



LEGAL UPDATE

Circular No. 08/2023/TT-NHNN regarding foreign loans

Our monthly Legal Update is to provide the summary of key regulatory news that potentially impact your investment and business activities in Vietnam.

This Legal Update covers some key points of Circular No. 08/2023/TT-NHNN stipulating conditions for foreign loans not guaranteed by the Government.

On 30 June 2023, the State Bank of Vietnam (“*SBV*”) issued Circular No. 08/2023/TT-NHNN (“*Circular 08*”) to replace Circular No. 12/2014/TT-NHNN (“*Circular 12*”) on regulating conditions on offshore loans without the government guarantee.

It is said that Circular 08 introduces stricter control over the conditions on offshore borrowing without the government guarantee.

1. Allow the borrowers to temporarily use unused loan funds to make deposits

Circular 08 allows the borrowers to make deposits with credit institutions or foreign bank branches operating in Vietnam in case they have withdrawn funds but temporarily not used them for legal purposes.

In the case of large foreign loans, this regulation provides real benefits to borrowers, allowing them to earn interest on their deposits to offset the cost of the loan during the period when they have not yet used these funds. However, enterprises must be aware that they can only deposit these funds for a maximum period of one month for each amount, regardless of the loan term.

2. Cases to borrow in Vietnamese dong from foreign loans.

According to previous regulations in Circular 12, the Vietnamese dong will be used only in the following cases:

- The borrower is a microfinance institution.
- The borrower is a foreign-invested enterprise that takes the loan from the distributed profit in Vietnamese dong from the direct investment of the creditor, which is a foreign investor that contributes capital to the borrower.
- Other cases approved by the Governor of the State Bank of Vietnam based on the actual situation and necessity of the loans.

In Circular 08, the *“other cases approved by the Governor of the State Bank of Vietnam based on the actual situation and necessity of the loans”* is removed and replaced by the case where *“the borrower withdraws capital, repay loans in foreign currency, and the liability of the loan is determined in Vietnamese dong”*, which provides flexibility for parties involved in loan transactions.

3. Limitation of foreign loan

3.1 *If the borrower is a credit institution*

Circular 08 introduces completely new provisions on the limitation of the amount of short-term foreign loans of borrowers that are credit institutions. Accordingly,

borrowers are only permitted to take out a short-term foreign loan if they comply with the limit on short-term foreign loans by the end of December 31 of the year preceding the occurrence of the loan. The short-term foreign borrowing limit refers to the maximum ratio of the total outstanding principal amount of short-term foreign borrowings to owner's equity, and may not exceed:

- 30% if the borrower is a commercial bank.
- 150% if the borrower is a branch of a foreign bank or other credit institution.

This regulation aims to reduce the increase of foreign debts of credit institutions, avoid pressure on the limit of conventional foreign loans, and ensure the safety of Vietnam's foreign debts. On the other hand, the requirement that the borrower must meet the limit for short-term foreign loans as of December 31 of the year preceding the time of the loan occurrence also gives the borrower flexibility in implementing the loans at different times of the year. In other words, the borrower can generate multiple loans and exceed the limit as long as it still meets the limit at the end of the year to qualify for loans in the following year.

This regulation will only come into effect only from 01 January 2024.

3.2 *If the borrower is an enterprise*

Circular 08 has additionally provided regulations for cases where enterprises borrow from abroad to restructure their foreign debts. According to Point a Clause 1 and Point c Clause 2 of Article 17, for loans used to restructure their foreign debts, enterprises are allowed to borrow on a short-term or medium to long-term basis. At the same time, the maximum amount of foreign loan used to restructure the borrower's foreign debts may not exceed the sum of the outstanding principal, unpaid interest and relevant expenses of the existing foreign loan, and the expenses related to the new loan determined when restructuring its foreign debts as stipulated in Point a Clause 3 of Article 18.

Pursuant to Point b Clause 3 Article 18, the enterprises must repay the existing medium and long-term foreign loans used to restructure their foreign debts within 05 working days from the withdrawal date of the new foreign loan. After the aforementioned period, the enterprises must ensure to comply with relevant regulations on loan limits.

4. *Clear provisions regarding the case where enterprises take short-term loans to repay short-term debts in cash*

Point a Clause 1 Article 17 of Circular 08 not only permits enterprises to obtain short-term foreign loans for the purpose of restructuring their foreign debts, but also

allows them to use such loans to settle short-term debts in cash (excluding the principal amount of domestic loans) owed to the borrowers. The short-term debts to be settled here refer to the debts incurred during the implementation of investment projects, production and business plans, and other projects of the enterprise. Therefore, these new regulations will help enterprises more clearly determine whether or not they can borrow short-term foreign loans to repay the debts incurred during their business operations or not.

Circular 08 will take effect from 15 August 2023.

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