STATE BANK OF VIETNAM -------	SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom - Happiness ---------------
No. 09/2017/TT-NHNN	*Hanoi, August 14, 2017*

CIRCULAR

AMENDMENTS TO CIRCULAR NO. 19/2013/TT-NHNN DATED SEPTEMBER 06, 2013 ON PURCHASE, SALE AND SETTLEMENT OF BAD DEBTS BY VIETNAM ASSET MANAGEMENT COMPANY

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

Pursuant to the Law on credit institutions dated June 16, 2010;

Pursuant to the National Assembly's Resolution No. 42/2017/QH14 dated June 21, 2017 on pilot settlement of bad debts of credit institutions (hereinafter referred to as "Resolution No. 42/2017/QH14");

Pursuant to the Government's Decree No. 53/2013/NĐ-CP on the establishment, organization and operation of Vietnam Asset Management Company, amended by the Government's Decree No. 34/2015/NĐ-CP dated March 31, 2015 and the Government's Decree No. 18/2016/NĐ-CP dated March 28, 2016 (hereinafter referred to as the Decree No. 53/2013/NĐ-CP);

Pursuant to the Government's Decree No. 61/2017/NĐ-CP dated May 16, 2017 on verification of starting prices for bad debts and collateral thereof; establishment of bad debt auction councils;

Pursuant to the Government's Decree No. 16/2017/NĐ-CP on August 17, 2017 defining the functions, tasks, powers and organizational structure of the State bank of Vietnam;

At the request of the Chief Banking Inspector,

The Governor of the State bank of Vietnam promulgates a Circular to amends Circular No. 19/2013/TT-NHNN dated September 06, 2013 on purchase, sale and settlement of bad debts by Vietnam Asset Management Company (VAMC).

Article 1. Amendments to Circular No. 19/2013/TT-NHNN dated September 06, 2013 on purchase, sale and settlement of bad debts by VAMC (hereinafter referred to as "Circular No. 19/2013/TT-NHNN)

1. Clause 7 Article 3 is amended as follows:

7. Debt equals (=) the principal plus (+) the interest and other liabilities related to the debt that is yet to be paid by the borrower under the credit extension agreement, credit extension authorization agreement; debt purchase agreement; agreement on authorized purchased of

unlisted corporate bonds or unregistered bonds of unlisted public companies that are accounted for by a credit institution or VAMC."

2. Clause 7a below is added after Clause 7 of Article 3:

"7a. Bad debt means a debt that is classified as bad debt according to:

a) Regulations of the State bank on classification of assets, rates of provisions and methods for making provisions, use of provisions to settle risks incurred by branches of foreign banks and credit institution, or

b) Article 4 of Resolution No. 42/2017/QH14."

3. Article 23 is amended as follows:

"Article 23. Conditions for bad debts to be bought by VAMC at market value

1. A bad debt specified in Point a of Clause 7a Article 3 of this Circular will be bought by VAMC when all of the following conditions are satisfied:

a) The conditions specified in Clause 1 Article 16 of this Circular;

b) VAMC considers the investment in buying bad debts as completely recoverable;

c) The collateral for the bad debt is liquid or the borrower has the potential for solvency.

2. A bad debt specified in Point b of Clause 7a Article 3 of this Circular will be bought by VAMC when all of the following conditions are satisfied:

a) The conditions specified in Points, b, c, d Clause 1 Article 16 of this Circular;

b) VAMC considers the investment in buying bad debts as completely recoverable;

c) The collateral for the bad debt is liquid or the borrower has the potential for solvency;

d) In the cases where a bad debt purchased with special bonds is converted into a bad debt purchased at market value, the special bonds must be immature and not be frozen at the State bank."

4. Article 26 is amended as follows:

"Article 26. Purchasing bad debts at market value

1. According to the plan for buying bad debts at market value approved by the State bank, financial capacity, efficiency and market developments, VAMC shall decide and take responsibility for the purchase of bad debts at market value.

2. VAMC may only purchase a bad debt specified in Point a of Clause 7a Article 3 of this Circular after the following tasks are completed:

a) Determining whether the bad debt satisfies all of the conditions in Clause 1 Article 23 of this Circular;

b) Determining the market price of the bad debt, including collateral for such bad debt. VAMC shall valuate the bad debt itself or hire an independent organization to do it;

c) Analyzing and assessing the efficiency, risks, and probability of capital recovery;

d) Analyzing and assessing the status and potential of the bad debt, the borrower, the guarantor, debt payer, and conditions for buying the bad debt agreed with the debt-selling credit institution;

dd) Feasible plans for settling the debt and its collateral.

3. Except for the case in Clause 4 of this Article, VAMC may only purchase a bad debt specified in Point b of Clause 7a Article 3 of this Circular, even if the bad debt purchased with special bonds is converted into a bad debt purchased at market value, after the following tasks are completed:

a) Determining whether the bad debt satisfies all of the conditions in Clause 2 Article 23 of this Circular;

b) The tasks specified in Points b, c, d, dd Clause 2 of this Article.

4. Pursuant to Clause 3 Article 6 of Resolution No. 42/2017/QH14, VAMC shall perform the following tasks before purchasing a bad debt specified in Point b Clause 7a Article 3 of this Circular:

a) Determining whether the bad debt satisfies all of the conditions in Clause 2 Article 23 of this Circular;

b) The tasks specified in Points c, d, dd Clause 2 of this Article;

c) Reach an agreement with the debt-selling credit institution on the independent valuating organization.

5. VAMC may only convert the bad debts purchased with special bonds specified in Point b Clause 7a Article 3 of this Circular into bad debts purchased at market value. When converting a bad debt purchased with special bonds into a bad debt purchased at market value, VAMC and the credit institution shall agree on the price, conclude an agreement on debt purchase at market value and follow these instructions:

a) VAMC shall receive the special bonds from the credit institution, settle the special bonds and the principal in its balance sheet; pay the credit institution a proportion of the collected debt to which the credit institution is entitled, the stake or shares in the borrower according to their book values if the bad debt has been partially converted into charter capital or share capital of the borrower. VAMC shall transfer all rights and obligations associated with the stake or shares in the borrower to the credit institution;

b) VAMC shall pay the credit institution the price for purchase of the debt at market value under the debt purchase agreement;

c) The credit institution shall transfer the special bonds to VAMC and receives the payment for the debt, the stake or shares in the borrower, a proportion of the collected debt and follow these instructions:

(i) If the payment for the debt, the collected debt and value of the stake or shares received from VAMC is higher than the face value of the special bonds, the credit institution will record the difference as its revenue in the fiscal year;

(ii) If the payment for the debt, the collected debt and value of the stake or shares received from VAMC is lower than the face value of the special bonds, the credit institution will use the provision for special bonds to cover the difference. If the provision is not sufficient, the credit institution may record the remaining difference as operating cost incurred in the period.

d) The credit institution shall reverse the provision for special bonds that remains after performing the tasks in c(i) and c(ii).

6. The purchase of a bad debt at market value shall be made into a written agreement in accordance with this Circular and relevant regulations. In the cases where a bad debt purchased with special bonds is converted into a bad debt purchased at market value as prescribed in Clause 5 of this Article, the agreement on debt purchase with special bonds shall be invalidated as soon as the agreement on debt purchase at market value comes into force.

7. The debt-selling credit institution shall transfer all original documents about the bad debt to VAMC. In the cases where a bad debt purchased with special bonds is converted into a bad debt purchased at market value as prescribed in Clause 5 of this Article, VAMC shall transfer all original documents about the collected debt, stake or shares in the borrower to the credit institution."

5. Article 29 is amended as follows:

"Article 29. Remission of late payment interest on bad debts purchased with special bonds, relevant fees and fines

1. VAMC shall consider reducing or removing the outstanding late payment interest, fees and fines when they borrower fully pays the principal of all bad debts at VAMC or satisfies the following conditions:

a) The borrower cooperates with VAMC and the authorized credit institution;

b) The remission helps the borrower alleviate its financial difficulties or restore its business performance;

c) The borrower has a feasible plan for paying the debt or financial restructuring serving debt repayment.

2. VAMC shall discuss with the debt-selling credit institution before granting the remission.

The debt-selling credit institution shall comment on the issues raised by VACM within 10 working days from the day on which VAMC makes a written request for comments. After the aforementioned period, VAMC shall decide and take responsibility for the remission.

3. Within 05 working days from the day on which the remission is granted, VAMC shall notify the debt-selling credit institution and the borrower."

6. Article 34 is amended as follows:

"Article 34. Rules for selling purchased bad debts

1. The sale of a purchased bad debt must:

a) comply with law;

b) ensure objectivity and transparency;

c) ensure that the debt, including interest and fees (if any), is collected as much as possible;

d) not be taken advantage of to earn illegal benefits.

2. VAMC shall decide or hire an independent valuating organization to offer the price. Where necessary, prices for similar bad debts may be taken into account before a price is offered by VAMC.

In the cases where a bad debt is sold at auction, VAMC shall comply with regulations of law on bidding.

3. The final price must be the highest price among the offered prices to minimize loss on bad debt settlement.

4. The debt purchase shall be made into a contract.

5. VAMC may authorize a credit institution to sell the bad debt under the requirements and conditions imposed by VAMC to ensure conformity with this Circular."

7. Article 35a below is added after Article 35:

"Article 35a. Selling a bad debt purchased at market value

1. VAMC shall decide and take responsibility for the sale of bad debts purchased at market value by negotiation with the buyers or through submission of bids or proposals.

2. VAMC shall sell a bad debt by negotiation with the buyer when the selling price is not smaller than the book value of the debt principal or the bidding is not successful.

3. The sale of a bad debt by submitting bids shall comply with regulations of law on selling property of VACM at auction.

4. The sale of a bad debt by submitting proposals shall comply with Clause 4 Article 35 of this Circular."

8. Clause 3 Article 38 is amended as follows:

"3. If the collateral for a bad debt is bought with special bonds, VAMC and the debt-selling credit institution shall reach an agreement on:

a) The sale price for the collateral when it is sold by negotiation with the buyer or the starting price if the collateral is sold at auction, even if VAMC has to negotiate the starting price with the guarantor in accordance with regulations of law on property auction, or

b) The value of the collateral if VAMC receives collateral as substitute for fulfillment of the guarantor's liabilities.

The debt-selling credit institution shall comment on the issues raised by VACM within 20 working days from the day on which VAMC makes a written request for comments. After the aforementioned period, VAMC shall decide and take responsibility for settlement of the collateral."

9. Point a Clause 1 of Article 43 is amended as follows:

"a) Within 05 working days from the day on which the debt is collected, VAMC shall deposit it at the debt-selling credit institution as interest-free deposit and must not withdraw it before redemption of special bonds, except for the case specified in Point b of this Clause, Article 19 and Clause 5 Article 26 of this Circular;"

10. Article 47a below is added after Article 47a:

"Article 47b. Use of provision to eliminate risks to the bad debts purchased at market value

1. VAMC may use its provision to eliminate risks in the following cases:

a) The debt is sold by VAMC at a price power than the book value of the debt principal at that time, or

b) The borrower is an organization that has been dissolved or gone bankrupt, or an individual who is dead or missing.

2. Risk elimination documents include:

a) Documents about debt purchase, debt restructuring, debt collection and sale of debts whose risks have been eliminated;

b) Documents about the collateral and relevant documents;

c) The decision on or approval for provision issued by the Board of members;

d) The decision on or approval for use of provision for risk elimination issued by the Board of members;

dd) A certified true copy of the court's decision on enterprise bankruptcy or dissolution apart from the documents specified in Points a, b, c, d of this Clause if the borrower is an organization that has been dissolved or bankrupt;

e) A certified true copy of the death certificate or declaration of a missing person apart from the documents specified in Points a, b, c, d of this Clause if the borrower is an individual that is dead or missing;

g) Other relevant documents.

3. Use of provision for risk elimination:

a) VAMC may only use the provision to eliminate risks to the debts that satisfy all conditions specified in Clause 1 and Clause 2 of this Article;

b) VAMC may use the provision to:

(i) handle the negative difference between the selling price and book value of the principal in the case specified in Point a Clause 1 of this Article, or

(ii) handle the book value of the principal in the case specified in Point b Clause 1 of this Article, or

c) VAMC may record the provision that remains after risk elimination as revenue earned in the period. If the provision is not sufficient to make the settlements specified in Point b of this Clause, VAMC may record negative difference as a cost incurred in the period;

d) In the cases where a bad debt is sold according to Point b Clause 7a Article 3 of this Circular, VAMC may include the difference between the book value of the principal and the sum of selling price and the provision for such debt in its annual income statement according to Clause 4 Article 16 of Resolution No. 42/2017/QH14."

11. Clause 4a and Clause 4b below are added after Clause 4 of Article 50:

"4a. When a credit institution sells a bad debt to VAMC at market value, except for the case specified in Clause 5 Article 26 of this Circular and Clause 4b of this Article, the credit institution shall handle the difference between the selling price and the book value of the principal as follows:

a) If the selling price is higher than the book value of the principal, the positive difference will be recorded as revenue earned in fiscal year by the debt-selling credit institution;

b) If the selling price is lower than the book value of the principal, the negative difference will be covered by the compensation provided by an individual or a group that caused the damage (if identified), insurance payout and the provision made; the uncovered difference will be recorded as a cost incurred by the debt-selling credit institution in the period. This paragraph does not apply if the credit institution makes a loss or the difference between the book value of the principal and the selling price and provision for the debt will cause a loss as prescribed in Clause 2 Article 14 of Decree No. 53/2013/NĐ-CP;

c) In the cases where a bad debt is sold according to Point b Clause 7a Article 3 of this Circular, the credit institution may include the difference between the book value of the principal and the selling price and the provision for such debt in the annual income statement of the credit institution according to Clause 1 Article 16 of Resolution No. 42/2017/QH14.

4b. When a credit institution sells an off-balance bad debt to VAMC at market value, the credit institution shall include the revenue from selling the debt in its other revenue earned in the fiscal year.

12. Clause 7 below is added to Article 50:

“7. When a bad debt is purchased at market value or purchased according to Clause 5 Article 35 of this Circular from VAMC, the credit institution shall classify the payment for the debt in a group with a risk level not lower than that of the group in which the debt was classified before it is sold to VAMC.”

Article 2. Responsibility for implementation

Chief of Office, Chief Banking Inspector, Heads of the units affiliated to the State bank, directors of branches of the State bank of provinces, Chairpersons of the Executive Boards, the Board of members/partners and General Directors (Directors) or Vietnamese credit institutions; the President of the Board of members and General Director of VAMC are responsible for the implementation of this Circular.

Article 3. Implementation clause

1. This Circular comes into force as of August 15, 2017.

2. Regulations of Point b Clause 7a of Article 3, Clause 2 of Article 23, Clauses 3, 4, 5 of Article 26, Point d Clause 3 of Article 47b, Point c Clause 4a and Clause 4b of Article 50 of Circular No. 19/2013/TT-NHHNN (amended) are effective for 05 years from August 15, 2017.

3. The following regulations are annulled:

a) Clauses 13, 15, 34, 39 Article 1 of Circular No. 14/2015/TT-NHNN.

b) Clauses 6, 8, 10, 11, 12, 19 Article 1 of Circular No. 08/2016/TT-NHNN.

PP GOVERNOR
DEPUTY GOVERNOR

Nguyen Dong Tien