

# NEW CIRCULAR 08 ON CONDITIONS FOR FOREIGN LOANS NOT GUARANTEED BY THE GOVERNMENT

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The State Bank of Vietnam ("SBV") recently issued Circular 08/2023/TT-NHNN on conditions for offshore loans without a government guarantee ("Circular 08"). There is no change in the prohibition on replacing an onshore loan with an offshore loan. However, compared to the previous draft circular released for public feedback last year, the official version of Circular 08 has dropped many controversial stricter conditions for offshore loans including the requirements for hedging arrangements and the restriction on using offshore loans for securities and real estate projects.

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Circular 08 will replace the existing Circular 12/2014/TT-NHNN ("Circular 12/2014") and provide some revisions to Circular 12/2022/TT-NHNN on foreign exchange administration for offshore borrowing ("Circular 12/2022"). It will take effect from 15 August 2023, except for the regulation on limitation on short-term offshore loans for the credit institution borrowers which will take effect from 1 January 2024.

Below are some important changes implemented by Circular 08.

## PURPOSE, LIMITATION AND PROVING DOCUMENTATIONS FOR NON-CREDIT INSTITUTION BORROWER

Circular 08 provides different conditions for non-credit institution borrowers and credit institution borrowers. In particular, notable conditions on offshore loan purposes, limitations and requirements for supporting documentation are:

**a) For short-term loan (up to one year term), a non-credit institution borrower could take the offshore loan for the following purposes:**

- to refinance its existing offshore debts. In such cases, the maximum amount of the offshore loan must not exceed the total value of the unpaid principal balance, interest and fees of the existing offshore debts, and the fee of the new loan as determined at the time of refinancing;

- to pay its monetary short-term payables (excluding the principal amounts of the existing onshore loans) incurred during the implementation of investment projects, business plans and other projects of the borrower; or
- to serve borrower's professional activities in a period not exceeding 12 months from the date of withdrawal of the offshore loan, where the borrower is subject to the requirements on safety criteria according to specialised laws (e.g., securities company).

## **b) For medium- and long-term loans (more than one year term), a non-credit institution borrower could take the offshore loan for the following purposes:**

- to implement its investment projects (which are approved under the investment registration certificate ("IRC"), investment certificate ("IC") or investment policy approval ("IPA")). The borrower must submit its IRC, IC or IPA to prove the purpose. In this case, the borrower's principal balance of both existing medium- and long-term onshore and offshore debts must not exceed the difference between the borrower's contributed capital in the project and the total investment capital as approved under the IRC, IC or IPA; or
- to implement its business plans and other projects. In this case, the borrower must submit the plan on offshore loan usage to prove the purpose. The borrower's balances of both existing medium- and long-term onshore and offshore debts must not exceed total demand for loan capital in the plan on offshore loan usage as approved by the competent authorities; or
- to refinance its existing offshore debts. The borrower must submit a plan on financing debts to prove the purpose. In this case, the maximum amount of the loan is subject to the same limitation as in the case of short-term loans to refinance offshore debts. Besides, Circular 08 imposed a new requirement whereby the borrower must repay the existing offshore debt within five working days from the date of withdrawal of the new loan, so that any limitation applied for its investment project or approved business plans stipulated above is secured.

## **c) What Circular 08 has changed:**

- under Circular 08, the borrower can only take the offshore loan for its own legitimate purposes, which is different from Circular 12/2014 where the borrower could take the medium- and long-term offshore loan to implement the business plans and investment projects of itself and the company in which it contributes capital;
- for the first time, Circular 08 provides for the basic contents of the plan on offshore loan usage and plan on refinancing debts. Under the previous regulations on offshore loan condition and offshore loan registration, such plans are provided as the required documentation for the borrower, but there is no detail guidance on the contents; and
- compared with Circular 12/2014 which requires that refinancing for existing offshore debts must not increase the loan expenses, Circular 08 is easier to comply with as a matter of practice. In practice, the loan expenses will be fluctuated depending on market conditions, change of interest rates and the identity of each offshore lender. Thus, ensuring that the new loan will be cheaper than the existing loan may be very challenging. With the effectiveness of Circular 08, the borrower only has to ensure that the total of the new facility is equal to the outstanding debts and the total of the new facility.

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## **OFFSHORE LOAN IN THE FORM OF IMPORTING GOODS WITH DEFERRED PAYMENT**

Under Circular 12/2022, deferred payment contracts for imported goods are considered as a type of offshore loan. However, Circular 08 provides that the borrower who takes offshore loan in the form of importing goods with deferred payment is not subject to the conditions in Circular 08. Therefore, deferred payment contracts for imported goods are still a type of offshore loan but will only subject to other regulations such as foreign exchange and commercial trading control, but not Circular 08.

## HANDLING THE UNUSED AMOUNTS

Under Circular 08, a borrower can deposit the proceeds of an offshore loan which has been withdrawn but not yet used at the bank as a saving deposit with term not exceeding one month. In such case, the borrower is responsible for keeping track of deposited amounts and providing evidence to competent authorities to serve the inspection purpose.

## OFFSHORE LOAN CURRENCY BEING VIETNAM DONG (“VND”)

Circular 08 allows for the offshore loan currency to be in VND in the case where the withdrawal and the repayment are in foreign currency and the debt is determined in VND. This provision creates more room for the parties to decide and structure currency regime of offshore loans.

Previously, the offshore loan currency being VND could be allowed if there is special ruling of the Governor of the SBV. Circular 08 no longer includes the requirement of a special ruling, and also removes the relevant provisions on such special ruling under Circular 12/2022.

## NEW LIMITATION ON SHORT-TERM LOAN FOR CREDIT INSTITUTION BORROWER

For credit institution borrowers, the limitation on short-term loan is the maximum ratio of the total principal balance of short-term loans based on separated equity capital of the borrower, being:

- 30% for commercial banks; and
- 150% for branches of foreign banks or other credit institutions.

This limitation must be met as of December 31 of the year preceding the loan, and this provision will be effective from 1 January 2024.

*Hanoi Legal Trainee Tien Le also contributed to this article.*

## KEY CONTACTS



**LINH DOAN**  
PARTNER • HANOI

T: +852 2168 6758

[LDoan@wfw.com](mailto:LDoan@wfw.com)



**MATT LORIMER**  
PARTNER • HANOI

T: +84 24 3938 8401

[mlorimer@wfw.com](mailto:mlorimer@wfw.com)



**MAI DAO**  
ASSOCIATE • HANOI

T: +84 24 3938 8401

[MDao@wfw.com](mailto:MDao@wfw.com)

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