

THE STATE BANK OF VIETNAM

Circular No. 36/2018/TT-NHNN dated December 25, 2018 of the State Bank of Vietnam on prescribing the provision of loans by credit institutions and foreign bank branches to clients for offshore investment

Pursuant to the June 16, 2010 Law on the State Bank of Vietnam;

Pursuant to the June 16, 2010 Law on Credit Institutions and the November 20, 2017 Law Amending and Supplementing a Number of Articles of the Law on Credit Institutions;

Pursuant to the November 26, 2014 Law on Investment and the November 22, 2016 Law Amending and Supplementing Article 6 and Appendix 4 on the List of Sectors and Trades Subject to Conditional Business Investment of the Law on Investment;

Pursuant to the December 13, 2005 Ordinance on Foreign Exchange and the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Foreign Exchange;

Pursuant to the Government's Decree No. 70/2014/ND-CP of July 17, 2014, detailing a number of articles of the Ordinance on Foreign Exchange and the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Foreign Exchange;

Pursuant to the Government's Decree No. 83/2015/ND-CP of September 25, 2015, prescribing offshore investment;

Pursuant to the Government's Decree No. 124/2017/ND-CP of November 15, 2017, prescribing offshore investment in petroleum activities;

Pursuant to the Government's Decree No. 16/2017/ND-CP of February 17, 2017, defining the functions, tasks, powers and organizational structure of the State Bank of Vietnam;

At the proposal of the Director of the Credit Department for Economic Sectors;

The Governor of the State Bank of Vietnam promulgates the Circular prescribing the provision of loans by credit institutions and foreign bank branches to clients for offshore investment.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Circular prescribe the provision of loans by credit institutions and foreign bank branches (below referred to as credit institutions) to clients for offshore investment in the forms specified at Points a, b, c and dd, Clause 1, Article 52 of the Law on Investment.

Article 2. Subjects of application

1. Credits institutions, including:

a/ Commercial banks;

b/ Non-bank credit institutions;

c/ Foreign bank branches.

2. Clients being investors in accordance with the Law on Investment and its guiding document (excluding credit institutions). For investors being households, cooperative groups and other organizations having no legal person status who participate in loan relations, their members shall be the subjects who participate in the establishment and performance of such loan relations or authorize representatives to participate in the establishment and performance of the loan relations.

3. Other related organizations and individuals.

Article 3. Application of relevant legal documents

Credit institutions shall provide loans to their clients for offshore investment in accordance with this Circular. For contents which have not yet been specified in this Circular, credit institutions shall comply with the State Bank's regulations on the provision of loans by credit institutions to clients, limits and prudential ratios in operations of credit institutions, foreign exchange management, internal controls, statistical reports, risk classification, provisioning and handling and other relevant legal documents.

Article 4. Demand for offshore investment loans

A credit institution may provide loans to those clients that have the following demands:

1. For charter capital contribution in order to establish an economic organization in accordance with the law of host country.
2. For capital contribution to perform business cooperation contracts (BCC) overseas.

3. For purchase of part or the whole of the charter capital of an overseas economic organization to participate in managing and carrying out overseas business investment activities.

4. For capital to invest offshore in the forms prescribed at Point dd, Clause 1, Article 52 of the Investment Law and guiding documents.

Article 5. Conditions for borrowing loans

A credit institution shall consider and decide to provide a loan for offshore investment to a client when the latter satisfies the following conditions:

1. Being a legal person who has the civil legal capacity as prescribed by law.

A client is an individual (including individuals who are members or authorized representatives of households, cooperative groups and other organizations having no legal person status) who reaches full 18 years of age or older and has full civil act capacity as prescribed by law.

2. Having obtained an offshore investment registration certificate. The investment activities have been approved or licensed by a competent agency of the host country. In case the law of the host country does not require investment licensing or approval, the investor shall produce a paper proving his/her/its right to carry out investment activities in the host country.

3. Having a feasible offshore investment project and plan according to assessment by the credit institution; and capability to repay debt.

4. Bad debt has not arisen for 2 consecutive years until the time of request for the loan.

Article 6. Dossiers of application for loans

A client, who has a demand for a loan, shall send the credit institution documents proving the eligibility for such loan as prescribed in Article 5 of this Circular and other documents required by the credit institution.

Article 7. Loan limit

1. A credit institution may agree with its clients on the loan limit based on the clients' borrowing demand, offshore investment plans and financial capability and its credit extension limits applicable to clients and available funding sources.

2. The loan limit must not exceed 70% of the client's offshore investment capital.

Article 8. Loan term

A credit institution and client shall agree on the loan term based on the debt repayment capability of the client, and the credit institution's sources for medium- and long-term loan provision, investment term of the project, the remaining validity period of the investment license, offshore investment registration certificate or other equivalent papers.

Article 9. Currencies of loan and repayment

1. Credit institutions and clients may agree on currency of loan in accordance with the law on the provision of loans by credit institutions to clients and relevant laws.

2. The currency used for debt repayment is the one in which the loan is provided. In case of other currency used for debt repayment, the agreement between the credit institution and client shall be made in accordance with relevant laws.

Article 10. Loan security

1. Loan security measures shall be taken in accordance with the law on the provision of loans by credit institutions to clients and relevant laws.
2. Loan security by assets located in a foreign country shall be agreed by the parties in conformity with the principle on choice of law in civil relations involving foreign elements prescribed in Part V of the Civil Code.

Article 11. Inspection and supervision of use of loans

1. Credit institutions have the right and responsibility to inspect and supervise the use of loans and debt repayment by clients in accordance with law.
2. Credit institutions may request their clients to report on the results of operations and use of loans or provide documents on the use of loans.
3. Clients shall use loans and debt repayment in accordance with loan agreements; report and provide documents on the use of loans at the request of credit institutions.

Article 12. Responsibilities of units of the State Bank

1. The Credit Department for Economic Sectors shall:
 - a/ Act as the focal point in monitoring and summarizing the provision of loans by credit institutions to clients for offshore investment;
 - b/ Assume the prime responsibility for, and coordinate in, handling problems arising from the provision of loans for offshore investment within the scope of regulation of this Circular.
2. The Bank Inspection and Supervision Agency:

a/ Assume the prime responsibility for, and coordinate with related units in, inspecting, examining and supervising credit institutions in providing loans to their clients for offshore investment in accordance with the law on the provision of loans for offshore investment; handle violations according to its competence in accordance with law;

b/ Control credit institutions in complying with regulations on the prevention of money laundering related to the provision of loans for offshore investment.

3. The Foreign Exchange Management Department:

To assume the prime responsibility for, and coordinate with related units of the State Bank in, handling problems arising from transfer of loans and other amounts related the provision of loans for offshore investment.

4. The Monetary Policy Department:

To assume the prime responsibility for, and coordinate with related units of the State Bank in, handling problems arising from the provision of foreign currency loans for offshore investment.

5. Other units of the State Bank shall, according to their functions and tasks and scope of management, coordinate in handling problems arising from the provision of loans by credit institutions to clients for offshore investment.

Article 13. Effect

1. This Circular takes effect on February 15, 2019; and replaces the State Bank's Circular No. 10/2006/TT-NHNN of December 21, 2006, guiding the provision of loans by credit institutions to clients for offshore direct investment.

2. Credit institutions and clients shall comply with signed credit contract/agreement in accordance with the existing law at the time of signing such contracts/agreements, or agreements to amend and supplement signed credit contracts in accordance with this Circular.

Article 14. Organization of implementation

The Chief of the Office, the Director of the Credit Department for Economic Sectors, heads of units of the State Bank, directors of the State Banks's provincial-level branches, chairperson of the Boards of Directors or Members' Councils, and directors general (directors) of credit institutions shall organize the implementation of this Circular.-

For The State Bank Governor

Deputy Governor

Dao Minh Tu

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