

**THE NATIONAL  
ASSEMBLY**

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Resolution No. 42/2017/QH14

**SOCIALIST REPUBLIC OF VIETNAM  
Independence - Freedom - Happiness**

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*Hanoi, June 21, 2017*

**RESOLUTION**

**ON PILOT SETTLEMENT OF BAD DEBTS OF CREDIT INSTITUTIONS**

**THE NATIONAL ASSEMBLY**

*Pursuant to Constitution of the Socialist Republic of Vietnam;*

*Pursuant to the Law on organization of the National Assembly No. 57/2014/QH13;*

*Pursuant to the Law on promulgation of legislative documents No. 80/2015/QH13;*

**RESOLVES:**

**Article 1. Scope**

This Decree deals with pilot policies for settlement of bad debts and treatment of assets tied to bad debts (hereinafter referred to as collateral) of credit institutions, branches of foreign banks, organization whose charter capital is wholly held by the State and established for bad debt settlement purpose; rights and obligations of relevant agencies, organizations, and individuals.

**Article 2. Regulated entities**

1. Credit institutions, branches of foreign banks (hereinafter referred to as credit institutions).
2. Organization whose charter capital is wholly held by the State and established for bad debt settlement purpose (hereinafter referred to as bad debt purchaser/manager).
3. Relevant agencies, organizations, and individuals.

**Article 3. Rules for settlement of bad debts**

1. Bad debts are settled publicly and transparently and legitimate rights and interests of credit institutions, bad debt purchaser/manager and relevant entities are protected.
2. Bad debt are settled in conformity with market mechanism in consideration of conservatism principle, respect of depositors' rights and maintenance of stable and safe system.
3. State budget is not used for settlement of bad debts.

4. Any entity has violated law resulting in bad debts or during the process of settlement of bad debts must take liability as per the law.

#### **Article 4. Bad debts**

1. A bad debt prescribed in the Resolution refers to:

- a) A debt that has arisen and has been considered as a bad debt before August 15, 2017;
- b) A debt that has arisen before August 15, 2017 and has been considered as a bad debt during the effective period of the Resolution.

The determination of bad debts is prescribed in Appendix issued herewith. In necessary cases, the Standing Committee of National Assembly shall, upon request of the Government, consider amending the Appendix and send the amended Appendix to National Assembly at the nearest session.

2. Each credit institution or the bad debt purchaser/manager, upon the competent authority's request to certify bad debts in writing, during the settlement of bad debts and treatment of collateral, must provide such a written certification as prescribed in this Decree.

#### **Article 5. Purchase of bad debts and collateral**

Credit institutions and the bad debt purchaser/manager sell bad debts or collateral transparently and in accordance with regulations of law; the selling price is consistent with market price, probably greater or smaller than principal balance of the debt.

#### **Article 6. Purchase and sale of bad debts by bad debt purchaser/manager**

1. The bad debt purchaser/manager is entitled to purchase bad debts that have been recorded on balance sheet or off the balance sheet of credit institutions, other than joint venture credit institutions and wholly foreign-owned credit institutions and entitled to convert bad debts purchased by special bonds into bad debts purchased by market price according to guidelines of the State Bank of Vietnam.

2. The bad debt purchaser/manager is entitled to sell bad debts to juridical persons and natural persons, including enterprises that have not engaged in debt purchase/sale line of business.

3. The bad debt purchaser/manager is entitled to agree with a credit institution prescribed in Clause 1 of this Article to purchase bad debts using the valuation price given by an independent valuation organization; settle, sell and recover debts as per the law and distribute the recovery amount less purchase price and settlement expenses.

The bad debt purchaser/manager must come to an arrangement with the credit institution over choosing independent valuation organization.

## **Article 7. Right to seize collateral**

1. The grantor or holder of collateral is obliged to hand over collateral along with sufficient legal documents of the collateral to the eligible credit institution or the bad debt purchaser/manager for treatment as agreed upon in the security agreement or another document (hereinafter referred to as security agreement) and regulations of law on secured transactions.

If the grantor or holder of collateral fails to hand over the collateral, the credit institution or bad debt purchaser/manager is entitled to seize the collateral as prescribed in this Article.

2. A credit institution or the bad debt purchaser/manager is entitled to seize collateral put up by a grantor or holder of collateral only if it satisfies fully the following conditions:

a) Occurrence of any case in terms of treatment of collateral prescribed in Article 299 of the Civil Code;

b) The security agreement clearly indicates the grantor's consent to the credit institution's right to seize the collateral upon occurrence of the case of treating collateral as per the law;

c) The secured transaction or security interests has been registered as prescribed by law;

d) The collateral is not in dispute in a case that has been accepted but remained unsolved or has been resolving at an authorized court; the collateral is not put under temporary emergency measures; and the collateral is not distrained or under judgment enforcement as prescribed by law;

dd) The credit institution or bad debt purchaser/manager has fulfilled obligation to publish information as prescribed in Clause 3 or Clause 4 of this Article.

3. At least 15 days before the date on which the collateral being real property is seized, the credit institution or bad debt purchaser/manager must publish information about time and place of seizure, collateral to be seized, reasons thereof as follows:

a) Post information on its website;

b) Send a notice to the People's Committee and police authority of commune where collateral is located;

c) Put up a notice on the bulletin board at the head office of People's Committee of commune which the grantor has referred to in the security agreement and at the head office of the People's Committee of commune where the collateral is located;

d) Send a notice to the grantor directly or by secure delivery service at grantor's address specified in the security agreement.

4. The credit institution or bad debt purchaser/manager must publish information about the process of seizure of collateral being movable as follows:

a) Post information on its website and send a prior notice stating its exercise of right to seize collateral to the People's Committee of commune which the grantor has referred to in the security agreement before seizing the collateral;

b) Send a notice to the grantor directly or by secure delivery service at grantor's address specified in the security agreement before the exercise of right to seize collateral.

5. A local government and police authority of administrative division where the collateral will be seized shall, within its functions, tasks, powers, keep social safety and order during the seizure process at the requests of credit institution or bad debt purchaser/manager. If the grantor fails to cooperate or be present upon notice sent by credit institution or bad debt purchaser/manager, a representative of the People's Committee of commune where the collateral will be seized shall witness and sign a record of collateral seize.

6. A credit institution is entitled to authorize the seizure of collateral solely to its affiliated assets management company; the bad debt purchaser/manager is entitled to authorize the seizure of collateral solely to a debt-selling credit institution or an assets management company affiliated to a debt-selling credit institution.

Credit institutions, bad debt purchaser/manager, and entity authorized to seize collateral may not adopt measures that commit violations of law during the seizure process.

7. The Ministry of Public Security shall direct police authorities to keep social security and order every time a credit institution or bad debt purchaser/manager exercise the right to seizure of collateral as prescribed in this Resolution.

#### **Article 8. Application of reduced procedures for settlement of disputes in respect of collateral at courts**

1. A court shall apply reduced procedures for settlement of disputes over obligation to hand over collateral or right to seize collateral claimed by credit institutions or bad debt purchaser/manager if all the following requirements are satisfied:

a) The security agreement has clearly stated that the grantor is obliged to hand over collateral to the secured party or the credit institution or bad debt purchaser/manager is entitled to seize collateral;

b) The secured transaction or security interests has been registered as prescribed by law;

c) No litigant has resided overseas or no disputed property is located overseas, unless the overseas litigant and the other litigant in Vietnam have come to an arrangement over requesting the court to handle the case under reduced procedures or litigants represent items of evidence for

their legitimate ownership of collateral and have come to an arrangement over the collateral treatment.

2. The disputes prescribed in Clause 1 of this Article shall be settled under reduced procedures prescribed in the Civil Procedure Code.

3. The Supreme People's Court shall provide guidelines for this Article.

#### **Article 9. Purchase/sale of bad debts secured by collateral being land use right or property on land, off-the-plan property on land**

1. The purchaser of a debt derived from bad debt of credit institution secured by collateral being land use right, property on land or off-the-plan property on land is entitled to receive pledge or register pledge of land use right, property on land or off-the-plan property on land as the security of the purchased debt.

2. The purchaser of a debt derived from bad debt of credit institution secured by collateral being land use right, property on land or off-the-plan property on land is entitled to inherit rights and obligations of mortgagee.

3. The bad debt purchaser/manager is entitled to register pledge upon receipt of additional collateral being land use right or property on land, off-the-plan property on land tying to the purchase debt.

4. The Ministry of Natural Resources and Environment shall lay down the registration of pledge of land use right, property on land, off-the-plan property on land; registration of modification of land use right certificate, ownership of housing and property on land as security for debts derived from bad debts of credit institutions.

#### **Article 10. Treatment of collateral being real property projects**

1. A credit institution or bad debt purchaser/manager is entitled to assign collateral being a real property project if all of following requirements are satisfied:

a) The project has been approved by competent authorities as per the law;

b) A decision on land allocation or land lease has been issued by competent authority;

c) The project is not in dispute over land use right in a case that has been accepted but remained unsolved or has been resolving at an authorized court; the project is not distrained for judgment enforcement or observance to administrative decisions of competent authorities;

d) No decision on revocation of project or land expropriation has been issued by competent authorities.

2. The assignee of project must meet conditions for real estate trading; inherit rights and obligations of investor and initiate procedures to resume the project as prescribed in law on investment and construction.

### **Article 11. Distraint of collateral of party obligated to judgment enforcement**

Collateral of the party obligated to judgment enforcement which is being secured for an account payable to the credit institution or bad debt purchaser/manager may not be distrained for other obligations as prescribed in Article 90 of the Law on civil judgment enforcement, except for enforcement of judgments and decisions on financial support, compensation for damage to life and health and existence of a written consent of the credit institution or bad debt purchaser/manager.

### **Article 12. Order of payment upon liquidation of collateral**

Proceeds from the liquidation of collateral, less expenses associated with storage, seizure and liquidation shall be preferentially paid to debts secured by the credit institution or bad debt purchaser/manager prior to tax liabilities and other unsecured liabilities taken over by the grantor. If an item of collateral is secured for multiple obligations, the order of payment in which joint creditors stand is prescribed in regulations of law.

### **Article 13. Sale of bad debts of which collateral is being distrained**

The credit institution is shall be entitled to sell bad debts of which collateral is being distrained to bad debt purchaser/manager or debt trader. The credit institution is obligated to provide sufficient and truthful information about the distraint situation of collateral prior to bad debt purchase/sale; the purchaser must determine potential risks of purchasing the debt by itself. The sale of collateral being distrained is prescribed in regulations of law.

### **Article 14. Return of collateral being exhibit(s) in criminal cases**

If a credit institution or bad debt purchaser/manager requests presiding agency, in a criminal case in which a collateral is considered an exhibit that has been verified and deemed not affecting the handling of case and judgment enforcement, to return such exhibit, the presiding agency must make the return.

### **Article 15. Assignment of collateral**

1. The agency competent to register right to ownership or use of collateral of credit institution shall conduct procedures for assignment of that right to purchaser or assignee.

2. Tax payment made by grantor or assignee relating to the assignment of collateral is prescribed in regulations of law on taxation. The secured party, assignee is not required to cover tax or fee liabilities payable by the grantor from the assignment amount upon formalities of registration or changes of right to ownership or use of collateral.

## **Article 16. Allocation of estimated profits or difference upon sale of bad debts of credit institutions or bad debt purchaser/manager**

1. The credit institution is entitled to allocate estimated profits that have been recorded of bad debts that have not been divested of as prescribed, difference between book value of the debt included in the balance sheet and selling price of the bad debt and amount of reserve for such debt to annual financial performance according to the following principles:

a) Minimum annual allocation is the difference of revenues and expenditures from annual financial performance of the credit institution;

b) Time limit for allocation of estimated profits may not exceed 10 years, except for the case prescribed in Clause 2 of this Article; time limit for allocation of difference between book value of the debt included in the balance sheet and selling price of the bad debt and amount of reserve for such debt may not exceed 5 years.

2. With regard to estimated profits of bad debts which have been sold to bad debt purchaser/manager but have not been divested of as prescribed, the time limit for allocation of estimated profits may not exceed the remaining period of the special bonds of bad debt purchaser/manager.

3. The credit institution is only entitled to allocate estimated profits obtained until December 31, 2016 as prescribed Clause 1 and Clause 2 of this Article

4. The bad debt purchaser/manager is entitled to allocate difference between the book value of the debt included in the balance sheet with the selling price of bad debt purchased by market price and the amount of reserve for such debt to the annual financial performance, but not greater than the difference between revenues and expenditures.

## **Article 17. Application of law**

1. The settlement of bad debts, treatment of collateral of credit institutions or bad debt purchaser/manager shall comply with this Resolution. Matters arising not prescribed in this Resolution shall apply applicable law.

2. Where the conflict is between this Resolution and other laws on the same matter in terms of settlement of bad debts treatment of collateral of credit institutions or bad debt purchaser/manager, this Resolution will prevail.

3. Banks for social policies may apply this Resolution for settlement of bad debts, treatment of collateral tied to bad debts of bank for social policies.

## **Article 18. Transitional regulations**

After expiry date of this Resolution, these following regulations shall apply:

1. Any arrangement between the bad debt purchaser/manager and a credit institution prescribed in Clause 3, Article 6 of this Resolution which has been valid during the effective period of the Resolution shall remain valid until the arrangement is completed;
2. Credit institutions or bad debt purchaser/manager may keep exercising the right to seizure of collateral as prescribed in Article 7 of this Resolution if they have published information as prescribed in Clause 3 or Clause 4, Article 7 hereof during the effective period of the Resolution;
3. Courts shall keep applying reduced procedures to cases that have been accepted during the effective period of the Resolution as prescribed in Article 8 hereof.

### **Article 19. Implementation**

1. This Resolution comes into force as of August 15, 2017 and remains in force for 5 years from the date of its entry to force.
2. The Standing Committee of National Assembly, the Nationality Council, Committees of National Assembly, National Assembly delegations, National Assembly deputies shall supervise the implementation of this Resolution.
3. The Government shall take charge of implementing this Resolution, send annual reports on results of settlement of bad debts and a final report on implementation of this Resolution at the session in the beginning of 2022 and proposals for improving the legal system on settlement of bad debt, collateral.
4. The Supreme People's Court and the Supreme People's Procuracy shall implement this Resolution. The Supreme People's Court shall provide guidelines for consistent application of law in terms of settlement of disputes over settlement of bad debts or collateral as prescribed in this Resolution.
5. The State Bank of Vietnam shall direct, supervise, and inspect the implementation of this Resolution of credit institutions, bad debt purchaser/manager; and adopt measures for restriction of bad debts.
6. Local governments shall direct, cooperate with relevant entities in implementing this Resolution in the administrative divisions; make plans for allocation of sources of funds to pay outstanding capital construction debt relating to bad debts payable by local government budget.

*This Resolution is passed by the 13th National Assembly of Socialist Republic of Vietnam during the 3rd session on June 21, 2017.*

**PRESIDENT OF NATIONAL ASSEMBLY**



## **Nguyen Thi Kim Ngan**

### **APPENDIX**

#### **ON IDENTIFICATION OF BAD DEBTS**

##### **Article 1. Bad debts**

A bad debt prescribed in this resolution refers to: debts that have been recording on and off the balance sheet of credit institutions and indentified as prescribed Articles 2, 3, 4, and 5 of this Appendix; bad debts that the bad debt purchaser/manager has purchased from credit institutions.

##### **Article 2. Activities from which bad debts probably arise**

1. Lending.
2. Finance lease.
3. Discounts, rediscounts of negotiable instruments and other valuable papers.
4. Factoring.
5. Credit grant in the form of credit card issuance.
6. Repayment according to commitment off-balance sheet.
7. Delegation of credit grant.
8. debt purchase.
9. Purchase and entrust of purchase of unlisted corporate bonds on securities market or unregistered corporate bonds on market of unlisted public companies.

##### **Article 3. Bad debts identified by quantitative method**

1. Sub-standard debts (group 3) include:
  - a) Debts remaining overdue for a period of 91 to 180 days;
  - b) Loans extended for the first time;
  - c) Loans whose interests are exempt or reduced due to client's incapacity to pay interests in full as specified in the credit contract;

d) Debts in any of the following cases that have not been recovered for a period of under 30 days from the date on which a decision on recovery has been issued:

- Debts in violation of Clauses, 1, 3, 4, 5 and 6, Article 126 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2, 3, and 4, Article 127 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2 and 5, Article 128 of the Law on credit institutions;

dd) Debts during the period of recovery stated in an inspection conclusion issued by the State bank of Vietnam;

e) Debts that have been classified into group 3 by credit institutions as prescribed by the State bank of Vietnam;

g) Debts that have been classified into group 3 at the request of the State bank of Vietnam;

h) Debts that have been classified into group 3 according to information provided by National Credit Information Center;

i) Debts which are rescheduled (rescheduling debt terms and loan extension), maintained in debt group for the first time, and within the term of rescheduled loan;

k) Corporate bonds whose principal and/or interest remain overdue for a period of 10 to 90 days;

2. Doubtful debts (group 4) include:

a) Loans remain overdue for a period of 181 to 360 days;

b) Debts which are rescheduled for the first time and remaining overdue of less than 90 days in the term of rescheduled loan ;

c) Debts which are rescheduled for the second time;

d) Debts in any of the following cases that have not been recovered for a period of 30 to 60 days from the date on which a decision on recovery has been issued:

- Debts in violation of Clauses, 1, 3, 4, 5 and 6, Article 126 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2, 3, and 4, Article 127 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2 and 5, Article 128 of the Law on credit institutions;

dd) Debts which must be recovered according to an inspection conclusion issued by the State bank of Vietnam but still be non-recoverable 60 days late from the missed deadline for recovery;

e) Debts that have been classified into group 4 by credit institutions as prescribed by the State bank of Vietnam;

g) Debts that have been classified into group 4 at the request of the State bank of Vietnam;

h) Debts that have been classified into group 4 according to information provided by National Credit Information Center;

i) Debts which are rescheduled (rescheduling debt terms and loan extension), maintained in debt group for the first time, and remaining overdue of 90 days in the term of the rescheduled loan;

k) Debts which are rescheduled (rescheduling debt terms and loan extension), maintained in debt group for the second time, and within the term of the rescheduled loan;

l) Corporate bonds whose principal and/or interest remain overdue for a period of 91 to 180 days.

3. Loss debts (group 5) include:

a) Debts remaining overdue for a period of more than 360 days;

b) Debts which are rescheduled for the first time and remaining overdue of at least 90 days in the term of firstly rescheduled loan;

c) Debts which are rescheduled for the second time and remaining overdue of the term of secondly rescheduled loan;

d) Debts which are rescheduled for the third time, regardless of due or overdue status;

dd) Debts in any of the following cases that have not been recovered for a period of more than 60 days from the date on which a decision on recovery has been issued:

- Debts in violation of Clauses, 1, 3, 4, 5 and 6, Article 126 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2, 3, and 4, Article 127 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2 and 5, Article 128 of the Law on credit institutions;

e) Debts which must be recovered according to an inspection conclusion issued by the State bank of Vietnam but still be non-recoverable more than days late from the missed deadline for recovery;

g) Debts that have been classified into group 5 by credit institutions as prescribed by the State bank of Vietnam;

h) Debts that have been classified into group 5 at the request of the State bank of Vietnam;

i) Debts that have been classified into group 5 according to information provided by National Credit Information Center;

k) Debts which are rescheduled (rescheduling debt terms and loan extension), maintained in debt group for the first time, and remaining overdue of at least 91 days in the term of the rescheduled loan;

l) Debts scheduled (rescheduling debt terms and loan extension), maintained in debt group for the second time, and remaining overdue in the term of the secondly rescheduled loan;

m) Debts which are rescheduled (rescheduling debt terms and loan extension), maintained in debt group for the third time or more, and remaining overdue or within of the term of the thirdly rescheduled loan;

n) Corporate bonds whose principal and/or interest remain overdue for a period of more than 180 days.

#### **Article 4. Bad debts identified by qualitative method**

Bad debts are identified by qualitative method according to clients' solvency and internal credit rating system and loan loss reserves:

1. Sub-standard loans (group 3) include:

a) Loans whose principal and interest are considered non-recoverable on due date by credit institutions. These loans are considered possible losses by credit institutions;

b) Debts in any of the following cases that have not been recovered for a period of under 30 days from the date on which a decision on revocation has been issued:

- Debts in violation of Clauses, 1, 3, 4, 5 and 6, Article 126 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2, 3, and 4, Article 127 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2 and 5, Article 128 of the Law on credit institutions;

c) Debts during the period of recovery stated in a conclusion of inspection issued by the State bank of Vietnam;

d) Debts that have been classified into group 3 at the request of the State bank of Vietnam;

dd) Debts that have been classified into group 3 according to information provided by National Credit Information Center.

2. Doubtful debts (group 4) include:

a) Loans are considered highly possible losses by credit institutions;

b) Debts in any of the following cases that have not been recovered for a period of 30 to 60 days from the date on which a decision on recovery has been issued:

- Debts in violation of Clauses, 1, 3, 4, 5 and 6, Article 126 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2, 3, and 4, Article 127 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2 and 5, Article 128 of the Law on credit institutions;

c) Debts which must be recovered according to an inspection conclusion issued by the State bank of Vietnam but still be non-recoverable 60 days late from the missed deadline for recovery;

d) Debts that have been classified into group 4 at the request of the State bank of Vietnam;

dd) Debts that have been classified into group 4 according to information provided by National Credit Information Center.

3. Loss debts (group 5) include:

a) Loans whose principal and interest are considered irrecoverable on due date by credit institutions;

b) Debts in any of the following cases that have not been recovered for a period of more than 60 days from the date on which a decision on recovery has been issued:

- Debts in violation of Clauses, 1, 3, 4, 5 and 6, Article 126 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2, 3, and 4, Article 127 of the Law on credit institutions;

- Debts in violation of Clauses, 1, 2 and 5, Article 128 of the Law on credit institutions;

c) Debts which must be recovered according to an inspection conclusion issued by the State bank of Vietnam but still be non-recoverable more than days late from the missed deadline for recovery;

d) Debts that have been classified into group 5 at the request of the State bank of Vietnam;

dd) Debts that have been classified into group 5 according to information provided by National Credit Information Center.

**Article 5. Identification of bad debts if clients have at least two debts**

If a client has at least two debts arising before August 15, 2017 at one or multiple credit institutions, in which one debt is identified a bad debt as prescribed in Article 3, Article 4 of this Appendix, remaining debts are also treated as bad debts.