

Special Alert

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Draft Circular Guiding Foreign Loans

The government has released the draft circular guiding some contents related to foreign exchange control of foreign loans borrowed by enterprises, and of loan repayment (the “**Draft Circular**”) which replaces Circular No. 03/2016/TT-NHNN dated 26 February 2016, as amended by Circular No. 05/2016/TT-NHNN and Circular No. 05/2017/TT-NHNN (“**Circular 03**”). In comparison with Circular 03, the Draft Circular contains several changes in order to simplify the number of administrative procedures but still ensure the objectives of managing and monitoring foreign loans borrowed and repaid by enterprises.

Removal of circumstances for enterprises to register foreign loans

Under Circular 03, the registration of foreign loans is required if foreign short-term loans without a contract for extension has principal outstanding at the first anniversary of the initial capital drawdown and the borrower cannot complete repayment of the loan within ten (10) days after such anniversary. Under the Draft Circular, if the borrower cannot complete repayment of the loan within thirty (30) days¹ after the first anniversary of the initial capital drawdown, foreign loan registration is required.

The Draft Circular has also extended the timeline to register such overdue short-term loans, from thirty (30) days from the first anniversary of its first drawdown to forty-five (45) days² from the first anniversary of its first drawdown.

Supplementation of the circumstances in which enterprises are not required to register changes of foreign loans

¹ Article 9.3, the Draft Circular.

² Article 13.3(c), the Draft Circular.

In addition to the circumstances in which enterprises are not required to register changes of foreign loans as stipulated under Circular 03, the Draft Decree sets out additional circumstances as follows:

- A change to the registered principal drawdown and repayment schedule is less than ten (10) working days and does not require an agreement between the parties. In this case, a borrower is only required to notify the account bank, without requiring registration with the State Bank of Vietnam (the “**SBV**”)³;
- A change to the registered payment schedule of interest and fees of the foreign loans where there is no change to the principle or method of determining such interest and fee. In this case, a borrower is only required to notify the SBV in writing⁴;
- The actual principal drawdown or repayment for a specific period (of one month/quarter/year) is less than the amount on the registered schedule and such change does not require an agreement between the parties. In this case, a borrower is permitted to draw down or repay such lesser amount for that particular period but is still required to reregister the drawdown/repayment schedule with the SBV for the remaining period⁵.

Further guidance on account opening

New guidance on account for implementing foreign loans include:

- Borrowers must still use direct investment capital accounts (the “**DICA**”) to carry out collection and expenditure transactions related to medium and long-term foreign loans, the Draft Circular has detailed guidance that in case the loan currency is not the currency of the DICA, the borrower is entitled to open another account to borrow or repay foreign loans at the bank where the borrower opens the DICA⁶;
- For foreign loans that have principal outstanding at the first anniversary of the initial capital drawdown and do not require registration with the SBV, the borrowers being foreign-invested enterprises are not required to use the DICA for repayment⁷;
- The new regulations on accounts of lenders are stipulated under the Draft Circular. Accordingly, the lender of a VND loan being a micro-finance organization has the right to choose to use or not to use the VND account to execute the VND loan. The lender in other VND loans is required to open a VND account to make related transactions⁸.

³ Article 15.2, the Draft Circular.

⁴ Article 15.3(d), the Draft Circular.

⁵ Article 15.5, the Draft Circular.

⁶ Article 24.2(a), the Draft Circular.

⁷ Article 24.2(c), the Draft Circular.

⁸ Article 29, the Draft Circular.

Recognition of additional security

Circular 03 currently only has guidance on foreign exchange management in the conduct of guarantees of foreign loans (Chapter V of Circular 03). Chapter V of the Draft Circular not only guides foreign exchange management for guarantees of foreign loans but also guidance for secured transactions related to foreign loans (guarantees, pledges, mortgages of assets of borrowers, third parties).

The Draft Circular also provides that the borrower, lender, and securing party in a foreign loan can authorize an agent to do the work arising from enforcement of the security measures (the "**Agent**"), such as receiving the proceeds from enforcement of the secured assets and transferring such amount to the lender. The Agent must be an organization with legal entity status established and operating under the laws of Vietnam⁹.

The Agent must use a payment account opened at a commercial bank in Vietnam to transfer the money relating to the enforcement of the security to the lender. Before making a remittance, the bank providing the payment account service related to the enforcement of the security must check and archive all documents stipulated under the Draft Circular¹⁰.

Obligations on reporting regime

Under the Draft Circular, the frequency of reports has been changed from quarterly to monthly. Enterprises have only one method to submit report which is via an official website. Upon receipt of the report, the branch of SBV will approve the data¹¹.

⁹ Article 35.3, the Draft Circular.

¹⁰ Articles 35.4 and 35.5, the Draft Circular.

¹¹ Article 39, the Draft Circular.

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