

LEGAL UPDATES

January 2022

What's new this month?

—
Corporate Bonds Trading

—
Bank Card Issuance by
Electronic Method

—
Rediscount of Negotiable
Instruments



- Contributed by Benjamin Yap Soon Tat and Le Thi Kim Quy -

New Regulations Governing Banking Sector

being effective from January 2022

The State Bank of Vietnam (SBV) has recently promulgated three remarkable circulars governing issues in relation to the operation of credit institutions and foreign bank branches. These circulars are issued for primary aim at amending and replacing existing legal regulations on purchase and sale of corporate bonds of credit institutions and foreign bank branches, electronic issuance of bank cards, and rediscount of negotiable instruments among credit institutions and foreign bank branches.

Legal Updates – January 2022



Picture from: <https://www.capitalbay.news/what-are-bonds-in-economics-and-how-do-they-work/>

How does new Circular govern Corporate Bond Trading by Credit Institutions?

Matters of Corporate Bond Trading used to be governed by Circular No. 22/2016/TT-NHNN dated 30 June 2016 and Circular No. 15/2018/TT-NHNN dated 18 June 2018 shall, from 15 January 2022, be governed by new Circular No. 16/2021/TT-NHNN dated 10 November 2021 in replacement (Circular 16).

Similarly to the other two previous regulations, the new Circular 16 provides for guidance on conditions for corporate bonds to be traded by credit institutions, conditions for sale and purchase of corporate bonds as well as circumstances where the trading is not allowed.

Firstly, the corporate bonds, if they would like to be traded, must be bonds issued in Vietnam Dong and in accordance with the Vietnamese law. Secondly, it is important to bear in mind that corporate bonds to be traded must be legally owned by the seller, not have matured for full payment of principal and interest and must be committed by the seller to be undisputed. Last but not least, the bonds wish to be put in a trading must be those that are allowed for transactions by laws and not be involved in any forward trading, discount, re-discount (except for cases where the credit institutions purchase corporate bonds being issued for sale for the first time).

To guide the trading by credit institutions of corporate bonds, the laws set out monitoring principles that credit institutions must comply with during their purchase and sale of corporate bonds. Those principles include the requirements on having a permit on corporate bond trading issued by the SBV which must have been complied with by the credit institutions when trading corporate bonds, on compliance with the relevant laws guiding the operation of credit institutions and corporate bond trading (including without limitation to the Law on Credit Institutions, Law on Securities, this new Circular 16, and other relevant prevailing regulations), and on having internal credit rating system and promulgation of internal regulations.

The internal regulations issued by the credit institution with aim at guiding corporate bond trading by that entity is a must and must have contents required by laws. The issued internal regulations must be submitted to the competent authorities (i.e. the SBV or its local branches) within ten working days from the date of its promulgation, and, its amendments or supplementation, if any. The new Circular 16 also requires the credit institutions to annually evaluate their regulations to ensure its compliance with the new provisions of laws (if any) and its appropriateness with the practice of change to trading market.



While corporate bonds trading is a right of credit institutions which shall be made in compliance with strict provisions of the laws, to protect the trading market, the new Circular 16 also sets out a few circumstances where credit institutions are not allowed to purchase corporate bonds. In particular, the purchase of corporate bonds is not allowed where those bonds are issued for restructuring issuing enterprises' debts, contributing capital acquiring shares at other enterprises, and increasing working capital scale, or are convertible bonds or warrant-linked bonds (applicable to branches of foreign banks). Most importantly, credit institutions are not allowed to sell corporate bonds to their subsidiaries, except for compulsory sale by credit institutions to commercial banks.

Electronic Means – Another Allowed Method for Card Issuance

A remarkable point of newly issued Circular No. 17/2021/TT-NHNN dated 16 November 2021, with effectiveness as from 1 January 2022 (Circular 17), is about card issuance procedure via electronic means.

Legal Updates – January 2022

Card referred to in this new Circular includes all types of cards, such as debit card, credit card, identified prepaid card for individual cardholders. However, not all entities are allowed to open cards by electronic method. In other words, persons aged 15 to under 18 years old without loss or limitation of legal capacity, institutional cardholder and supplementary cardholder are not allowed to open cards using electronic method.

For the purpose of card issuance by electronic means, the laws require card issuers to establish, issue, and publicize the process and procedure for issuing cards of individuals by electronic means in accordance with law on anti-money laundering, law on electronic transactions, relevant regulations on the safety measure, confidentiality of customer information, and operational safety of card issuers. Process must follow at least following steps:

- (i) collecting necessary information and documents before entering into a contract for card issuance and use with a customer in order to identify the customer and determine the transaction limit;
- (ii) checking, comparing, and verifying customer identification information;
- (iii) warning customers about prohibited acts during the opening and use of cards issued electronically;
- (iv) providing customers with a contract for card issuance and use and entering into a contract; and
- (v) notifying name of card issuer, name or trademark of card, card number, validity period (or commencement date of validity) of card, name of cardholder, scope and function of card, prohibited acts to customers.

Regardless of the above, card issuers are allowed to, at their discretion, apply measures, methods, technologies to identify and verify the customer, and take responsibility for any risks (if any).

While being granted power to identify customers, card issuers are also allowed to decide the transaction limit of the customer, provided that the total transaction limit (including cash withdrawal, wire transfer, payment) of any bank card does not exceed one hundred (100) million Vietnam Dong in a month and that customer may neither withdraw cash in foreign currency overseas nor make international payments. Card issuers are also entitled to decide the higher transaction limit and allow the customer to withdraw cash in foreign currency overseas or make international payments if card issuers apply technology solutions as required by the law (such as video call or biometric systems).

What should be noted about Rediscount of Negotiable Instruments?



Final new finding in this month of Legal Updates is about provisions guiding rediscount of negotiable instruments among credit institutions and foreign bank branches as set out in newly-issued Circular No. 18/2021/TT-NHNN dated 18 November 2021 (Circular 18), which will come into effect as from 7 January 2022.

Like Circular 16 as discussed above, the new Circular 18 also sets out principles governing the rediscount of negotiable instruments among credit institutions and foreign bank branches. Clearly, the credit institutions and foreign bank branches are only allowed to rediscount negotiable instruments when their licenses issued by the SBV expressly have contents of rediscount of negotiable instruments. Not less important, the rediscount may be proceeded in foreign currency in accordance with the permitted scope of foreign exchange operations of the credit institutions and foreign bank branches.



Picture from: <https://www.halt.org/what-is-a-negotiable-instrument-and-what-are-the-different-types/>

In addition to principles guiding the rediscount of negotiable instruments, the laws also introduce conditions on which negotiable instruments to be rediscounted must be satisfied. In other words, negotiable instruments are rediscounted only when those are discounted by the rediscounted party for clients as prescribed by relevant regulations of the SBV, under the lawful ownership of the rediscounted party, are permitted for trading in accordance with the laws, have no disputes, and are not used to secure other obligations, still intact, not erased or repaired and the payment for those instruments is not yet due. The rediscounting party has the right to request the rediscounted party to provide information and documents to prove that the negotiable instrument is eligible for the rediscount. That means the rediscounted party takes responsibility for accuracy and completeness of information and documents providing at the request of the rediscounting party.

Aside the above, guidance on 'Agreement on Rediscount' is also another remarkable point of this new Circular 18. Particularly, Circular 18 requires the 'Agreement on Rediscount' between credit institutions and foreign bank branches to be presented in a form in accordance with the laws and include at least contents on information about the rediscounting party and rediscounted party and rediscounted negotiable instrument, rediscount method, currency, period, interest rate, rediscount price of negotiable instrument, payment date, payment method, rights and obligations of relevant parties, and handling of violations.

Moreover, depending on the rediscount method, the 'Agreement on Rediscount' is required to contain the commitment to repurchase negotiable instruments, repurchase price of negotiable instruments, or rediscounted party's responsibility to pay the outstanding amount, or other contents as agreed by the parties in accordance with the provisions of this Circular 18 and applicable laws.



Picture from: https://www.freepik.com/free-vector/contract-conclusion-conceptillustration_5505475.htm#query=agreement&position=11&from_view=search

Contributors



Benjamin Yap (Mr.)

Senior Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
benjamin.yap@rhtlaw.com.vn



Le Thi Kim Quy (Ms.)

Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
quy.le@rhtlaw.com.vn

Our offices



RHTLaw Vietnam

Suite 1101, 11th Floor, Sofitel Central Plaza 17
Le Duan Boulevard, District 1, Ho Chi Minh City,
Vietnam
Tel: +84 28 38206 448



RHTLaw Vietnam - Hanoi Branch

Unit 1501B, 15th Floor, Charmvit Tower 117
Tran Duy Hung Street, Cau Giay District, Hanoi,
Vietnam
Tel: + 84 24 3974 8881

RHTLaw Vietnam is a Vietnam law practice registered as a limited liability company in Vietnam (the "**LLC**"). It works in collaboration with the Singapore law practice RHTLaw Asia LLP. The LLC is a distinct legal entity in Vietnam.

Our model is driven by the focus on helping clients succeed, which translates to clear and precise solutions with high-level legal and commercial insights. We proactively grow our practice in tandem with regional and international fast-growing industries and areas like Banking & Finance, Capital Market, M&As, Inward & Outward Investment, Intellectual Property, Trading & Commerce, Real Estate & Construction, Telecommunications, Employment and Litigation.

Find out more about us at www.rhtlaw.com.vn.



Disclaimer: All materials have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your factual and legal circumstances.