

No. 12/2014/TT-NHNN

Hanoi, March 31, 2014

CIRCULAR

REQUIREMENTS FOR TAKING FOREIGN LOANS APPLIED TO COMPANIES NOT GUARANTEED BY THE GOVERNMENT

Pursuant to the Law on the State bank of Vietnam No. 46/2010/QH12 dated June 16, 2010;

Pursuant to the Law on credit institutions No. 47/2010/QH12 dated June 16, 2010;

Pursuant to the Ordinance on Foreign currencies No. 28/2005/PL-UBTVQH11 of Standing Committee of the National Assembly dated December 13, 2005;

Pursuant to the Ordinance No. 06/2013/UBTVQH13 dated March 18, 2013 on amendments to the Ordinance on Foreign currencies;

Pursuant to the Government's Decree No. 156/2013/NĐ-CP dated November 11, 2013 defining the functions, tasks, entitlements and organizational structure of the State bank of Vietnam;

Pursuant to the Government's Decree No. 219/2013/NĐ-CP dated December 25, 2013 on loans and repayment of loans taken by companies that are not guaranteed by the government;

At the request of the Director of Foreign Currency Department,

The Governor of the State bank of Vietnam promulgates a Circular on Requirements for taking foreign loans applied to company not guaranteed by the government.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation and subjects of application

1. This Circular deals with the requirements for taking foreign loans applied to the residents being companies, cooperatives, credit institutions (except for the state-owned commercial banks), branches of foreign banks that are established and operated in Vietnam and are not guaranteed by the government (hereinafter referred to as borrowers), except for the cases mentioned in Clause 2 and Clause 3 of this Article.

2. Requirements for issuing international bonds applied to the companies that are not guaranteed by the government shall comply with the government's regulations on corporate bond issuance.

3. Requirements for taking loans applied to state-owned commercial banks shall comply with separate regulations of the State bank of Vietnam (hereinafter referred to as the State bank).

Article 2. Interpretation of terms

In this Circular, the terms below are construed as follows:

1. Short-term foreign loans without guarantor (hereinafter referred to as short-term foreign loans) are the foreign loans with maturities of up to 01 year and are not guaranteed by the government.

2. Mid-term and long-term foreign loans without guarantor (hereinafter referred to as mid-term and long-term foreign loans) are the foreign loans with maturities longer than 01 year and are not guaranteed by the government.

3. A foreign-loan business plan means a business plan that proves the legitimate, reasonable purposes and the need for foreign loans, as well as the ability to repay the debt of the borrower.
4. A project of investment means a compilation of proposals to make mid-term and long-term investments in a particular area over a specific period of time.
5. Foreign loan expense means the total expense expressed as an annual percent of the loan, including the interest and other expenses that the borrower is obliged to pay to the creditor, the guarantor, insurers, agents, and relevant parties.

Article 3. Rules for application of requirements for taking foreign loans

1. Borrowers and the foreign loans must meet the general requirements and additional requirements corresponding to each foreign loan.
2. Borrowers must comply with this Circular and relevant regulations when taking foreign loans.
3. The State bank shall supervise the borrowers' fulfillment of requirements for taking foreign loans by verifying the registration of foreign loans. If the foreign loan is exempted from registration with the State bank, the borrower is responsible for their adherence to the requirements in this Circular.

Article 4. Inspection of fulfillment of requirements for taking foreign loans

The State bank shall inspect the borrowers' fulfillment requirements for taking foreign loans.

Chapter II

GENERAL REQUIREMENTS

Article 5. Purposes of taking foreign loans

Every borrower is allowed to use foreign loans to:

1. Implement the business plans or projects of investment funded by foreign loans of:
 - a) The borrower;
 - b) Any company to which the borrower makes a direct capital contribution (only applied to mid-term and long-term foreign loans). In this case, the ratio of the loan serving that business plan or project of investment to the total loan taken by the borrower must not exceed the proportion of contribution to the aforesaid company by the borrower.

The business plan or project of investment funded by foreign plan mentioned in this Clause must be approved by a competent authority in accordance with law and the license for establishment, Certificate of Business registration, Certificate of Business registration, certificate of investment, or certificate of cooperative registration of the borrower or the company to which the borrower makes a direct capital contribution.

2. Restructure the foreign debts incurred by the borrower without increasing the loan expense.

Article 6. Foreign loan agreement

1. A foreign loan agreement must be made in writing before the loan is released in accordance with Vietnam's law, except for the case mentioned in Clause 2 of this Article.
2. If a credit institution or a branch of a foreign bank takes a short-term foreign loan, the written foreign loan agreement must be concluded by the time the loan is released in accordance with Vietnam's law.

Article 7. Currencies of foreign loans

1. Currencies of foreign loans are foreign currencies.
2. The Vietnamese currency is only used in the following cases:

- a) The borrower is a microfinance institution;
- b) The borrower is a foreign-invested company that takes the loan from the distributed profit in Vietnamese currency from the direct investment by the creditor being a foreign investor that contributes capital to the borrower;
- c) Other cases approved by the Governor of the State bank considering the situation and necessity of the loans.

Article 8. Security for foreign loans

1. The security for foreign loans must comply with current Vietnam's law.
2. The pledge of shares, capital contributions of Vietnamese companies, or convertible bonds issued by Vietnamese companies as security for the foreign loans granted by non-resident creditors or relevant must comply with the regulations on securities and holdings of foreign investors in Vietnamese companies and/or relevant laws.

Article 9. Foreign loan expense

1. Foreign loan expense is agreed by the borrower, the creditor and relevant parties, except for the case mentioned in Clause 2 of this Article.
2. If necessary, the Governor of the State bank shall decide the application of foreign loan expense requirements, decide and announce the ceiling level of foreign loan expense in order to regulate the limits on foreign loans without guarantor.

Chapter III

ADDITIONAL REQUIREMENTS

Article 10. Additional requirements applied to creditors being credit institutions and branches of foreign banks

1. Requirements for taking short-term foreign loans
 - a) Credit institutions and branches of foreign banks must adhere to the safety ratios announced by the State bank, unless otherwise permitted by the Prime Minister of the Governor of the State bank;
 - b) Credit institutions and branches of foreign banks may only take short-term foreign loans to replenish their short-term loan capital.
2. Requirements for taking mid-term and long-term foreign loans:

When taking mid-term and long-term foreign loans, credit institutions and branches of foreign banks must adhere to the safety ratios announced by the State bank, unless:

 - a) The transgression is permitted by the Prime Minister of the Governor of the State bank;
 - b) The mid-term or long-term foreign loan is eligible to be included in level-2 capital of the credit institution or branch of a foreign bank, and this loan helps the credit institution or branch of a foreign bank adhere to safety ratios.

Article 11. Additional requirements applied to creditors other than credit institutions and branches of foreign banks

1. Requirements for taking short-term foreign loans:
 - a) Creditors must not take short-term loans to serve mid-term and long-term purposes;
 - b) Any state-owned company that wishes to take a short-term foreign loan must have a plan appraised and approved by competent authorities in accordance with the laws on distribution of entitlements, duties, and obligations of owners of state-owned companies and state capital in companies.

2. Requirements for taking mid-term and long-term foreign loans:

a) Any state-owned company that wishes to take a mid-term and long-term foreign loan must have a plan appraised and approved by competent authorities in accordance with the laws on distribution of entitlements, duties, and obligations of owners of state-owned companies and state capital in companies.

b) If the creditor is not a state-owned company:

(i) If the creditor has a project of investment funded by foreign capital that has a certificate of investment, the total midterm or long-term loan (including the domestic loans) taken by the creditor to serve the project must not exceed the difference between the total capital and the contributed capital in the certificate of investment;

(ii) If the creditor takes the foreign loan to execute a business plan or project of investment that does not have a certificate of investment, the total midterm or long-term loan (including the domestic loans) taken by the creditor must not exceed the need for loan serving business plan or project of investment, which has been approved by a competent authority.

Chapter IV

IMPLEMENTATION

Article 12. Implementation

1. This Circular takes effect on May 15, 2014.

2. The regulations in Chapter II of the Circular No. [09/2004/TT-NHNN](#) dated December 21, 2004 of the State bank on taking and repaying foreign loans are abrogated.

Article 13. Transition

The foreign loan agreements that come into force before the effective date of this Circular are still in force. The amendments to such foreign loan agreements from the day on which this Circular takes effect must be made in accordance with this Circular.

Article 14. Organization of the implementation

The Director of the Foreign Currency Department, heads of the units affiliated to the State bank, Directors of provincial branches of the State bank, Presidents of Executive Boards, Presidents of Boards of members, Directors of credit institutions and branches of foreign banks are responsible for the implementation of this Circular.

**PP THE GOVERNOR
DEPUTY GOVERNOR**

Dao Minh Tu