

THE GOVERNMENT

THE SOCIALIST REPUBLIC OF VIETNAM

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Independence - Freedom - Happiness

Hanoi, December 26, 2013

DECREE

On management of enterprises' borrowing of foreign loans and payment of foreign debts without government guarantee

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the June 16, 2010 Law on the State Bank of Vietnam;

Pursuant to the June 16, 2010 Law on Credit Institutions;

Pursuant to the June 17, 2009 Law on Public Debt Management;

Pursuant to the November 29, 2005 Law on Enterprises;

Pursuant to the November 20, 2012 Law on Cooperatives;

Pursuant to December 13, 2005 Ordinance No. 28/2005/PL-UBTVQH11 on Foreign Exchange;

Pursuant to March 18, 2013 Ordinance No. 06/2013/PL-UBTVQH13 Amending and Supplementing a Number of Articles of the Ordinance on Foreign Exchange;

At the proposal of the Governor of the State Bank of Vietnam,

The Government promulgates the Decree on management of enterprises' borrowing of foreign loans and payment of foreign debts without government guarantee.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

1. This Decree prescribes enterprises' borrowing of foreign loans and payment of foreign debts without government guarantee and the responsibilities of related agencies in managing such activities.

2. Enterprises regulated by this Decree (below referred to as borrowers) include:

a/ Enterprises established and operating under the Law on Enterprises;

b/ Credit institutions and foreign bank branches established and operating under the Law on Credit Institutions;

c/ Cooperatives and unions of cooperatives established and operating under the Law on Cooperatives.

Article 2. Subjects of application

1. State management agencies managing enterprises' borrowing of foreign loans and payment of foreign debts without government guarantee as prescribed in this Decree.

2. Borrowers that take foreign loans without government guarantee.

3. Organizations and individuals involved in enterprises' borrowing of foreign loans and payment of foreign debts without government guarantee.

Article 3. Interpretation of terms

In this Decree, the terms and phrases below are construed as follows:

1. Borrowing of a foreign loan means a borrower receiving a credit amount from a non-resident through signing and implementing a foreign loan agreement in the form of loan contract, contract on goods purchase and sale on deferred payment, loan provision entrustment contract, financial leasing contract, or issuance by the borrower of debt instruments.

2. Borrowing of a foreign loan without government guarantee (below referred to as borrowing a foreign loan by the mode of self-borrowing and self-payment) means a borrower taking a foreign loan by the mode of self-borrowing and self-responsibility for payment to the foreign lender.

3. Foreign debt by the mode of self-borrowing and self-payment means payable amounts, including the principal and interest arising from the borrowing of a foreign loan by a borrower by the mode of self-borrowing and self-payment in accordance with Vietnamese law.

4. Limit of foreign loans by the mode of self-borrowing and self-payment approved annually by the Prime Minister means the ceiling level of the total net loan amount (the actually received loan amount minus the principal payments) of

medium- and long-term foreign loans by the mode of self-borrowing and self-payment in a year.

5. Licensed credit institutions include credit institutions and foreign bank branches in Vietnam that are licensed to deal in foreign exchange and provide foreign exchange services in accordance with law.

Article 4. Management principles

1. The Government shall manage the borrowing of foreign loans by the mode of self-borrowing and self-payment within the framework of management of national foreign debts, ensuring the safety of debts within the limit approved by a competent authority, and ensuring the national financial security and macroeconomic balances.

2. When borrowing foreign loans and paying foreign debts, borrowers must satisfy the conditions on borrowing of foreign loans and payment of foreign debts; register loans, open and use accounts, withdraw capital and transfer money for debt payment, and report on the implementation of the loans under regulations of the State Bank of Vietnam. The State Bank of Vietnam shall certify registration of loans within the foreign commercial loan limit approved annually by the Prime Minister.

Foreign loans borrowed by enterprises by the mode of self-borrowing and self-payment through issuance of international bonds or issuance of other debt instruments for non-residents must comply with this Decree, regulations on issuance of international bonds and foreign exchange management, and other relevant regulations.

3. Foreign loans by the mode of self-borrowing and self-payment through import of goods on deferred payment must comply with foreign exchange management policies, trade policies and other relevant regulations.

4. Borrowers shall take responsibility before law for the signing and performance of contracts on the borrowing of foreign loans by the mode of self-borrowing and self-payment. The Government is not responsible for the borrowing of foreign loans and payment of foreign debts by borrowers by the mode of self-borrowing and self-payment.

5. The policies on management of the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment must be consistent with the policies on domestic credit management in order to ensure the

objectives of monetary policy and foreign exchange management policy in each period.

6. When necessary, in order to ensure national financial and monetary security and debt safety criteria, the Prime Minister shall decide on the application of appropriate measures to manage the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment.

Article 5. Contents of state management of foreign loans and debts by the mode of self-borrowing and self-payment

1. Elaborating, promulgating, and organizing the implementation of, legal documents on management of the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment.

2. Monitoring cash flows related to the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment for synthesizing the international payment balance, regulating monetary policies and managing foreign exchange.

3. Reviewing and reporting information on the borrowing of foreign loans by the mode of self-borrowing and self-payment.

4. Disseminating policies and laws on management of the borrowing of foreign loans by the mode of self-borrowing and self-payment.

5. Inspecting, examining and supervising the observance of the law on management of the borrowing of foreign loans by the mode of self-borrowing and self-payment.

6. Organizing professional training and retraining in operations of management of the borrowing of foreign loans by the mode of self-borrowing and self-payment.

7. Handling violations and settling complaints and denunciations in the implementation of regulations on management of the borrowing of foreign loans by the mode of self-borrowing and self-payment.

Chapter II

SPECIFIC PROVISIONS

Article 6. Forecast of annual levels of net foreign loans borrowed by the mode of self-borrowing and self-payment

1. Bases for forecasting annual levels of net foreign loans borrowed by the mode of self-borrowing and self-payment:

a/ Debt safety criteria under the five-year socio-economic development plan approved by the National Assembly;

b/ The medium-term debt management program for the period of three subsequent years, approved by the Prime Minister;

c/ Forecast of macroeconomic targets in the plan year;

d/ Forecast of Vietnam's payment balance in the plan year;

dd/ Forecast of foreign loan demands of enterprises, credit institutions and foreign bank branches in each period, when necessary.

2. Pursuant to Clause 1 of this Article, the State Bank of Vietnam shall assume the prime responsibility for, and coordinate with the Ministry of Finance and the Ministry of Planning and Investment in, forecasting annual levels of net foreign loans borrowed by the mode of self-borrowing and self-payment. When necessary, the State Bank of Vietnam shall coordinate with the Ministry of Finance, the Ministry of Planning and Investment and other related agencies in reviewing foreign loan demands of borrowers in order to forecast annual levels of net foreign loans borrowed by the mode of self-borrowing and self-payment in the plan year.

3. By January 31 every year at the latest, the State Bank of Vietnam shall send the forecast levels of net foreign loans borrowed by the mode of self-borrowing and self-payment to the Ministry of Finance for summarizing and elaborating annual limits of national foreign commercial loans.

Article 7. Monitoring of the implementation of limits of foreign loans borrowed by the mode of self-borrowing and self-payment

1. The State Bank of Vietnam shall monitor total new loans signed, levels of capital withdrawal and debt payment for medium- and long-term foreign loans borrowed by the mode of self-borrowing and self-payment; work out appropriate solutions to manage foreign loans borrowed by the mode of self-borrowing and self-payment to ensure that the total net loan amount of medium- and long-term foreign loans borrowed by the mode of self-borrowing and self-payment in a year is within the Prime Minister-approved limit of foreign loans borrowed by the mode of self-borrowing and self-payment.

2. When the economy needs more raised capital in excess of the Prime Minister-approved limit of foreign loans borrowed by the mode of self-borrowing and self-payment in the year, the Ministry of Finance shall assume the prime responsibility for, and coordinate with the State Bank of Vietnam and the Ministry of Planning and Investment in, calculating the adjustment and submitting it to the Prime Minister for decision.

Article 8. Competence of the Prime Minister

1. To approve the annual limit of foreign loans borrowed by the mode of self-borrowing and self-payment within the limit of national foreign commercial loans.

2. To approve the application of appropriate measures to manage the borrowing of foreign loans by the mode of self-borrowing and self-payment when necessary in order to ensure national foreign debt safety criteria.

3. To direct the inspection and examination of the use of foreign loans by state enterprises.

4. To decide on inter-sectoral coordination in the management of the borrowing of foreign loans by the mode of self-borrowing and self-payment when necessary.

Article 9. Responsibilities of the State Bank of Vietnam

1. To assume the prime responsibility for, and coordinate with the Ministry of Finance and the Ministry of Planning and Investment in, forecasting annual levels of medium- and long-term net foreign loans borrowed by the mode of self-borrowing and self-payment under Article 6 of this Decree.

2. To assume the prime responsibility for, and coordinate with the Ministry of Finance, the Ministry of Planning and Investment and related agencies in, setting conditions for short-, medium- and long-term foreign loans borrowed by the mode of self-borrowing and self-payment in each period.

3. To guide procedures for and organize the registration, change registration, revocation or cancellation of written certifications of registration of foreign loans borrowed by borrowers by the mode of self-borrowing and self-payment.

4. To assume the prime responsibility for, and coordinate with the Ministry of Finance, the Ministry of Planning and Investment and related agencies in, developing and submitting to the Prime Minister for approval and organizing the implementation of, measures to manage the borrowing of foreign loans by the

mode of self-borrowing and self-payment in order to attain management objectives in each period.

5. To monitor the implementation of the limit of foreign loans borrowed by the mode of self-borrowing and self-payment.

6. To coordinate with the Ministry of Finance in developing a process of collecting, reporting, summarizing, sharing and publishing information on national foreign debts.

7. To review the annual situation of the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment by enterprises, credit institutions and foreign bank branches and report it to the Prime Minister and the Ministry of Finance for annual national review of the borrowing of foreign loans and payment of foreign debts.

8. To perform other tasks related to the state management of the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment under Article 5 of this Decree.

Article 10. Responsibilities of the Ministry of Finance

1. To assume the prime responsibility for, and coordinate with the State Bank of Vietnam and the Ministry of Planning and Investment in, submitting to the Prime Minister for approval the limits of national foreign commercial loans, including the limit of foreign commercial loans borrowed by the mode of self-borrowing and self-payment.

2. To assume the prime responsibility for developing a process of collecting, summarizing, reporting, sharing and publishing information on national foreign loans.

3. To advise the Government or the Prime Minister on the borrowing of foreign loans by state economic groups and corporations by the mode of self-borrowing and self-payment when necessary at the request of the Government or the Prime Minister in each period.

4. To coordinate with the State Bank of Vietnam in forecasting the level of net foreign loans borrowed by the mode of self-borrowing and self-payment in the plan year.

5. To coordinate with the State Bank of Vietnam in working out, and organizing the implementation of, measures to manage the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment.

6. To perform other tasks related to the borrowing of foreign loans and payment of foreign debts by state enterprises in accordance with law.

Article 11. Responsibilities of the Ministry of Planning and Investment

1. To coordinate with the State Bank of Vietnam in forecasting the level of net foreign loans borrowed by the mode of self-borrowing and self-payment in the plan year.

2. To coordinate with the State Bank of Vietnam in working out, and organizing the implementation of, measures to manage the self-borrowing of foreign loans and self-payment of foreign debts.

3. To assume the prime responsibility for, and coordinate with management agencies in charge of foreign direct investment in, reviewing demands of foreign-invested enterprises for foreign loans to be borrowed by the mode of self-borrowing and self-payment, when necessary.

Article 12. Coordination responsibility of agencies representing state capital owners

1. To approve plans on the borrowing of medium- and long-term foreign loans by the mode of self-borrowing and self-payment by state enterprises under their management in accordance with relevant laws before the enterprises sign foreign loan agreements.

2. To manage the borrowing of foreign loans by the mode of self-borrowing and self-payment by state enterprises within their competence.

3. To coordinate with the State Bank of Vietnam in implementing measures to manage the borrowing of foreign loans by the mode of self-borrowing and self-payment.

Article 13. Rights of borrowers

1. To decide on the forms of borrowing foreign loans as suitable to their demands and use purposes in accordance with relevant laws.

2. To select licensed credit institutions for execution of foreign loans in accordance with law.

3. To request the opening of overseas foreign-currency accounts for receiving loans and implement commitments in loan agreements with foreign lenders under regulations of the State Bank of Vietnam.
4. To purchase foreign currencies at licensed credit institutions for paying foreign debts as committed and agreed in loan agreements.

Article 14. Responsibilities of borrowers

1. To use foreign loans for proper purposes and within the scope of their operation in accordance with law.
2. To take responsibility for the legal capacity, financial capacity and ability to provide loans of foreign lenders.
3. To take responsibility for the signing and implementation of foreign loan agreements and other relevant agreements. To refrain from signing agreements with contents contrary to Vietnamese law.
4. To pay foreign debts and bear all risks when borrowing foreign loans by the mode of self-borrowing and self-payment.
5. To comply with the State Bank of Vietnam's regulations on conditions for borrowing of foreign loans and payment of foreign debts; to register, or register the change of, foreign loans; to open and use accounts, withdraw capital and transfer money for debt payment for foreign loans.
6. To comply with this Decree, regulations on foreign exchange management, other relevant laws of Vietnam and international practices in the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment.
7. To comply with regulations on reporting on the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment.
8. To take responsibility for the accuracy and validity of produced dossiers, documents and papers of licensed credit institutions or overseas credit institutions (in case they are permitted to open and use overseas foreign-currency accounts) when conducting transactions related to foreign loans.
9. To comply with requests of competent agencies conducting inspection, examination and supervision of the borrowing of foreign loans and payment of foreign debts in accordance with law.

Article 15. Inspection, examination and supervision

1. The State Bank of Vietnam shall examine and supervise:

a/ The borrowing of foreign loans of credit institutions and foreign bank branches by the mode of self-borrowing and self-payment;

b/ Money transfer by borrowers related to foreign loans borrowed and debts paid by the mode of self-borrowing and self-payment;

c/ The borrowers' compliance with regulations on the self-borrowing of foreign loans and self-payment of foreign debts and regulations on foreign exchange management;

d/ The provision of foreign exchange services by licensed credit institutions for the self-borrowing of foreign loans and self-payment of foreign debts.

2. The Ministry of Finance shall assume the prime responsibility for, and coordinate with related agencies in, examining and supervising the borrowing of foreign loans by the mode of self-borrowing and self-payment by state economic groups and corporations other than credit institutions.

3. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with investment management agencies and related agencies in, examining and supervising the borrowing of foreign loans by the mode of self-borrowing and self-payment by foreign-invested enterprises other than credit institutions and foreign bank branches.

4. The State Bank of Vietnam shall assume the prime responsibility for, and coordinate with the Ministry of Finance, the Ministry of Planning and Investment and related agencies in, inspecting the observance of regulations on foreign exchange management with regard to the borrowing of foreign loans by the mode of self-borrowing and self-payment in accordance with the current law on inspection.

5. When necessary, the Prime Minister shall decide on inspection or examination of the self-borrowing and use of foreign loans by borrowers.

Article 16. Reporting regime

1. Borrowers shall regularly or extraordinarily report on the withdrawal of capital and self-payment of foreign debts under regulations of the State Bank of Vietnam.

2. icensed credit institutions shall implement the reporting regime under regulations of the State Bank of Vietnam.

3. Annually, the State Bank of Vietnam shall assume the prime responsibility for, and coordinate with related agencies in, summarizing and reporting to the Government the borrowing of foreign loans and payment of foreign debts by the mode of self-borrowing and self-payment by enterprises, credit institutions and foreign bank branches in Vietnam.

Article 17. Handling of violations

Organizations and individuals that violate this Decree shall, depending on the nature and severity of their violations, be administratively handled or examined for penal liability in accordance with law.

Chapter III

IMPLEMENTATION PROVISIONS

Article 18. Effect

1. This Decree takes effect on February 15, 2014.

2. To annul the Government's Decree No. 134/2005/ND-CP of November 1, 2005, promulgating the Regulation on management of the borrowing of foreign loans and payment of foreign debts, and Section 4, Chapter III of the Government's Decree No. 160/2006/ND-CP of December 28, 2006, detailing the Ordinance on Foreign Exchange.

Article 19. Implementation responsibility

1. The State Bank of Vietnam, the Ministry of Finance, the Ministry of Planning and Investment, agencies representing state capital owners, investment management agencies and business registration agencies shall, within the ambit of their functions, tasks and powers, guide the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.-

On behalf of the Government
Prime Minister
NGUYEN TAN DUNG

