



GLOBAL VIETNAM
LAWYERS

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NEWLY ISSUED LEGAL DOCUMENTS

1. Novelties on the issuance, registration, depository, listing and trading of the Government's debt instruments on the securities market

On 29 November 2023, the Government issued Decree 83/2023/ND-CP ("**Decree 83/2023**") amending and supplementing a number of articles of Decree 95/2018/ND-CP ("**Decree 95/2018**") on the issuance, registration, depository, listing and trading of the Government's debt instruments on the securities market, effective from 15 January 2024, with some notable amendments and supplements as follows:

1.1. Change the bidding method for issuance of Government bonds

Previously, according to Article 15.5 of Decree 95/2018, the bidding results for issuance of Government bonds was determined by one of the two methods: single-price bidding or multiple-price bidding, as decided by the Ministry of Finance from time to time. Now, Decree 83/2023 makes an amendment in the direction of only applying the single-price bidding method to determine bidding results.

1.2. Supplementing the process of selecting the main underwriter/co-underwriter in issuing Government bonds by the underwriting method

Decree 83/2023 supplements the process of selecting the main underwriter/co-underwriter in Article 16.4 of Decree 95/2018 as follows:

- (i) When it needs to issue bonds by the underwriting method, the State Treasury will notify the underwriting plan so organisations can make their registrations. The notice includes a number of key details such as: information about the bond underwriting (basic conditions and terms of the bonds, volume of bonds expected to issue, interest rate planning, time and method of

issuance, schedule for negotiation and signing of the bond underwriting contract); Information on the selection of the main underwriter/co-underwriter (conditions and standards required of these organisations, deadline and location for receiving registration dossiers).

- (ii) Organisations that meet the conditions and wish to participate in the bidding will submit applications to the State Treasury to register for the selection process. In particular, the registration dossier must include an application letter, a proposed bond underwriting plan and documents proving their eligibility to become the main underwriter/co-underwriter.
- (iii) The State Treasury will evaluate and select the main underwriter/co-underwriter based on the conditions and the underwriting plan for the bond issuance.
- (iv) Within a maximum of 15 working days of the deadline of receiving applications, the State Treasury will notify the selection results to the participating organisations and publish them on the websites of the

Ministry of Finance, the State Treasury and Stock Exchanges.

- (v) The State Treasury and the main underwriter/co-underwriter will agree on the subject matter and sign a principle contract for underwriting the bond issuance.
- (vi) The main underwriter/co-underwriter will select an underwriter/a co-underwriter and make a report to the State Treasury for approval of the list of main underwriters/co-underwriters.

1.3. Commercial banks and foreign bank branches are allowed to act as distribution agents for Government bonds

Previously, Article 17.1 of Decree 95/2018 only allowed the State Treasury to issue Government bonds in private placements by directly selling bonds to each buyer. However, from 15 January 2024, Decree 83/2023 will allow the private placement of Government bonds through distribution agents. Specifically, according to Article 1.4 of Decree 83/2023, private placement means the method of selling government bonds directly to particular buyers or selecting commercial banks or foreign bank branches to act as agents for distribution of and payment for government bonds (distribution agents).

1.4. Requirements on the expected bond issuing form in the Plan for private placement of Government bonds

In addition to the basic details required to be included in the Plan for private placement of Government bonds

according to the current regulations that the State Treasury sets up to report to the Ministry of Finance for approval, such as: Type of bond buyer; Expected volume of the issue; Bond term; Expected interest rate; Expected time of the issue. Decree 83/2023 also stipulates additional regulations on the expected form of private placement (direct issuance by the State Treasury or selection of distribution agents).

If the State Treasury chooses a distribution agent, the selection and signing of a contract with a distribution agent must comply with the conditions and process for selecting a distribution agent.

1.5. Conditions to act as a bond distribution agent

- (i) Be a commercial bank or foreign bank branch duly established and operating in Vietnam, with the function of providing bond issuance agency services as prescribed in the Law on Credit Institutions and as instructed by the State Bank of Vietnam;
- (ii) Have an operational network that meets the distribution of and payment for Government bonds; and
- (iii) Have a plan for organising the distribution of and payment for the bonds that meets the requirements of the issuer for each issue.

1.6. Process of selecting bond distribution agents

- (1) *The State Treasury announces the bond issuance plan*

When wishing to issue bonds by the method of private placement through distribution agents, the State Treasury will notify the plan on organisation of bond issuance on its website and the websites of the Ministry of Finance and Stock Exchanges so commercial banks and foreign bank branches can register for acting as bond distribution agents. The notice should include the following contents:

- Information on bonds that are expected for issuance: basic conditions and terms of bonds (issuance currency, term, par value, principal and interest payment method); expected volume of the issue; expected time of issuance, and issuance method;
- Information on the selection of distribution agents: conditions required of distribution agents; time limit and place for receipt of application dossiers for acting as distribution agents.
- Plan for organising the distribution of and payment for the bonds with basic contents: Forecasts about the bond market and the potential of bond distribution; implementation plan for bond distribution and payment; Propose the bond distribution and payment fees;
- Documents proving satisfaction of the conditions to become a distribution agent include: copies of the Enterprise Registration Certificate, Incorporation License or legal documents of equivalent value (Copies extracted from the original book, copies certified by a competent state agency, or uncertified copies presented with the original ones for cross-checking); information about the operating network and infrastructure to ensure the distribution of and payment for the bonds as required by the State Treasury.

(2) *Submit application dossiers for distribution agents*

Organisations that meet the conditions and wish to act as distribution agents can submit sealed documents directly to the State Treasury or send them by post to the address notified by the State Treasury. Application dossiers must include:

- Application letter for distribution agent registration

(3) *The State Treasury to evaluate and select an organisation to act as a distribution agent*

After expiry of the dossier submission period, the State Treasury will establish a team to open the sealed dossiers, evaluate and select one or several organisations to act as distribution agents based on the conditions and

the plans for bond distribution and payment.

(4) The State Treasury to announce the selection results

Within a maximum of 15 working days of the deadline of receiving applications for distribution agent registration, the State Treasury will announce the results of distribution agent selection in writing to the participating organisations and publish them on the websites of the Ministry of Finance, the State Treasury and Stock Exchanges.

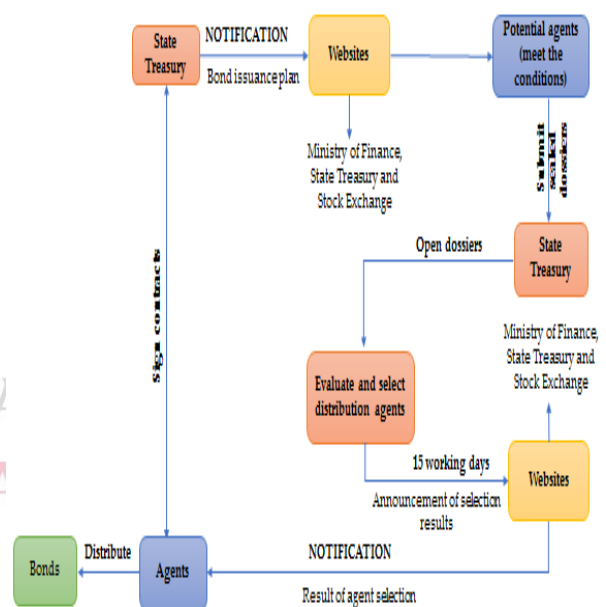
(5) Sign distribution agent contracts

The State Treasury will sign a contract with the distribution agent according to the form provided by the Ministry of Finance. The bond distribution and payment contract provides the basis for determination of the rights and obligations of the distribution agent and the State Treasury.

(6) Distribution agents to distribute the bonds

Distribution agents are responsible for organising the implementation of bond distribution and payment according to the contract signed with the State Treasury.

Thus, the bond distribution agent selection process can be illustrated by the following diagram:



2. Novelties on credit information activity of the State Bank of Vietnam

On 5 December 2023, the State Bank of Vietnam issued Circular 15/2023/TT-NHNN (“Circular 15/2023”) regulating credit information (CI) activities of the State Bank of Vietnam with some notable contents as follows:

2.1 Vietnam National Credit Information Center (CIC) is the focal point for organising and implementing CI activities

According to Article 1 and Article 3.1 of Circular 15/2023, the State Bank's credit information activities (hereinafter referred to as CI activities) are

understood as the activities of collecting, exchanging, processing, storing, CI secure, create CI products and provide credit information services of the State Bank. Accordingly, these activities are organised and implemented by CIC.

2.2 Information that the CIC may collect

According to Article 8 of Circular 15/2023, the CIC may collect the following information:

- CI provided voluntarily by credit institutions and other organisations as prescribed in Circular 15/2023.
- Information from units of the State Bank as prescribed by the State Bank and other relevant provisions of law.
- Information from state management agencies and other legal sources of information as prescribed by law.

2.3 CI provided to the CIC

According to Article 9.1 of Circular 15/2023, credit institutions will provide the CIC with the entire system of credit information index according to the Decision of the Governor of the State Bank issued from time to time, including 9 groups of index as follows:

- (1) Identification information about the borrower;
- (2) Information about related persons of the borrower (who are having loans at the credit institution planning to provide credit to the borrower);
- (3) Information on lending and other credit granting activities (excluding index groups 4 and 5);
- (4) Credit card information;

- (5) Information on the purchase and entrusted purchase of corporate bonds (excluding credit institutions);
- (6) Information on security measures for credit extension;
- (7) Information about handling of on-balance sheet bad debts;
- (8) Off-balance sheet information; and
- (9) Annual financial statements (the financial statements submitted to the Tax authority or audited financial statements) of corporate borrowers.

In addition, a voluntary organisation may provide the CIC with all or part of the CI Index System under an information exchange contract signed with the CIC.

2.4 Frequency of provision and storage period of CI

According to Article 10 of Circular 15/2023, the frequency of provision of the target groups in section 2.3 above is as follows:

- Credit institutions to provide information at the frequency specified in the CI Index System issued together with the Decision of the Governor of the State Bank.
- Social Policy Banks to provide information twice a month.
- People's credit funds and micro-finance institutions to provide information once a month.

Regarding the storage period, according to Article 11.2 of Circular 15/2023, CI will be kept at the CIC for a minimum period of 5 years from the date of generation.

2.5 Extent of providing CI about borrowers

According to Article 12, Article 13.1 and Article 18.1 of Circular 15/2023, the extent of providing CI about borrowers is specified as follows:

- *Units of the State Bank* can be provided with CI-related products to serve the state management requirements of the State Bank.
- *Other state management agencies* are allowed to provide CI according to the provisions of law.
- *Credit institutions and voluntary organisations* are allowed to provide CI services on the basis of contracts signed with the CIC.
- *Borrowers* can be provided with their own CI according to the CIC's instructions and can be provided free of charge with information about the index groups 1, 3, 4, 5, 6, 8 once a year as prescribed in section 2.3 and the CI of their own according to the CIC's instructions.
- *Foreign CI organisations* are allowed to provide, exploit and exchange IC-related products about borrowers on the basis of memorandums of understanding, cooperation agreements, and contracts signed with the CIC in accordance with relevant regulations of the Vietnamese law

and the law of the country in which the foreign CI organisation is established and operates.

- *Other organisations* (other than units of the State Bank, state management agencies, credit institutions, voluntary organisations, borrowers, foreign credit information organisations) when using CI services relating to borrowers must obtain the consent of the borrowers and ensure compliance with the contract signed with the CIC. The borrower's consent must be expressed in a format that can be printed, reproduced in writing, including in electronic or verifiable formats.
- For negative information about borrowers, it can only be provided for a maximum period of 5 years from the date of termination of that negative information, unless required by state management agencies.

2.6 Organisations provided with CI must have measures to protect the safety and security of CI

Article 6 of Circular 15/2023 requires the CIC, credit institutions, voluntary organisations, and other organisations provided with CI to:

- Have measures in place to protect CI from any loss, unauthorised access, use or disclosure.
- Set up a data recovery solution in case the data is corrupted, lost, or corrupted, and a recovery plan therefor.

- Ensure the safety and security of CI as prescribed by this Circular 15/2023 and other laws on information about safety and security.

and interests of relevant organisations and individuals.

2.7 Prohibited acts in CI activities

According to Article 7 of Circular 15/2023, the following 5 acts are strictly prohibited in CI activities:

- (1) Illegally collecting, providing, exchanging, and using information within the scope and list of state secrets.
- (2) Intentionally falsifying the content of CI, affecting the legitimate rights

- (3) Exchanging or providing CI to the wrong person or to a third party contrary to the law.
- (4) Taking advantage of CI activities to infringe the interests of the State, the legitimate rights and interests of organisations and individuals.
- (5) Obstructing the collection and exploitation of legal CI by organisations and individuals.

Circular 15/2023 will take effect from 1 January 2025 and replace Circular 03/2013/TT-NHNN, Circular 27/2017/TT-NHNN.

3. Novelties on the internal control system of non-bank credit institutions

On 20 November 2023, the State Bank of Vietnam issued Circular 14/2023/TT-NHNN (“Circular 14/2023” regulating the internal control system of non-bank credit institutions including financial companies, financial leasing companies; organisations and individuals related to the internal control system of non-bank credit institutions. Circular 14/2023 will take effect from 1 October 2024 with some notable contents as follows:

3.1 The internal control system must have 3 independent lines of protection

According to Article 4.3 of Circular No. 14/2023, the internal control system of non-bank credit institutions must have 3 independent lines of protection as follows:

- *The first line of defense* has the function of identifying, controlling and minimising risks performed by the following departments: Business departments (including product development departments), functional

departments that generate other revenue; departments that have the function of implementing risky decisions; Departments with the function of allocating risk limits, controlling risks, and minimising risks (subordinate to business departments or independent departments) for each type of transaction and business activity; Human resources department, accounting department.

- *The second line of defense* has the function of developing the contents related to risk management,

internal regulations on risk management, risk monitoring and compliance with legal regulations, which is performed by the Compliance Department and Risk Management Department performs according to regulations.

- *The third line of defense* has the internal audit function performed by the internal audit department as prescribed by the Law on credit institutions and Circular 14/2023.

3.2 Requirements for internal control system

According to Article 4.1 of Circular 14/2023, the internal control system of the non-bank credit institutions must meet the following requirements:

- Set up internal control system duly as prescribed by the Law on credit institutions.
- Be suitable for the scale, conditions and complexity of business activities of the non-bank credit institutions.
- Have sufficient financial, human, and information technology resources to ensure the effectiveness of the internal control system.
- Build and maintain a control culture and professional ethical standards for the non-bank credit institutions.

3.3 Non-bank credit institutions must develop a credit risk management strategy

According to Article 3.8(a) of Circular 14/2023, the credit risk is understood as a risk due to the customer's failure to perform or inability to perform part or all of the debt repayment obligation according to the contract or agreement with the non-bank credit institutions (*except in case of counterparty credit risk*). In particular, customers (including credit institutions and foreign bank branches) have relationships with the non-bank credit institutions in receiving credit (including credit through entrustment), deposits, and issuing corporate bonds.

Therefore, Article 19 of Circular 14/2023 requires the non-bank credit institutions to develop a minimum credit risk management strategy including the following contents:

- Target bad debt ratio, target bad credit ratio.
- Principles for determining credit risk compensation costs in the method of calculating interest rates and pricing credit products (pricing) according to the customer's credit risk level.
- Principles for applying credit risk mitigation measures (including authority to approve credit risk mitigation measures).

3.4 Non-bank credit institutions must issue credit risk limits

According to Article 20 of Circular 14/2023, the non-bank credit institutions must issue credit risk limits to ensure compliance with regulations on restrictions towards safety in the operations of non-bank credit

institutions according to the Law on credit institutions and regulations of the State Bank with 2 minimum limits: (i) credit limit for customers based on their ability to repay debts, and (ii) credit limit by product.

Credit risk limits must be reviewed and re-evaluated (adjusted if necessary) at least once a year according to the internal regulations of the non-bank credit institutions

3.5 Principles for monitoring credit grants after disbursement

According to Article 24.1(c) of Circular 14/2023, the supervision of credit grants after disbursement must ensure principles as follows:

- Check the use of loan capital and implement other terms in the customer's credit contract;
- Evaluate factors affecting customers' ability to repay debt;
- Monitor debt repayment schedules, remind customers of

fulfilling their debt repayment obligations when due, promptly report to competent authorities when customers are at risk of not performing or being late in performing their debt repayment obligations.

3.6 Non-bank credit institutions may buy insurance to minimise losses arising from risks

According to Article 29 of Circular 14/2023, the non-bank credit institutions may buy insurance to minimise losses arising from operational risks as prescribed by the law, ensuring compliance with their financial capacity and compensating for your losses. However, the non-bank credit institutions may not consider the purchase of insurance to be in replacement of operational risk management, they must evaluate the effectiveness of minimising losses arising from operational risks of purchasing insurance, and assess their capacity of insurance enterprises in implementing insurance contracts and other new risks (if any).

1. Declaring taxes on real estate rental activities of business households

Organisations and individuals doing real estate business must establish enterprises or cooperatives and have legal capital not less than VND20 billion, except where organisations, households or individuals sell, transfer, lease, lease-purchase small-scale, irregular real estate as prescribed in Article 5 of Decree 02/2022/ND-CP, they will not be required to establish an enterprise but must declare and pay taxes as prescribed by law.

In case the tax authority determines that a business household leases real estate on a small-scale basis and infrequently, it is subject to tax declaration and tax calculation for individual property lease activities. Applicable tax rates include 5% VAT and 5% personal income tax. Tax declaration is carried out as prescribed in Article 9.1(a, b) and Article 14.1 of Circular 40/2021/TT-BTC.

The General Department of Taxation replies to the question of the Tax Department of Hai Duong province in Official Letter No. 5329/TCT-DNNCN dated 29/11/2023.

2. Tax policy for products used in dentistry

In case a product used in dentistry is determined to be an artificial product in replacement of a patient's body part, it is not subject to tax.

In case products are determined to be medical devices or instruments with an Import Licence or Certificate of Circulation Registration or Receipt of standard declaration dossier according to the law on health or according to the List of Medical equipment items under specialised management of the Ministry of Health having their product codes determined according to Vietnam's List of exports and imports under Circular 14/2018/TT-BYT and its amendments and supplements are subject to 5% VAT

rate pursuant to the instructions in Article 1 of Circular 43/2021/TT-BTC.

The General Department of Taxation replies to the question of the Ho Chi Minh City Tax Department in Official Letter No. 5318/TCT-CS dated 28/11/2023.

3. Issue value-added invoices for goods free from value-added taxes

In case the Company pays taxes by the deduction method, when selling goods that are free from VAT according to the law, the Company must issue an invoice whose content will comply with Article 10 of Decree 123/2020/ND-CP, and on the VAT invoice at the item "tax rate", the Company shows as FTT (i.e. Free from VAT) pursuant to the instructions in Appendix V of Decision 1450/QD-TCT dated 7 October 2021 of the General Department of Taxation.

Ha Noi City Tax Department replies to the question of BOCA COMMODITY JSC. in Official Letter No. 86140/CTHN-TTHT dated 7/12/2023.

4. Fill out additional value-added tax declaration documents

In case the Company discovers that an input invoice has been omitted, leading to errors or omissions in the tax declaration submitted to the tax authority, the Company will supplement the tax declaration of the period with errors as prescribed in Article 47 of the Law on Tax Administration No. 38/2019/QH14.

In case after additional declaration, there is an overpaid VAT amount at the declaration period, the overpaid tax amount will be handled as prescribed in Article 60 of the Law on Tax Administration No. 38/2019/QH14 and Article 25 of Circular 80/2021/TT-BTC.

Ha Noi City Tax Department replies to the question of Daiwa Living Vietnam Co., Ltd. in Official Letter No. 86321/CTHN-TTHT dated 7/12/2023.

1. Ho Chi Minh City proposes self-production and self-consumption of rooftop solar power

According to the proposal of the Department of Industry and Trade of Ho Chi Minh City sent to the Ministry of Industry and Trade, as of 31 October 2023, the entire city has 14,092 rooftop solar power production projects/systems, of which nearly 99% of rooftop solar power systems are installed for on-site self-use.

However, in the process of developing rooftop solar power, there are still some shortcomings that require additional guidance to suit the new situation because there is no mechanism to encourage the development of rooftop solar power in replacement of the mechanism in Decision No. 13/2020/QĐ-TTg that has expired, so it has not thoroughly promoted the potential of rooftop solar power in Ho Chi Minh City.

Furthermore, completing relevant documents on specialised state management activities of the investors who have signed rooftop solar power purchase contracts with the electricity industry still faces many difficulties due to entangled regulations of each specialised field...

Accordingly, Ho Chi Minh City proposes priority of the development of self-produced and self-consumed rooftop solar power according to Decision No. 500/QĐ-TTg the Prime Minister in 2023. Self-produced and self-consumed rooftop solar power is



*Nearly 99% of rooftop solar power systems in Ho Chi Minh City are installed for on-site self-use.
Photo: congnhiepmtruong.vn*

expanded to be installed in all construction projects that meet the requirements (structural safety, fire protection, environment...) without limitation to houses, agencies. In some specific cases, Ho Chi Minh city proposes the application of a flexible electricity trading mechanism (FIT price, agreed price, electricity compensation...).

Particularly for rooftop solar power systems with large capacity (recommended over 100 kWp), it is necessary to encourage and gradually move toward requiring investors to install an accompanying energy storage system (ESS) to optimise the exploitation of rooftop solar power systems; limit the impacts of instability on power grid operations and balance supply and demand in the national power system...

By hcmcprv.org.vn

2. Proposal to adjust real estate loan risk coefficients by segment

The State Bank is drafting amendments and supplements to a number of articles of Circular No. 41/2016/TT-NHNN regulating capital adequacy ratio. In particular, the State Bank has considered proposals to reduce the risk coefficient of real estate lending to remove difficulties in lending in this field. Many people believe that it is necessary to subdivide real estate segments to have appropriate risk coefficients.



Illustration (source by thuongtruong.com.vn)

When lending to real estate projects, banks are having to apply a uniform lending risk coefficient of 200%. Real estate are considered a risky field with long loan terms, so high rates are often

applied to ensure capital safety for the system.

In addition to the risk coefficient for real estate business loans in general, the new draft circular has added the industrial park real estate segment, the risk coefficient will be reduced to 160%.

However, opinions reflect that it is necessary to further subdivide real estate segments. Encouraged segments will reduce the rate, while restricted segments can even increase this rate higher.

The draft also proposes plummeting the risk coefficient for loans to buy social housings and buy houses under Government support programs and projects to 12% - 50% depending on the group. But in order to lend, experts also recommend that the Ministry of Construction need to be the focal point to restructure the real estate market by segment whereby banks have a basis for lending.

By vtv.vn

No.	Document title	Issuance date	Effective date
NATIONAL ASSEMBLY			
1	Resolution 110/2023/QH15 of the 6th National Assembly session, 15th National Assembly.	29/11/2023	29/11/2023
GOVERNMENT			
1	Decree 88/2023/ND-CP amending and supplementing a number of articles of Decree 54/2017/ND-CP detailing a number of articles of, and providing measures for implementing the Pharmacy Law and Decree 155/2018/ND-CP amending and supplementing a number of articles concerning business investment conditions under state management of the Ministry of Health.	11/12/2023	11/12/2023
2	Decree 84/2023/ND-CP amending and supplementing a number of articles of Decree 129/2022/ND-CP on Vietnam's Special Preferential Import Tariffs to implement the Regional Comprehensive Economic Partnership for the 2022-2027 period.	1/12/2023	1/12/2023
3	Decree 83/2023/ND-CP amending and supplementing a number of articles of Decree 95/2018/ND-CP on the issuance, registration, depository, listing and trading of the Government's debt instruments on the securities market.	29/11/2023	15/1/2024
4	Decree 82/2023/ND-CP amending and supplementing a number of articles of Decree 120/2016/ND-CP detailing and guiding the implementation of a number of articles of the Law on Charges and Fees.	28/11/2023	12/1/2024
MINISTRY OF FINANCE			
1	Circular 69/2023/TT-BTC amending and supplementing a number of articles of Circular 57/2021/TT-BTC providing the roadmap for restructuring the stock trading market, the bond trading market, the derivatives trading market, and the trading market for other types of securities.	15/11/2023	30/12/2023
MINISTRY OF SCIENCE AND TECHNOLOGY			
1	Circular 23/2023/TT-BKHCN detailing a number of articles of the Law on Intellectual Property and measures to implement Decree 65/2023/ND-CP detailing a number of articles and measures to implement the Law on Intellectual Property on industrial property, protection of industrial property rights, rights to plant varieties and State management of intellectual property related to procedures for establishing industrial property rights and ensuring information industrial property.	30/11/2023	30/11/2023
MINISTRY OF DEFENCE			
1	Circular 96/2023/TT-BQP promulgating "National technical regulations on cryptographic technical characteristics used in civil cryptographic products belonging to the group of data storage security products".	29/11/2023	15/1/2024
STATE BANK OF VIETNAM			
1	Circular 15/2023/TT-NHNN providing on credit information activity of the State Bank of Vietnam.	5/12/2023	1/1/2025
2	Circular 14/2023/TT-NHNN regulating the internal control system of non-bank credit institutions.	20/11/2023	1/10/2024



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