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LEGAL ALERT

NEW REGULATIONS ON FOREIGN LOANS BY ENTERPRISES



The State Bank of Vietnam is collecting opinions on the Draft Circular on conditions for foreign loans by enterprises not guaranteed by the Government (“Draft”). This is a draft that is of great interest to the business community.

This legal update provides a number of notable provisions in the Draft that affect enterprises:

1. Purpose of foreign loans

According to Articles 5, 12 and 15 of the Draft, the Borrower must specify the purpose of foreign loans in the Plan on using foreign loans, specifically as follows:

- ❖ *For the Borrower being a credit institution or foreign bank branch (CI):*

The Borrower is allowed to borrow abroad to serve the purpose of supplementing capital sources for the Borrower's lawful business activities; or restructuring the existing foreign loans of the Borrower. Specific information on the purpose of using foreign loans must be specified in the Plan on using foreign loans.

- ❖ *For the Borrower being an enterprise (not CI):*

Borrowers are allowed to borrow short-term foreign loans to pay short-term debts that are obligated to pay within 12 months of signing the foreign loan agreement. For medium and long-term foreign loans, the Borrower is allowed to borrow to serve the purpose of (i) implementing its investment project; (ii) increasing the capital scale for its legitimate production and business; and (iii) restructuring existing foreign loans of the Borrower.

Enterprises must detail the purpose of foreign loans in the Plan on using foreign loans, including Information on production and business activities within the legal scope of activities of the Borrower that will use foreign loans; List of short-term debts that are obligated to pay within 12 months of signing the foreign loan agreement that the

Borrower plans to use foreign loans to pay (for short-term foreign loans.)

- ❖ *For borrowing purposes to structure the Borrower's existing foreign loans, including:* Information on existing foreign loans (loan amount, loan term, loan terms and conditions) and proof that existing foreign loans comply with at the time of loan implementation.

2. Foreign loan cost ceiling

The cost of foreign loans shall be agreed upon by the Borrower, the Lender and related parties, but under no circumstance shall exceed the following cost ceilings:

- *For loans in foreign currencies, the maximum loan cost ceiling is as follows:*
 - ✓ For loans using reference interest rate: reference interest rate + 8%/year.
 - ✓ For loans without using reference interest rate: SOFR Term Rate + 8%/year.

SOFR Term Rate is the 6-month SOFR Term interest rate announced by CME on its official website, determined at the nearest time to the signing date of foreign loan agreements and other agreements on amendments and supplements related to foreign loan costs.

- *For loans in VND:* Vietnamese Government bond interest rate + 8%/year.

Vietnamese Government bond interest rate is the exercise interest rate of a 10-year government bond in Vietnamese dong at the nearest time to the date of

signing foreign loan agreement and agreements on amendments and supplements related to foreign loan costs.

3. Enterprises must conduct foreign currency derivative transactions when borrowing foreign capital

According to Article 10 of the Draft, the Borrower must conduct foreign currency derivative transactions when borrowing foreign capital according to the following principles:

Transactions generating foreign currency	Short-term foreign loans	Medium and long term foreign loans
<i>Loan turnover/ Principal repayment amount</i>	Having a loan turnover of over USD 500,000 or another foreign currency of equivalent value.	Remittances to repay principal with a value of over USD 500,000 or another foreign currency of equivalent value.
<i>Implementation time</i>	Before or at the time of withdrawal of the loan.	At least 3 months before the principal repayment date.
<i>Minimum transaction value</i>	Equal to 30% of the withdrawal value.	Equal to 30% of the principal repayment amount.
<i>Transaction term</i>	In line with the plan of repaying short-term foreign loans.	Consistent with the principal repayment plan of medium and long-term foreign loans.

The requirement on performing foreign currency derivatives does not apply in the

following cases: (i) The borrower is a credit institution that is permitted to conduct business and provide foreign exchange services in accordance with current laws; or (ii) The borrower expects to have sufficient foreign currency revenue to repay the loan.

4. Guarantee conditions for foreign loans

According to Article 8 of the Draft, the Borrower and related parties agree on security transactions for the foreign loans on the principle of self-responsibility to comply with the current law on secured transactions and other relevant legislation.

However, if the foreign loan has collateral in the territory of Vietnam, the lender and related parties must use a representative organization to handle the collateral, which is a credit institution or other legal entity established and operating under Vietnamese law, except where the securing party and the secured party agree on the handling of the security asset in the manner where the secured party itself acknowledges the security asset as a replacement for the performance of the secured obligation.

5. In case enterprises are not allowed to borrow short-term foreign loans

Enterprises not being credit institutions are allowed to borrow short-term foreign loans to pay short-term debts that are obligated to pay within 12 months of signing the foreign loan agreement, but excluding the following cases:

- Debts arising from loan contracts with residents.
- Debts arising from purchases of trading securities; contributed capital or shares of another entity; investment real estate and transactions as project transferee.

The draft will replace Circular 12/2014/TT-NHNN and does not apply to foreign loans in the form of goods on deferred sale.



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