

Stricter conditions for foreign loans by Vietnamese companies being non-credit institutions

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1. Introduction

1.1. In June 2023, the State Bank of Vietnam (**SBV**) issued Circular 8/2023 to replace Circular 12/2014 which prescribes conditions for Vietnamese borrowers to borrow foreign loans (i.e., loans provided by an offshore lender) without a Government guarantee. Similar to Circular 12/2014, Circular 8/2023 has separate borrowing conditions for borrowers being credit institutions and borrowers being companies incorporated in Vietnam which are not credit institutions (**Vietnamese Companies**). In this post, we discuss the borrowing conditions for a Vietnamese Company. This post is written by Nguyen Hoang Duy and Nguyen Quang Vu.

1.2. The key highlights of Circular 8/2023 include:

- 1.2.1. offshore short-term loan borrowing will likely be more difficult since short-term loans are now only permitted for limited purposes (see 3.6) and (a) a Short-term Borrowing List needs to be prepared (see 5.1.2);
- 1.2.2. it is important to determine the purpose of an offshore loan to be for an investment project, a business and production plan, other projects, or for refinancing existing offshore loans; and
- 1.2.3. significant more paperwork is required for a medium- and long-term loans (see 5.1.1). The paperwork is mostly to evidence the purpose of the offshore loans.

2. General

2.1. In general, the SBV controls offshore borrowing by Vietnamese Companies through the following mechanism:

- 2.1.1. **First**, a Vietnamese Company must comply with the borrowing conditions set out by the SBV. These conditions were provided in Circular 8/2023;
- 2.1.2. **Second**, a Vietnamese Company must obtain an offshore loan registration from the SBV for medium and long term offshore loans. The procedures for registration are provided in [Circular 12/2022](#);

2.1.3. **Third**, all onshore remitting banks have a duty to verify that a Vietnamese Company complies with the first two requirements; and

2.1.4. **Fourth**, the Government issues a total annual offshore borrowing limit for all medium and long term loan each year. The SBV will monitor this total annual limit via the registration system.

3. Borrowing conditions for short-term offshore loans by Vietnamese Companies

3.1. Short-term offshore loans have a repayment period of up to one year. In order to borrow short-term offshore loans, the borrower must satisfy the following conditions.

Offshore loan agreement

3.2. The borrower must enter into an offshore loan agreement (*thỏa thuận vay nước ngoài*) with the offshore lender who extends or commits to extend a loan to the borrower for the borrower to use for a specific purpose (see further discussion below) within a specified period. The loan agreement must be in writing and can be executed electronically. Circular 12/2014 does not define an offshore loan agreement. The offshore loan agreement must be entered into before the draw-down date except in certain limited circumstances.

3.3. Unlike Circular 12/2014, Circular 8/2023 does not require the offshore loan agreement to be not contrary to Vietnamese law. Although this change does not automatically mean that an offshore loan agreement could be contrary to Vietnamese law, this change could at least reduce the verification burden of the remitting bank.

Loan currency

3.4. The offshore loan must be denominated and/or settled in foreign currencies except in some limited circumstances including the cases where a foreign invested enterprise borrows the distributed dividends from its foreign shareholders/members.

3.5. Unlike Circular 12/2024, Circular 8/2013 makes clear that an offshore loan could be denominated in VND but settled in foreign currencies.

Use of proceeds (loan purpose)

3.6. Circular 8/2023 significantly limits the permitted use of proceeds for an offshore short-term loan. Under Circular 8/2023, the proceeds of a short-term

offshore loan can only be used to (1) repay other offshore loans and (2) finance short-term payables (excluding principal of domestic loans) of the borrower which arises from “investment projects”, “business and production plan” or “other projects”. The short-term payables will be determined based on, among other things, Vietnamese accounting standards.

3.7. Circular 12/2014 did not impose similar restrictions. It just requires that the borrower cannot borrow short-term foreign loans for medium/long-term purpose.

Other conditions

3.8. Circular 8/2023 also provides the conditions relating to security interests and borrowing costs. However, the wording of these conditions refer to Vietnamese law in general only. This means that there is no specific conditions to be complied with at the moment. However, in the future, the SBV may impose specific conditions (if necessary).

4. Borrowing conditions for medium- or long-term offshore loans by Vietnamese Companies

Short-term loan conditions

4.1. Medium- or long-term offshore loans have a repayment period of more than one year. In order to borrow medium- or long-term offshore loans, the borrower must satisfy the same conditions of offshore loan agreement (see 3.2), loan currency (see 3.4) and other conditions (see 3.8) as in the case of short-term loans.

Use of proceeds

4.2. Regarding use of proceeds, the borrower of a medium- or long-term loan could use the loan proceeds for the following purposes:

- 4.2.1. to implement an investment project;
- 4.2.2. to implement a business and production plan;
- 4.2.3. to implement other projects; and
- 4.2.4. to repay other offshore loans.

4.3. However, Circular 8/2023 provides confusing definitions or descriptions of the use purpose of a medium- or long-term loan. In particular,

- 4.3.1. “Investment project” (*dự án đầu tư*) is defined to mean a “project” (*dự án*) which has been granted an investment registration certificate or other equivalent documents under the investment regulations. However, the Investment Law 2020 has its own definition of an “investment project” and does not have a definition of a “project”. The Investment Law 2020 defines an investment project to mean a collection of proposals for the expenditure of medium or long-term capital to conduct business investment activities in a specific geographical area and for a specified duration. So by introducing a new definition of “investment project”, the SBV either violates the Investment Law 2020 issued by the National Assembly or creates unnecessary confusion as to what an investment project means;
- 4.3.2. “Other projects” (*dự án khác*) is defined to mean a “project” which is not an investment project. Since there is no definition of a “project”, the definition of “other projects” is not clear at all; and
- 4.3.3. “Business and production plan” (*kế hoạch sản xuất, kinh doanh*) is not defined at all in Circular 8/2023.
- 4.4. Circular 12/2014 provides a definition of an investment project similar to an investment project under the Investment Law 2014 and a definition of business and production plan (*Phương án sản xuất, kinh doanh*).
- 4.5. Circular 8/2023 requires the use purpose of an offshore loan must be consistent with:
- 4.5.1. the scope of the enterprise registration certificate, establishment decision, investment registration certificate or other equivalent documents; or
- 4.5.2. other legal activities provided in the legal instruments governing the charter of the borrower.
- 4.6. It is not clear how “other legal activities” provided in the second bullet point will be interpreted. For example, the Enterprise Law 2020 and the Investment Law 2020 allow a Vietnamese Companies to invest in another company. Accordingly, it is not clear whether this mean that a Vietnamese Company could borrow from offshore lenders to invest in another company even though Circular 8/2023 no longer allows a borrower to borrow foreign loans to implement business plan or project of its subsidiary.
- Borrowing cap for medium- and long- term loan*
- 4.7. Under Circular 8/2023, the total outstanding medium- and long-term loans (both onshore and offshore) of a Vietnamese Company cannot exceed:

4.7.1. if the purpose of offshore loans is to implement an investment project, the difference between the total investment and the contribution capital as recorded in the investment registration certificate or equivalent document. This condition is consistent with Circular 12/2014; and

4.7.2. if the purpose of offshore loan is to implement a business and production plan or another project, the aggregate borrowing demand for the relevant business and production plan or the other project as provided in an approved plan for use of proceeds (see 5.1.1). This condition is similar to the one provided in Circular 12/2014; and

4.7.3. if the purpose of offshore loan is to repay existing offshore loans, the sum of (i) the outstanding principal of the existing foreign loans, (ii) the outstanding interests and fees of the existing foreign loans, and (iii) the fees of the new loan determined at the time of the restructuring. This is a new condition. Circular 12/2014 only generally requires that the refinancing of existing offshore loan must not increase the borrowing costs of the borrower. In addition, if the new loan is a medium- long-term loan, the borrower must repay the existing foreign loans within five business days after the disbursement of the new loan to ensure the compliance with the limitations related to the total outstanding medium/long-term loans. This is a new provision to deal with potential double-counting of offshore loan amounts in case of refinancing existing offshore loans.

5. New mechanism to verify borrowing purposes

5.1. Circular 8/2023 introduces a whole new mechanism to monitor and ensure that the borrower will comply with the stated borrowing purposes for an offshore loan. In particular, Circular 8/2023 requires a borrower being a Vietnamese Company to prepare and maintain:

5.1.1. a plan for use of proceeds (*Phương án sử dụng vốn vay*) (the **Utilization Plan**), if the offshore loans are medium- and long-term loans for a business and production plan or for other projects;

5.1.2. a list of short-term borrowing (*Bảng kê nhu cầu sử dụng vốn*) (the **Short Term Borrowing List**), if the offshore loans are short-term loans; or

5.1.3. a debt restructuring plan (*Phương án cơ cấu nợ*) (the **Refinancing Plan**), if the proceeds of the offshore loan are used to repay other offshore loans. The Refinancing Plan is required for all offshore loans including short-term offshore loans.

5.2. An Utilization Plan must have certain compulsory contents, i.e. (i) information of the borrower, (ii) borrowing purposes, (iii) scale of the foreign

borrowing, (iii) information of the business and production activities/other project for which the offshore loans will be used, and (iv) authority to approve the Use Plan. The Short-term Borrowing List must be in a prescribed form. These contents are much more detailed than what are required in a business plan under Circular 12/2014. In short, the SBV seems to require each Vietnamese Company to demonstrate their overall financing needs and how the proposed offshore loan will be used or repaid.

6. What are not included?

6.1. Perhaps, what equally interesting are things which are provided in the draft Circular 8/2023 but are finally not included in the Circular 8/2023. In particular, Circular 8/2023 do not include some new conditions relating to maximum foreign borrowing expenses, foreign exchange hedging requirement and security asset realization organization (which was discussed [here](#)).

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