

NEW CIRCULAR REGULATING THE CONDITIONS, APPLICATION, ORDER AND PROCEDURES FOR CAPITAL CONTRIBUTION OR PURCHASE OF SHARES BY CREDIT INSTITUTIONS

By Vision & Associates

On 31 December 2018, the State Bank of Vietnam (“**SBV**”) issued Circular No. 51/2018/TT-NHNN (“**Circular 51**”), detailing the conditions, formality and compositions of application dossier, order and procedures for commercial banks and finance companies (hereinafter collectively called “**Credit Institutions**”) to obtain SBV approval for their contribution of capital to or purchase of shares in entities operating in certain sectors. Some notable provisions of Circular 51 may be cited as below:

1. Transactions needing SBV approval:

SBV approval shall be required for:

- (a) A commercial bank contributing capital to or purchasing shares to: (i) establish or acquire a domestic subsidiary or affiliate operating in the following sectors: securities underwriting or securities brokerage, management and distribution of securities investment funds’ certificates, management of securities investment portfolios and sale & purchase of shares, insurance, debt management and asset exploitation, remittances, forex and gold trading, intermediary payment services or credit information; (ii) acquire a domestic subsidiary or affiliate operating in the following sectors: finance leasing, factoring, consumer credit or credit card issuance;
- (b) A commercial bank contributing capital to or purchasing shares in another domestic enterprise operating outside the sectors of insurance, securities, remittances, forex trading, gold trading, factoring, credit card issuance, consumer credit, intermediary payment services or credit information;
- (c) A finance company contributing capital or purchasing shares to establish or acquire a domestic subsidiary or affiliate operating in the following sectors: insurance, securities, debt management and asset exploitation;
- (d) A commercial bank or finance company converting debts into a capital contribution portion/shares in a domestic enterprise operating outside the sectors of insurance, securities, remittances, forex trading, gold trading, factoring, credit card issuance, consumer credit, payment intermediary services or credit information in order to settle bad debts.

However, this Circular does not apply to commercial banks’ contributing capital or purchasing shares in order to establish a Credit Institution.

2. Principles for preparing and sending application dossiers:

Application dossiers of Credit Institutions must be compiled on the following principles:

- (a) The dossier must be made in Vietnamese. In case a document issued by a competent foreign body or organization is notarized or certified, it must be consularly legalized under Vietnamese laws (except for cases of exemption from consular legalization according to the provisions of laws on consular legalization) and translated into Vietnamese;
- (b) Translations from foreign languages into Vietnamese must be notarized or certified by translators according to the provisions of laws;
- (c) The submitted dossiers must be the originals or copies issued from the original books or certified copies or copies accompanied by the originals for comparison; in the event that the credit institution submits a copy together with the original copy for comparison, the comparer must sign on and take responsibility for the accuracy of the copy against the original;
- (d) The Credit Institution's application dossier for the SBV approval must be signed by the its legal representative or authorized representative (“lawful representative”). In case of signing under authorization, the application dossier must have an authorization document made in accordance with the provisions of laws.

Application dossiers of Credit Institutions may be sent to the SBV by hand or by post.

3. Order of and procedures for obtaining the SBV approval:

Credit Institutions shall make 2 sets of application dossiers as prescribed in this Circular and send them to the SBV via Banking Supervisory Agency (“**BSA**”). In case where the dossier is incomplete or invalid, within 7 days after receiving the dossier, the BSA shall send a written request to the applicant to supplement the dossier.

Within 7 days after receiving a completed and valid application dossier, the BSA shall review the application, seek the opinions of the relevant authorities, including:

- (a) State Bank branch in a province or city where the applicant is headquartered on satisfaction of the conditions for capital contribution or share purchase by a Credit Institution as prescribed in this Circular;
- (b) Units of the State Bank on capital contribution, share purchase, debt conversion into contributed capital of a Credit Institution (if necessary).

Within 10 days from the date of receiving the written opinions of the BSA, the consulted authorities shall send to the BSA their written opinions on the contents to be consulted.

Within 14 days from the date of receiving the comments of the relevant authorities, the BSA shall assess and appraise the dossier and submit it to the SBV Governor for the latter’s consideration, approval or disapproval.

Afterwards, the SBV, within 45 days since the date receiving a completed and valid application dossier, shall issue its written approval for the capital contribution or share purchase or debt conversion by a Credit Institution (or in case of disapproval, shall specify the reasons why the approval is not granted).

The Credit Institution must complete the capital contribution, share purchase or conversion of debt into capital contribution within 12 months after receiving the written approval from the SBV.

After this time limit, the SBV approval shall automatically not longer be effective, and must be re-obtained.