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SOME NOTABLE CHANGES IN BANK GUARANTEE UNDER THE CIRCULAR 11/2022/TT-NHNN



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On 30th September 2022, the State Bank of Vietnam issued the Circular No. 11/2022/TT-NHNN on bank guarantees (hereinafter referred to as the “**Circular 11**”). The Circular 11 will repeal the Circular 07/2015/TT-NHNN and the Circular 13/2017/TT-NHNN on bank guarantees (hereinafter referred to as the “**Circular 07**”), and take effect from 1st April 2023. Below are some notable changes of the Circular 11.

1. Electronic guarantees

Pursuant to Article 9 of the Circular 11, in addition to the bank guarantees in writing, credit institutions/foreign bank branches may

offer electronic bank guarantees (hereinafter referred to as “**electronic guarantees**”). Adoption of electronic guarantees will depend on agreement by the credit institutions/foreign bank branches and clients. Those matters related to security of data and information confidentiality in electronic guarantee must comply with, among others, regulations on anti-money laundering, electronic transactions, SBV’s instruction on risk management of electronic transactions. The supplementation of electronic guarantee form under Circular 11 is based on the actual demand of clients, which implement the provisions of the Law on Credit Institutions on electronic banking services. Regulations on electronic transactions in e-banking activities and electronic guarantee are also found in other legal documents, including, among others, Decree 35/2007/ND-CP, Decree 130/2018/ND-CP and Decision 35/2006/QD-NHNN.

In case “know your clients” are made electronically, the value of each issued bank guarantee shall not exceed VND04 billion per individual and VND45 billion per organization, except the following cases:

- Client identification information is certified by the competent authority or electronically certified by electronic certification service providers in accordance with the law on electronic certification and identification;

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- Request for issuance of an electronic guarantee is submitted via SWIFT system;
- Client information and guaranteed obligations are verified and certified through the customs e-payment portal or the national bidding system;
- Clients use digital signatures as prescribed by law when applying for a guarantee or entering into a guarantee agreement with credit institutions/foreign bank branches;
- The client is a credit institution or a foreign bank branch.

2. Guarantees over future residential property

The Circular 11 clarifies some certain contents regarding guarantees over future residential property as follows:

- An agreement on guarantees over future residential property is defined by Circular 11 as a contractual agreement between a commercial bank, a developer and other relevant parties (if any) whereby commercial bank agrees to guarantee for obligations of developer against the buyer under the sale, and purchase leasing of future residential property. The

guarantee letter will be issued by the bank to buyers after conclusion of the agreement on guarantees over future residential property.

The agreement on guarantee over future residential property is signed before signing contracts on sale or contracts on purchase leasing of future residential property (hereinafter referred to as the “**Sale contract**” or “**Purchase leasing contract**”). Upon signing Sale contract or Purchase leasing contract, the developer shall request the commercial bank to issue guarantee letters to buyers.

- Rights and obligations of the parties

The Circular 11 specifies those rights and obligations of developers, commercial banks and buyers in relation to guarantees over future residential property, which give buyers more protection in case of claiming the guarantee, including, among others:

- Commercial banks are obliged to issue and deliver guarantee letters to buyers, or developers in accordance with Sale contract or Purchase leasing contract;
- Upon receipt of guarantee letters from the commercial bank, developers are obliged to deliver the same to buyers;

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- Buyers are entitled to receive the guarantee letters from commercial banks or developers within the effective term of the agreement on guarantees over future residential property and before the estimated hand-over date of future residential property;
- If the guarantee agreement over future residential property is early terminated, within the business day immediately following termination date, the commercial bank shall so publish on its website and notify this early termination in writing to the housing management authority of the provincial level where the project is located, specifically stating that the commercial bank will no longer issue guarantee letters for the buyer to sign a Sale contract or Purchase leasing contract with the developer after the guarantee agreement over future residential property is terminated. For guarantee letters previously issued to the buyer, the commercial bank shall continue to fulfill its commitment until the guarantee obligation is terminated.

3. The cases where enterprises are not guaranteed for bond payment obligations

Pursuant to Article 11.2 of the Circular 11, the credit institutions/foreign bank branches

are not allowed to grant the bank guarantees with respect to the bond issued for debt restructure, capital contribution, shares acquisition or operational capital increase, while under Circular 07 such limitation was only applied for two cases of debt restructure and bond issued by subsidiaries or affiliates of other credit institutions.

4. Foreign language in bank guarantees

Previously, pursuant to the Circular 07, bank guarantee was allowed to be in a foreign language only if the guaranteed transaction is a civil relation involved a foreign element as defined in the Civil Code. The Circular 11 now supplements two additional cases where it is allowed to use a foreign language: (i) guaranteed obligations arising from projects financed by international financial institutions, and (ii) guaranteed obligations arising from participating in international bidding packages.

5. Transitional regulation

The parties continue to implement the signed bank guarantee agreement, bank guarantee commitment which took effect prior to the effective date of the Circular 11 until termination of the guarantee obligations thereof. The amendment and supplementation of the above-mentioned signed documents shall comply with the regulations of the Circular 11.

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Bản tin này cùng với các nội dung trong bản tin chỉ nhằm mục đích cung cấp thông tin chung. Chúng tôi không cam kết hoặc bảo đảm về tính chính xác, tính thời sự hoặc sự đầy đủ của các thông tin cung cấp trong bản tin này. Bản tin này thể hiện quan điểm, ý kiến chính thức hay tư vấn pháp luật của chúng tôi. Bạn không nên sử dụng những thông tin trong bản tin này để thay thế cho việc tham khảo ý kiến tư vấn pháp luật của chúng tôi hoặc của luật sư của bạn. Việc bạn sử dụng các thông tin trong bản tin này không hình thành mối quan hệ “luật sư – khách hàng” giữa bạn và chúng tôi, trừ khi và cho đến khi một thoả thuận được ký kết giữa bạn và chúng tôi theo đó chúng tôi được yêu cầu tư vấn về vấn đề cụ thể của bạn.

Chúng tôi giữ quyền sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này hoặc bất kỳ phần nào của bản tin mà không thông báo trước. Chúng tôi không chịu bất kỳ trách nhiệm nào về các sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này.

Nếu bạn có vấn đề nào cần tư vấn, hãy liên hệ với chúng tôi hoặc yêu cầu luật sư của bạn tư vấn về vấn đề đó cho bạn.

Tất cả các quyền, bao gồm cả quyền sở hữu, quyền tác giả, quyền liên quan và các quyền sở hữu công nghiệp đối với nội dung thông tin, thiết kế, trình bày mỹ thuật của bản tin này thuộc chúng tôi và được bảo vệ theo Luật Sở hữu Trí tuệ Việt nam, các hiệp định, hiệp ước quốc tế mà Việt nam đã ký kết.

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