

NEW REGULATIONS ON CONDITIONS FOR FOREIGN LOANS WITHOUT GOVERNMENT GUARANTEE

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On June 30, 2023, the State Bank of Viet Nam (**SBV**) issued Circular 08/2023/TT-NHNN on conditions for foreign loans not guaranteed by the Government (**Circular 08**). Taking effect from August 15, 2023 (except for the regulations on short-term foreign loan room that will take effect from January 1, 2024), Circular 08 will replace Circular 12/ 2014/TT-NHNN guiding foreign exchange management for enterprise's foreign loan borrowing and repayment (**Circular 12**). In addition to the general regulations on the principles of using foreign loan capital and foreign loans in the form of deferred payment for imported goods, foreign debt restructuring plans, etc., Circular 08 also focuses on formulating both general and specific conditions applied to 02 groups of borrowers, including (i) credit institutions, foreign bank branches and (ii) those other than credit institutions, foreign bank branches. The article will introduce the regulations of Circular 08 related to the latter borrowers mentioned in point (ii) above with the following outstanding contents:

Firstly, Circular 08 supplements the principles on using foreign loan capital and regulations applied to foreign loans in the form of deferred payment for imported goods. Accordingly, borrowers shall be fully responsible for the use of foreign loan capital in accordance with the purposes specified in Circular 08. In the case that the foreign loans have been withdrawn but have not yet been used for lawful loan purposes, the borrowers can deposit the loans at credit institutions or foreign bank branches operating in Viet Nam with a maximum deposit term of one month. It should be noted that foreign loans granted by deferral of payment for imported goods shall not be subject to the conditions specified in Circular 08. Instead, the borrowers owning these loans shall comply with the regulations guiding foreign exchange management for enterprises' foreign loan borrowing and repayment, legal provisions on commerce, foreign trade management, and other applicable provisions of relevant laws.

Secondly, Circular 08 provides regulations on foreign debt restructuring plans. Specifically, the Circular defines the foreign debt restructuring plan (**Debt restructuring plan**) as the collection of information on the use of new foreign loans for paying off lawful and existing foreign debts. Borrowers' Debt restructuring plans must be approved by competent authorities in accordance with the laws. Fundamental contents of a debt restructuring plan include (i) Information about the borrowers; (ii) Information on existing foreign loans and outstanding loan amounts; (iii) Information on new foreign loans; (iv) Authority to approve the debt restructuring plan; (v) Other contents (if any).

Thirdly, Circular 08 provides specific regulations on foreign loan purposes. Under Article 17, Circular 08, the borrowers shall only use short-term foreign loan capital for restructuring foreign debts and paying short-term debts payable in cash. In which, payable short-term debts are those incurred by the borrowers during the implementation of investment projects, business plans and/or other projects, and determined in accordance with applicable regulations guiding corporate accounting. In the case that the borrowers are required to achieve minimum levels of financial prudential indicators under dedicated laws, they are entitled to use the short-term foreign loan capital for business operations within a maximum duration of 12 months from the withdrawn day of the foreign loan capital. Regarding medium-term and long-term foreign loans, the borrowers are allowed to use these loans for (i) implementing their investment projects; (ii) executing the borrower's business plans and/or other projects; (iii) restructuring their foreign debts. In addition, the purpose of short/medium/long-term loans must be consistent with the scope of the borrower's business lines, establishment licenses or investment registration certificates, etc. Previously, Circular 12 only have general regulations that the

loan purposes are for the execution of the borrower's business plans or restructuring foreign debts without increasing loan costs.

Fourthly, Circular 08 provides regulations on foreign loan rooms. Accordingly, Article 18 of the Circular provides 03 cases of foreign loan room applied to borrowers that are not credit institutions, foreign bank branches, typically:

- In case of foreign loans for implementation of investment projects: the borrowers shall ensure to comply with 02 conditions: (i) the sum of outstanding principal debts of their medium/long-term domestic and foreign loans for investment projects (including short-term loans that are extended and overdue short-term loans that are treated as medium/long-term loans) *shall not exceed the limit on borrowed capital of the investment projects*; and (ii) the above-mentioned limit on borrowed capital of investment projects is the difference between the total investment capital of an investment project and the investors' contributed capital recorded in the investment certificate, investment registration certificate, written approval of investment policies.
- In the case of foreign loans for the execution of business plans or other projects of the borrowers: the sum of outstanding debts of their medium/long-term domestic and foreign loans for this purpose (including short-term loans that are extended and overdue short-term loans that are treated as medium/long-term loans) *shall not exceed the total demand for borrowed capital defined in its plan for the use of foreign loan capital approved by competent authorities in accordance with the laws.*
- In case of foreign loans for restructuring the borrowers' foreign debts: the maximum foreign loan amount for the purpose of restructuring foreign debts *shall not exceed the sum of outstanding principal debts, unpaid interests and expenses of the existing foreign loan, and expenses associated with the new loans determined at the time of restructuring.*

It should be noted that short-term foreign loans for the implementation of investment projects, business plans, or other projects of the borrowers are not subject to the above-mentioned regulations on foreign loan rooms.

COMMENTS AND RECOMMENDATIONS

Besides inheriting some contents of Circular 12, Circular 08 has amended and supplemented many contents related to the conditions for foreign loans not guaranteed by the Government. In order to increase the flexibility for enterprises, Circular 08 supplements such regulations as allowing enterprises to deposit in banks the loans that have been withdrawn but not yet been used for lawful foreign borrowing purposes. In addition, Circular 08 also limits the loan room and activities related to short-term loans of enterprises by only permitting enterprises to use short-term foreign loans to restructure foreign debts, etc. Enterprises should update and study the regulations of Circular 08 in order to proactively develop financial plans suitable to their operation situation as well as to ensure compliance with SBV's regulations.