

New Instruments on Onshore and Cross-Border Lending Activities

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The State Bank of Vietnam (**SBV**) has released certain instruments to amend, supplement and revise the current regulations to both onshore and cross-border lending activities. Two (2) documents are put under the spotlight due to their significant impact to the current capital market, namely:

- Circular 06/2023/TT-NHNN (**Circular 06**) amending a number of articles of the existing Circular 39/2016/TT-NHNN on lending transactions of onshore credit institutions and/or foreign bank branches with customers (**Circular 39**) which will come into force as of 1 September 2023; and
- Circular 08/2023/TT-NHNN (**Circular 08**) which will replace Circular 12/2014/TT-NHNN (**Circular 12**) to be the crucial instrument on conditions for non-government guaranteed cross-border loans as of 15 August 2023.

In general, these documents along with the regulations thereunder are circulated for the purposes of:

- Ensuring the requirements to manage the current lending activities in compliance with the current market status;
- Ensuring compliance with other current legislation; and
- Approaching a new debt management plan as to be consistent with the roadmap for capital account liberalisation and recommendation from international organisations.

We set out the significant changes under Circular 06 and Circular 08 in comparison with the existing documents.

Onshore Lending

More restrictions to onshore loans

In addition to retaining the existing strict onshore loan usage under Circular 39, Circular 06 expressly provides four (4) new loan usages which is ineligible for loan borrowing, as follows:

- (i) for making new deposits;
- (ii) for payment for the purchase of shares or contribution of capital or acquisition of capital contributions to limited liability companies or partnerships; or purchase of shares or contribution of capital or acquisition of shares of the joint stock companies which have not yet been listed on a stock exchange or registered for trading on the UPCOM;
- (iii) for making capital contributions for implementation of investment projects ineligible for being put into business in accordance with applicable law; and
- (iv) for financial offsetting purposes (save exceptions).

Onshore digital lending activities

Other than the above-mentioned further restriction, it is notable that Circular 06 newly regulates the legal frameworks for credit institutions to provide digital lending activities, subject to the following conditions, among others:

- The credit institutions are able to ensure security and safety, protect data messages, store and preserve information and data and ensure their safety and confidentiality in accordance with applicable law;
- The information system used for carrying out digital lending activities must satisfy Level3 or higher-level information system security requirements;
- The credit institutions are able to make backup copies of files so that data can be accessed and used when necessary or for the purposes of inspection, collation, and settlement of complaints and disputes, or for provision to relevant State authority; and
- The outstanding amount of loans for living purposes granted by a credit institution to an individual customer shall not exceed VND100 million.

The digital lending contract can be made in the form of electronic contract, provided that it contains all compulsory contents as required under Circular 39.

Inbound Cross-Border Lending

Particular requirements to cross-border loan agreement

Under Circular 08, a cross-border loan agreement is defined more specifically than its predecessor, being one document or a collection of documents recording an agreement between parties, according to which the lender provides or commits to provide an amount of money or asset(s) (in case the cross-border loan is under the form of a financial loan) to use for a determined purpose in a period with the principles of repaying both principal and interests (if there is any agreement with respect to interests).

The cross-border loan agreement must be executed prior to the date of first disbursement (save limited exceptions such as the conversion of pre-establishment cost to cross-border shareholder loan).

Limited loan usage purposes

Whereas former Circular 12 stipulated a set of purposes for all onshore borrowers, Circular 08 separates the eligible purposes into ones applicable to the borrowers being onshore credit institutions/foreign bank branches and other borrowers, according to which:

	Borrower being onshore credit institutions/foreign bank branches	Other onshore borrowers
Short-term loan	<ul style="list-style-type: none"> refinancing its own foreign debt; increasing its own capital for the credit providing activities in compliance with its credit growth. 	<ul style="list-style-type: none"> refinancing its own foreign debt; paying its own short-term payables (NOT INCLUDING repayment of onshore loans).
Mid- and long-term loan		<ul style="list-style-type: none"> refinancing its own foreign debt; implementing its own investment projects; implementing its own business plan, manufacturing plan and other projects.

It should be noted that the above scope is significantly limited compared to the scope under the former Circular 12 where onshore borrowers were used to be permitted to procure cross-border loans for the implementation of the investment projects and/or the business plans of the borrower's **subsidiaries**.

In addition, the former restriction relating to borrowing cost of refinancing loan not exceeding borrowing cost of the existing loan has been removed under Circular 08.

Restraints on cross-border loans

As to accomplish its effort to control the foreign borrowing limit, the SBV sets out strict restraints under its new circular that onshore borrowers must comply with if these entities desire to be provided with facilities from offshore lenders, specifically:

Borrower	Applicable loans	Requirements
Borrower being onshore credit institutions/foreign bank branches	Short-term loans	Satisfaction of the limitation to short-term foreign borrowing as of 31 December of the year preceding the time of the proposed cross-border loan, i.e. the maximum short-term loan amount over core capital is 30% applicable to commercial banks and 150% applicable to foreign bank branches and other credit institutions.

Borrower	Applicable loans	Requirements
Other borrowers	Refinancing loans (to repay existing foreign debt)	The maximum amount of the refinancing loan must not exceed the total value of the outstanding principal, the amount of interest, unpaid fees of the existing foreign debt, and the fee of the refinancing loan determined at the time of refinancing.
	Medium/long-term loans to implement its own investment projects	Outstanding principal amount of medium/long term onshore and cross-border loans of the borrower serving the investment project does not exceed the loan limit of the investment project, which is recorded on its investment certificate, investment registration certificate, investment in-principle approval.
	Medium/long-term loans to implement its own business plan, manufacturing plan and other projects	Outstanding principal amount of medium/long term onshore and cross-border loans of the borrower for this purpose shall not exceed the total demand for loan capital in the approved plan on using cross-border loans.

New requirement on statement of usage of proceeds of short-term loans

Circular 08 expressly requires the borrower of a short-term cross-border loan to create, control and update statement of usage of proceeds of short-term loans in accordance with rules provided in, and prescribed form appended to, Circular 08.

Retaining Restriction on Refinancing

With the issuance of Circular 06 and 08, refinancing is still subject to the following restrictions:

- (i) A new onshore loan can be entitled to repay another onshore loan granted by the same onshore credit institution or foreign bank branch **only if** it satisfies all of the following conditions:
 - (a) the loan usage purpose to is pay loan interests arising from construction phase; and
 - (b) such loan interests have been already included in the construction/investment cost.

- (ii) A new onshore loan can be entitled to (i) repay another onshore loan at another onshore credit institution or foreign bank branch or (ii) repay a cross-border loan **only if** it satisfies the following conditions:
 - (a) The term of the new loan does not exceed the residual term of the existing loan; and
 - (b) The existing loan has not yet been refinanced.
- (iii) A new cross-border loan can be entitled to repay another cross-border loan only if it satisfies the conditions as set out in the former part of this article.
- (iv) Other cases of refinancing shall be deemed as not permitted.

Please contact us if you have any questions relating to this Legal Update.

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