**LAW FINAL EXAM NOTES**

**LAW ARTICLES TO REMEMBER**

1. **Law on Credit Institutions**

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* **Article 4** Interpretation of Terms

-> Note Article 4.8 Foreign Credit Institutions

* **Article 6** Organizational forms of credit institution
* **Article 12** Legal representative of credit institution
* **Article 33** Cases in which people are not permitted to hold positions
* **Article 34** Cases in which people are not permitted to hold concurrent positions
* **Article 50** Conditions and criteria for managers, executives and a number of other positions of credit institutions

1. **Credit Instituitions being Shareholding Companies**

* **Article 52 – 65**

|  |  |
| --- | --- |
|  | **Shareholding CI** |
| Member **(Article 52.6)** | * Individual, organization * Min: 100, Max: Unlimited   (Exceptions: **Art 52.6**) |
| Member liability | Limited liability within contributed capital |
| Ability to issue shares | Allowed to issue all kinds of shares |
| Restriction on transfer of shares | **Article 56** |

***Notes:*** Difference between shareholding companies and credit institution

**The transfer of shares: Art 56 - Difference 56.4**

* Shareholding companies: If one to transfer to another shareholders -> need approval from GMS; only 3 years
* Shareholding credit institution: **up to 5 years,** not only 3 years, **only allowed to transfer shares to people qualified** under article 53 -> more restriction.

1. **LLC Credit Institutions**

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| --- | --- | --- |
|  | **Single-member LLC Credit Institutions** | **Multiple member LLC Credit Institutions** |
|  | Article 66 - 69 | Article 70 - 72 |
| Member | * Individual, Organization * Min: 1, max: 1 | **Article 70.1**   * Individual, Orgnanization * Min: 2, max: 5 * Max Ownership: <= 50% charter capital |
| Member liability | Limited liability | Limited liability |
| Transfer of shares | **Article 66.1 (d)**  Can transfer charter of capital to another person, but need to go through procedures of SBV | * **Article 71** Law on CIs * **Decree No.88/2019/NDD-CP (Art 5.6.b):** Can buy adiitional capital from CI but must obtian written approval from SBV |

**Notes: Decree No.88/2019/NDD-CP**

**Article 5.** Violations against regulations on changes requiring written approval from SBV

**6.** **A fine ranging from VND 250,000,000 to VND 300,000,000 shall** be imposed **for failure to obtain the written approval from SBV** when:

**b) making capital contribution, buying shares, transferring or purchasing stake of a credit institution** according to Article 71, Point b Clause 4 Article 103 of the Law on Credit Institutions;

1. **Foreign Credit Institution: Art 4.8** if foreign CI resided in VN -> foreign-owner CI
2. **Operation of CI:**

* **Capital mobilization:** to peform the function “borrow to lend”, contribute the profit to the bank -> most important
  + Demand deposit (Tiền gửi không kỳ hạn): can be withdrawn on demand anytime
  + Time deposit: a specific term (maturity date) -> tiền gửi có kỳ hạn

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* **Credit extension**
* **Banking services**

1. **Deposit Insurance Operation**

* **All banks are required to purchase deposit insurance, T or F?**

No, policy banks are not required (law on deposit insurance/ law on credit institution)

Nếu credit institution làm deposit taking, thì mới phải purchase deposit insurance.

* **Insured deposits shall be deposits in Vietnam Dong →Why?**

Interest rate is low, we have no policy to encourage issue in foreign currency

* **Insurance money:** Maximum insurance money amount to be paid to all deposits (including both principal and interest) of an individual at the deposti insured shall be decided by the Prime Minister based on the request of SBV **-> Decision No.32/2021/QD-TTg 125 mil VND** (Decision No.21/2017/QD-TTg: 75 mil VND)
* **Principle of risk diversification:** 
  + Cases which are prohibited from credit extension: **Article 126**
  + Limit on credit insitutions**: Article 127**
  + Limit on the credit extension: **Article 128**
    - In excess of the limits -> 2 cases: syndicated credit & special case
      * Article 127: syndicated loan: cho vay hợp vốn => The ways banks support 1 customers
      * Article 128.7: special case is decision from PM -> to implement sociio-economic task

1. **Equity: Article 4**

* Legal capital: no requirement if specified by the law
* Charter capital: specify in the charter, total value of asset contributed or commited by companies
* When will equity = charter capital? at the time of establishment, because we dont have reserve funds or other liabilities
* Business capital: vốn kinh doanh huy động từ các nguồn khác nhau -> Kênh lớn nhất của ngân hàng

1. **Credit contract**

* **Lending Credit Institutions: Art 2.2 Circular 39/2016/TT-NHNN**

1. Commercial banks
2. Cooperatives banks
3. Non-bank Cis
4. Microfiancne institutions

dd) People’s credit funds

1. Foreign bank branches

* **Borowing customers: Art 2.3 Circular 39/2016/TT-NHNN**

3. Client borrowing loans from a credit institution (below referred to as client) means a legal person or an individual, being:

a/ A legal person established and operating in Vietnam, a legal person established overseas and lawfully operating in Vietnam;

b/ An individual bearing the Vietnamese citizenship, an individual bearing foreign citizenship**.**

+ Legal entities established and operated witin teritory of Vietnam and/or those established abroad and legally operated within territory of Vietnam

+ Vietnamese and/ or foreign nationals

* **Article 7. Conditions for borrowing loans Circular 39/2016/TT-NHNN**

A credit institution shall consider and decide to provide a loan to the client when the latter fully satisfies the following conditions:

1. Being a legal person who has the civil legal capacity as prescribed by law. A client is an individual who reaches full 18 years of age or older and has full civil act capacity as prescribed by law or who is between full 15 years of age and under 18 years of age and has not lost his/her civil act capacity or his/her civil act capacity is not restricted in accordance with law.

2. Having demand to borrow a loan for use for a lawful purpose.

3. Having a feasible loan use plan.

4. Having financial capability to repay debt.

5. A client who wishes to borrow a loan from a credit institution at the interest rate specified in Clause 2, Article 13 of this Circular, must be assessed by the credit institution as having a transparent and sound financial status.

1. **Pledging/Mortgage contract**

|  |  |
| --- | --- |
| Mortgage | Pledge |
| By one party |  |
| Without transferring such property to the mortgage, the property may be still with the mortgagee | May keep the property |

:

* **In which cases we need to register security transaction:** real estate, aircraft, car thì cần nhưng ko phải tất cả đều cần
* **Why do we need to register security transaction?** reduce the risk for thỉrd party: it is basic to dèfine the rate for the payment. Cùng 1 tài sản thế chấp, giả dụ đi dk tài sản 2 lần cho 2 ngân hàng, nếu bị mất thì sẽ dựa vào đăng kí ngân hàng nào trước thì sẽ thế chấp cho ngân hàng đó

**Notes: Relation between security contract and credit contract:**

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**Notes: Relationship between credit contract vs mortgage:**

* + **The credit contract vs mortgage contract ->** acts as principal contract vs axilary contract. Therefore if mortgage contract is invalidadted -> credit contract is not invalid (Nếu hđ thế chấp bị vô hiệu thì hợp đồng credit không bị vì mối quan hệ hai contract này là mqh chính - phụ)
  + **If a credit contract invalid -> may lead to the secured contract terminated??:** FALSE Because at that time, need to consider that the party has performed the obligations or not. If security contract has already been performed -> we received money from the bank -> credit contract valid

1. **Guarantee:**

* Can the **branch of company A** receive a bank loan guaranteed by **company A**?

=> The branch of company -> is not a legal entity because the asset of branch is the same with/ not separated from company A

=> Branch of A cannot receive bank loan guarantee because it is not satisfied as being a third person (Branch of A and Company A is not seperated)

**LAW ON VIETNAM STATE BANK**

* Definition Article 2.1
* Vietnam is in the Model 2 (Handouts to print)
* **Objectives of Central Bank:**

-> ECB: hierarchical mandate, price stability first then economic policies

-> Fed: dual mandate

* **Operations of State Bank:**

-> SBV only draft the inflation target rate, National Assembly is the one rectifies the target rates

* **Prime interest rate:** Civil code 200**5** to serve the regulation of the monetary policy and the fight againt **usury** (cho vay nặng lãi). However, under Civil code 2015 -> do not based on the prime interest rate on the usury any more -> prime interest rate has no use
* Lãi suất 25

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**TRUE/FALSE/NOT GIVEN**

**Exercise 1: Credit Instituion**

* **Credit institution is claimed to be a special company TRUE**
* Under control of SBV; Higher requirements for managers; Conducting all and some of banking activities
* **Credit institutions are entitled to take deposits of individuals FALSE**
* Article 4 Non-bank credit institutions are not allow to take deposits of individuals, but can take deposit of other institutions
* **Banks are established and operated for profit FALSE**
* Article 17 There are not-for-profit banks, to perform social purposes…
* **HSBC Bank Vietnam Limited is a foreign credit institution FALSE**
* Article 4.8 HSBC is a foreign owned company. However, HSBC set up in VN => VN Bank

**Exercise 2: Legal representatives of CI (Article 12)**

* **A shareholding CI may have more than one legal representatives FALSE**
* One person only (shareholding companies must be more than one).
* **The legal representative of a joint stock commercial bank could be any shareholders of such bank FALSE**
* Article 12.1 Legal rep shall be chairman or general director (director)
* **The legal representative of a commercial bank must be the director (or general director) of such bank FALSE**
* Article 12.1 Legal rep could be chairman

**Exercise 3: Decide if the following persons could act as the director/general director of a joint stock commercial bank:**

* **Mr A whose brothers is the chairman of the board of management of such bank FALSE**
* Article 50.4 (a) The general director/director shall not belong to the people stipulated in Article 33.1 (g), which is a related person of chairman.
* Article 4.28 (d) related person in this case falls into the category mentioned, who is the sibling of such individual
* **Mrs B who is currently acting as the director of company X FALSE**
* Article 34.4 The general director (director) of a CI is not permitted to concurrently be the general director (director) of another enterprise.
* Mr C who has been working in the accouning department of KPMG for 12 years TRUE
* Article 50.4 (d) The general director satisfy the conditions of having worked for at least 10 years directly in the accounting sectors
* **Ms D who used to be the deputy-director of a commercial bank for 3 years and is currently doing her PhD in Melbourne FALSE**
* Article 50.4 (d) not satisfy the conditions of having worked for at least 5 years as an executive of a credit instituion, and Article 50.4 (e) not satisfy the condition of residing in Vietnam during her term of offfice.

**Exercise 4: Article 126 Entities to whom extension of credit is not permitted.**

**Determine if Mr A is permitted to borrow money from bank B:**

* **A’s brothers is the chairman of Management’s Board of Bank B TRUE**
* Sibling (Brother) is not mentioned in the case of Art 126.1(b), only parent/spouse and childs of the BoM are not permitted
* **A is the vice director of Bank B FALSE**
* Art 126.1(a) deputy director in credit institution/foreign bank branch is not allowed to extend credit, deputy director=vice director
* **A’s son is a member of the Board of Controllers of Bank B FALSE**
* Child of member of Board of controller Art 126.1(b)
* **A is the sharholder holdign 15% of the voting share capital from Bank B TRUE**
* Art 126 no prohibition is mentioned on the shareholder holding 15%

**Exercise 5: Article 126 Entities to whom extension of credit is not permitted.**

In April 2013, XYZ wants to borrow from ABC commercial bank VND 400 billion to invest in export processing plant. The ABC’s equity is VND 4000 billion. In order to secure the payment, XYZ has to following options:

Option 1: Ask Mr TYPN – deputy director of ABC to guarantee

Option 2: Ask Mr Bean – shareholder holding 15% of the voting share capital of ABC to mortgage his land use right.

Analyze two options to determine if they are legal

**Option 1: Illegal**

-> Art 126.3 A credit institutoin is not permitted to extend credit to clients on the basis of security (such as guarantee, mortgage, pledge, etc) provided by the subject mentioned in Article 126.1. According to Art 126.1 (a) The subject mentioned here is deputy director, which is the individual not allowed to extend credit

**Option 2: Legal** -> Art 126.3, and 126.1 -> no mentioned about the subject (shareholder holding 15% of the voting shares), therefore, this subject are allowed to extend credit.

**Exercise 6: Article 126 Entities to whom extension of credit is not permitted.**

A Co. Ltd, represented by Mrs X – Director, plan to borrow VND 5 billion from Finance company B whose equity is VND 700 billion. The security property is an apartment of VND 10 billion, co-owned by Mrs X.

1. Given that Mrs X’s husband is a member of the Board of Controller of Companny B, determine if B is permitted to grant the loan to A.
2. The security property is changed into the B’s stock of VND 20 billion owned by the Company A. Determine if B is permiteed to grant the loan to A
3. A plans to issue bonds to mobilize the capital of VND 5 billion. Is B entitled to purchase A’s bonds?

**The borrower here is Company A**

1. **N -> Article 126.3, and Art 126.1 (b)**

-> Art 126.3 A credit institutoin is not permitted to extend credit to clients on the basis of security (such as guarantee, mortgage, pledge, etc) provided by the subject mentioned in Article 126.1. According to Art 126.1 (b) the subject mentioned here is a spouse of a member of the board of controllers. Therefore, The spouse of Mrs X is not permitted

1. **N -> Art 126.5** A credit institutions is not permitted to extend credit on the basis of receipt of securitety being shares owned by such credit instituion, securities here are the stocks from B.
2. **N -> Art 126.6** A credit instituions is not permitted to extend credit in order to contribute capital or to purchase shares in a credit institution. And **Art 126.7,** extension of credit includes activities of purchase of enterprise bonds. Therefore, in this case it is not allowed to purchase enterprise bonds.

**Exercise 7: Credit contract**

* **Parties to the credit contract:** Every Vietnamese is allowed to borrow money from the bank, T or F? must fulfill these conditions: age maturity in Vietnam (18 years old), have civil capacity
* A foreigner is not allowed to borrow money from the Vietnamese credit instituions FALSE
* **Art 2.3 2 Circular 39/2016/TT-NHNN** Borowing customers who are vietnamese and/or foreign nationals are all satisfied.
* **A credit contract need not be made in writing FALSE**
* Article 23 of Circular 39: must be made in written form
* **A credit contract is null and void without specifying capital utilization purpose TRUE**
* Article 23 c
* The ownership of collateral is transferred from the mortgagor to the mortgagee in the mortgage agreement. FALSE
* Mortgage is without transfering property.

**Exercise 8: Contract**

Company A borrowed money from Bank B and used ít property as collateral which was registered at a competent authority. A continued to borrow money from bank C and used the above property as collateral (The title document was delivered to Bank C and the collateral was then registered at the competent authority)

Now Company A declare insolvent. Who would be given priority for the payment, B or C?

**=> Bank C has the right realized all the asset by the borrower?**

-> No. Dont care who holds the title in this case, it doesnt mean it will be transferred to that person. First come first served.

-> To protect B in this case

**Exercise 9: Guarantee**

In 2007, the Bank lent the money to Company A with a guarantee from Mr.B whose his land use right certificate were used as the security for A’s loan and handed over to the bank.

In 2010, the Bank and Company A liquidated the 2007 loan contract and lent Company A a new amount of money. The bank and company A agreed to continue to use Mr.B’s land use right certificate as security.

Now company A is unable to pay and the bank sues Mr. B. Does the bank have the right to force Mr. B to perform the guarantee obligation?

Can Mr. B ask the bank to return his land use right certificate?

* **Article 343.1 Civil Code about the Termination of Guarantees:** Guarantee for the first loan only -> if liquidated then the security contact is terminated.
* Because in this case the second loan is not agreed by B -> Mr B can ask the bank to return his land use right certificate

**Exercise 10: Guarantee vs mortgage of a third party’s asset**

If the borrower fails to repay money to the bank:

* Mortgage of a third party: The bank can directly realize the property secured
* Gurantee: The bank ask the guarantor to pay all the debt. If the guarantor fails to repay -> sue the guarantor.

What if, asset 1 billion, debt 1.3 billion, you borrowed from bank with your parent’s house, who will pay 0.3 billion?

* Parents are liable for the secured asset only -> no required to pay the 0.3 billion
* If parents are not a third party but act like a guarantor -> pay all obligations 1.3 billion

**Exercise 11: Fidelity Guarantee (Bảo hiểm lòng trung thành)**

Some commercial banks are offering unsecured loans without collateral and guarantee. Is this offer a fidelity guarantee? NO

**Civil Code Article 344, 345**

-> The borrower who are poor individuals/ households

-> The lender is the bank

-> The one who provide fidelity guarantee: A socio-political organization (tổ chức chính trị xã hội) -> to verify the borrower is worth to receive the money. For example, Vietnamese Fatherland Front (Mặt trận tổ quốc VN), Vietnam Women's Union (Hội Phụ Nữ VN), Ho Chi Minh Communist Youth Union (Đoàn Thanh Niên), Vietnam Farmer's Union (Hội nông dân VN)

-> If the borrower is fails to repay the money to the bank => No one should be liable for that debt, the risk is with the bank

**Exercise 11: Guarantee/Mortgage**

On 1 September 2020, ABC Co. Ltd represented by Mr K – Director negotiated to enter into a credit contract with D joint-stock commercial bank. Accordingly, Bank D would grant ABC a loan of 2 VND billion with the loan term of 2 years and interest rate of 10%/year. The loan purpose is to make payments to their foreign partner in accordance with the contract of importing machines. Decide if the following options are legitimate.

1. **The company could use importing machines as security assets for the loan. TRUE**

* Article 295.3 Civil Code, security property may be either current property or property to be formed in the futures. Importing machines are assets that are still under the transportation

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1. **The company may request the local Vietnam Women’s Union to provide fidelity guarantee for the loan as the company is recruiting many local female employees. FALSE**

* Article 344 Civil code - The definition of fidelity guarantee is that the borrower must be poor individuals/ households. But in this case, the borrower is the company -> no allowed

1. **The company could use shares issued by Bank D to mortgage for the loan. FALSE**

* Based on the Article 126.5 (Law on credit institutions) The company is not permitted to extend credit on the basis of receipt of securitybeing shares by Bank D sss

**Exercise 12: State Bank of Vietnam**

* **The SBV is an organization established under the control of the National Assembly TRUE**
* Article 2.1 Law on the State bank of Vietnam: The SBV is an organization established under the control of the National Assembly (NOT SURE)
* **One of the SBV’s primary function is to maintain price stability TRUE**
* Article 4.1 Law on the State bank of Vietnam: The operation of SBV is for the purpose of stabilizing the value of money.
* **The national monetary policy decisions are made by the Governor of the Vietnam State Bank only FALSE**
* Article 3.4 Law on the State bank of Vietnam : The Prime Minister of the Governor and the Governor of SBV can make national monetary policy decisions
* **The SBV is entitled to implement national monetary policy by providing long term loans to credit institutions FALSE**
* Article 24.1 Law on the State bank of Vietnam: SBV shall make short-term loans to credit instituions (in the forms of re-financing)
* **SBV provides guarantee for HD bank to borrow a loan of VND 200 bil from VCB FALSE**
* Article 25 Law on the State bank of Vietnam: SBV shall not provide guarantees for organizatoins and individuals to obtain loans, except for guarantees for CI to obtain foreign loans pursant to a decision of the PM of Government (NOT SURE)
* **SBV provides guarantee for Vinacomin to borrow a loan of USD 50 mil from WB TRUE**
* Article 25 Law on the State bank of Vietnam: SBV can provide guarantees for CI to obtain foreign loans pursant to a decision of the PM of Government (NOT SURE)
* **SBV grants Techcombank a loan of VND 50 bil secured by the morgage of Techcombank’s stocks FALSE**
* Article 24.1 The SBV shall grant loans secured by the mortgage of valuable papers. Decision No.11/QD-NHH, enterprise stocks are not categorized as valuable papers to be used in transactions with SBV
* **SBV aquires all Ocean Bank shares for zero Vietnam dong TRUE**
* Article 59.2 (dd) SBV shall request Ocean Bank to transfer its charter capital in case the SBV saw the risks of bannking breach. (NOT SURE)
* **SBV contributes the capital to set up a national debt management company UNKNOWN**