(d) Prohibition on attaching the distribution of nonmandatory insurance products to the offer of banking products

In recent years, there have been certain incidents regarding the bancassurance activities, including certain reports on cases where certain staff of credit institutions (acting as insurance agencies) forced individual borrowers to purchase insurance products, otherwise, the credit institutions will not disburse the loans to the borrowers. Considering that issue, the New Law has newly and specifically prohibited credit institutions, managers, executives and staff of credit institutions from attaching the distribution of nonmandatory insurance products to the offer of banking products in any way.

(e) Mechanisms to deal with nonperforming loans (NPLs)

The mechanisms of dealing with NPLs are currently set out under Resolution No. 42/2017/QH14 dated 21 June 2017 (as amended) on pilot mechanisms to deal with the NPLs, which cover the sale and purchase of NPLs, and security enforcement in relation to NPLs. The New Law also contains a new chapter to provide more detailed mechanisms on dealing with NPLs and security enforcement in relation to NPLs.

Under the New Law, the NPLs include: (i) NPLs that are accounted in the balance sheet of credit institutions and foreign banks' branches per guidance of the SBV's Governor; (ii) NPLs that the credit institutions and foreign banks' branches have reserved for handling but have not yet recovered the debt and monitoring outside the balance sheet; and (iii) NPLs that the debt trading companies have purchased from the credit institutions or foreign banks' branches but have not yet been recovered. Sale and purchase of the NPLs would be conducted at the market price.

The New Law also allows the credit institutions, foreign banks' branches, debt management and assets exploration companies and asset management companies of credit institutions to transfer part or the entire real estate projects that are the secured assets as a security enforcement for debt recovery. The transfer of the real estate projects is compliant with the Law on Real Estate Business,² but the credit institutions, foreign banks' branches, debt management and asset exploration companies and asset management companies of credit institutions are not required to satisfy the conditions applicable to entities doing real estate business as the transferor in the real estate project, as required under the Law on Real Estate Business. This provision will take effect from 1 January 2025.

(f) Early intervention measures and remedial plan

The New Law specifies circumstances in which the SBV will apply the early intervention measure on credit institutions and foreign bank branches, including, among others, the credit institutions rank below average per guidance of the SBV, violation of the credit institutions against the solvency ratio, which are inherited from the Current Law, or credit institutions face a mass cash withdrawal (or bank run) incident as reported to the SBV, which is a new circumstance under the New Law.

² Law No. 66/2014/QH13 passed by the National Assembly on 25 November 2014 on real estate business ("**Law on Real Estate Business**").

The credit institutions are required to develop remedial plans to prevent circumstances of early intervention containing, among others, an assessment on the business of the credit institutions, financial status of the credit institutions, measures to remedy in each early intervention circumstance and the timeline for remedy. The remedial plan must be submitted to the SBV within 10 days from the date of being approved internally by the credit institutions or foreign banks' branch.

(g) Business activities through electronic means and regulatory sandbox in the banking sector

The New Law also states that the Government shall provide a regulatory sandbox on the application of technology and the launch of the products, services or new business model in the banking sector. A regulatory sandbox under the New Law means a limited and controlled environment (i.e., limited in scope of business, location and time), which requires the participants to satisfy certain conditions and criteria, and to be supervised by the authority. The Government will provide more details for this regulatory sandbox.

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