

# Vietnam: Offshore borrowings

The State Bank of Vietnam recently issued two circulars (Circular 12 and 25) to regulate offshore borrowings without a Government guarantee. These circulars apply to any loan facility whereby the borrower is a resident and the lender is a non resident. These circulars also apply to resident borrowers that are credit institutions including branches of offshore banks. This briefing highlights key changes under Circular 12 and 25.

## Borrowing purposes

**Circular 12 broadens the permitted purposes of use of loan proceeds. Offshore borrowings may now be used to finance:**

- a business plan [or] an investment project (a) of the borrower or (b) in the case of a medium or long term loan, of the enterprise in which the borrower makes a direct investment; and/or
- a restructuring of the borrower's existing offshore loans without increasing borrowing expenses.

Circular 12 implies that it does not recognize offshore borrowings to finance the restructuring of the borrower's onshore loans. This might cause some difficulties in addressing the current chronic situation of onshore bad debts.

## Borrowing limits

Repealed regulations previously imposed a borrowing limit only on foreign-owned projects. Under Circular 12, the borrowing limit applies to both domestic and foreign-owned projects.

- If the financed project has been issued an investment certificate (IC), the balance of all medium

and long term loans for that project shall not exceed the difference between the total investment capital and equity capital recorded in the IC;

- If the financed business plan or project does not have an IC, the balance of all medium and long term loans shall not exceed the total borrowing needs of such plan or project as approved.

## Borrowing currency

Offshore loans must be in foreign currencies, except in one of the following cases: (i) loans to micro-financing companies, (ii) shareholder loans financed with a foreign direct investor's VND dividends; (iii) when being exceptionally approved by the SBV Governor.

The SBV registration dossier must include documents in connection to the above. In case (ii), for instance, the borrower must provide evidence of the crediting of VND dividends to the shareholder, and in case (iii), the borrower must provide an explanatory statement of its need for offshore VND borrowing to the SBV.

## Security for offshore loans

The mortgage of shares or equity interests of Vietnamese companies

must comply with statutory foreign equity restrictions. It is unclear whether such compliance is applicable at the time of foreclosing on the security or at the time of entry into the security agreement.

## Key issues

- Offshore borrowings may now be used for a broader range of purposes but Circular 12 implies that it does not recognise offshore borrowings to finance restructuring of onshore loans
- Under Circular 12 borrowing limits apply to both domestic and foreign owned projects (previously only on foreign owned projects)
- Circular 25 removes the previous requirement that State-owned enterprises obtain approval from the Ministry of Finance for their offshore borrowings

## Registration requirements

Under the law, a medium or long term loan is a loan with a term longer than one year. A short term loan is a loan with a term of one year or less. In

principle, only an offshore medium or long term loan is required to be registered with the SBV. Circular 25 further clarifies how to determine the “term” for registration purposes.

Under Circular 25, any of the following offshore loans is subject to the requirement of registration with the SBV:

- Medium or long term loan (the “term” for purpose of determining whether the loan is short, medium or long term runs from the agreed date of the first drawdown to the agreed date of the last repayment);
- Short term loan (when it is extended such that the aggregate term of the extended loan exceeds one year); or
- Short term loan which is not extended, but which is not repaid in full within one year and ten days after the first drawdown.

With respect to an import credit sale, the “term” begins to run from the date the credit sale goods are cleared through customs. The offshore loan registration dossier in this case must include evidence that the goods have been cleared through customs.

If the parties enter into a framework agreement or memorandum of understanding that does not permit a drawdown absent another agreement, such framework agreement or memorandum of understanding need not be registered with the SBV.

Same as provided in earlier regulations, the duty to file for registration of a medium or long term loan rests with the borrower. Circular 25 further elaborates, inter alia, that the party having the filing duty is the importer in the case of an import credit sale and the loan entrustee

Credit Institution in the case of a cross-border entrustment loan.

### Borrowing credit institutions

Under Circular 12, borrowing Credit Institutions must meet the statutory prudential ratios as a condition for obtaining offshore loans except in exempt situations stipulated in Circular 12. Under Circular 25, such borrowing Credit Institutions must submit to the SBV evidence of compliance with the statutory prudential ratios as part of their offshore loan registration dossier.

A Credit Institution may borrow an offshore short term loan only to finance its short-term lending needs.

### Borrowing state-owned enterprises

The repealed Article 1 of Circular 25/2011/TT-NHNN guiding administration procedures with the SBV provides that a State-owned enterprise must obtain approvals from the Ministry of Finance and the Ministry overseeing its sector for each medium or long term loan borrowing. There was however no regulatory guidance on the procedure to obtain such approvals.

Circular 25 removes the above unusual requirement and only requires the State-owned enterprise to obtain approvals from the relevant authority according to applicable regulations on State-owned enterprises or the management of State capital invested in other enterprises.

### Amendment registration

Under Circular 25, a filing with the SBV for changes to the registration

certificate for an offshore loan must be made:

- Within 30 days after execution of any amendments to a loan facility that result in changes to the contents recorded in the registration certificate previously issued by the SBV, and before such amendments become effective, or
- Before the occurrence of changes that have an impact on the contents of the registration certificate previously issued by the SBV (“occurrence of changes” may include a change without any execution of amendments to the loan facility e.g. if repayment is not made within 10 days of the registered due date, remittance of the overdue payments may be rejected in the absence of an amendment registration).

Circular 25 explicitly waives the above amendment registration requirement in case there is a change of the drawdown schedule, repayment schedule or fee payment schedule that is no more than 10 days different from the original schedules recorded in the registration certificate.

If you require advice on any of the issues raised in this briefing note please contact the authors below.

*NOTE: Circular 12/2014/TT-NHNN (Circular 12) took effect on May 15, 2014 and Circular 25/2014/TT-NHNN (Circular 25) will take effect on November 1, 2014.*

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