

NEW REGULATIONS ON FOREIGN EXCHANGE IN RESPECT OF FOREIGN LOAN



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On September 30, 2022, the State Bank of Vietnam (SBV) issued Circular 12/2022/TT-NHNN on guidelines for the administration of foreign exchange in enterprises' foreign loans ("Circular 12"), which replaced Circular 03/2016/TT-NHNN ("Circular 03"). Circular 12 took effect from November 15, 2022, with significant changes as follows:

1. Adjustment of loan registration exception (Article 11.3)

In case the Borrower completes payment of the outstanding principal owed within ten (10) days from the date of the first withdrawal, for a short-term loan without an agreement to extend but still has the outstanding principal (including outstanding interest converted into principal) from the date of full one year from the date of first withdrawal, it is not required to register a loan with the SBV.

Circular 03 extends the time limit from ten (10) to thirty (30) business days from the date of the first loan proceeds withdrawal so that the Borrower can manage to complete the payment of the outstanding principal.

2. Adding cases where registration of loan change is not required (Article 17.2)

Circular 12 adds 03 new cases where Borrowers are not required to register the change of their foreign loans but only need to announce the changed details on the Web portal, specifically the following cases:

- The change of payment schedule of interests and fees on the foreign loan without changing the interests and fees calculating method in the loan agreement;
- The change (increase or decrease) of the amount of withdrawn loan proceeds, repayment of principal, interests, and fees within 100 currency units of the foreign loan;
- The change of the actual amount of loan proceeds withdrawn or principal repayment of a specific installment less than the amount in the withdrawal or repayment schedule.

3. Adding documents replacing the confirmation of the Account Service Provider in the loan registration of change dossier (Article 19)

Circular 03 does not provide for the case where the account service provider bank is closed or suspended before the Borrower changes to another bank and/or the loan proceeds withdrawal and repayment are not required to proceed via a foreign loan account. For this case, Circular 12 provides that other documents can be submitted for verification purposes such as:

- A copy of the audited or reviewed financial statement with information proving the receipt of the loan proceeds and outstanding debt up to the time of requesting the State Bank to confirm the foreign loan registration;

- A copy in the original language and the Vietnamese translation of the written certification of the overseas commercial bank where the borrower opens and uses a foreign currency account to withdraw and repay the loan;
- A copy in the original language and the Vietnamese translation of the letter of confirmation from an overseas bank about the amount of money the creditor has directly paid to the beneficiary, who is a non-resident, for the provision of goods and services according to their contract with the resident as the Borrower.

4. Removing 02 cases of cancellation of the written confirmation of loan registration or registration of change (Article 22)

Circular 12 removes 02 cases of cancellation of the written confirmation of loan registration or registration of change in Circular 03, the cases are as follows:

- The application for loan registration and registration of change meets the requirements in terms of procedures, but the information for registration and registration of changes is incorrect, leading to errors in the content of the written confirmation of registration or of registration of change of the SBV;
- Written confirmation, and certification of registration of change issued without legal authorization.

Accordingly, Circular 12 provides that where the application for registration, registration of change of foreign loan contains fraudulent information, or forged documents is the only case the written confirmation of loan registration or registration of change can be canceled.

5. Adding more use cases for the Direct Investment Capital Account (Article 26.2)

Circular 12 provides clearer guidance on the use of the Direct Investment Capital Account (DICA) in the process of borrowing and repaying foreign loans as follows:

- As for medium-term and long-term foreign loans, the Borrower shall utilize the account for DICA, but if the loan currency is not the currency of the DICA, the Borrower is allowed open another foreign loan account to carry out a foreign loan at the bank where it opened the DICA.
- In case a foreign-invested enterprise is an organization jointly liable for the debt repayment obligation of the original Borrower after the split-up, split-off, amalgamation, or acquisition of such enterprise is not required to use the DICA to repay the debt for which this enterprise is jointly liable.

6. Adding transactions related to foreign loans by foreign currencies that are allowed to use foreign loan accounts (Article 28).

Circular 12 adds 04 cases of foreign loan accounts in foreign currencies to be used for performing transactions, as follows:

➤ For receipts:

- Receivable amounts from derivative transactions relating to foreign loans;
- Interests earned on account balances;

➤ For expenditures:

- Service charges for account management and money transfer through accounts as stipulated by the account service provider;
- Payable amounts to derivative transactions for preventing risks of exchange rates and interests relating to foreign loans.

7. Adding transactions related to foreign loans made in Vietnam dong that are allowed to use Vietnam dong loan accounts (Article 29).

Circular 12 adds 02 cases where Vietnam dong loan accounts can be used to perform the following transactions:

- For receipts:
Interests earned on account balances per applicable laws.
- For expenditures:
Service charges for account management and money transfer via accounts.

8. Amending cases in which withdrawals of loan proceeds are not done via foreign loan accounts (Article 34)

Circular 12 eliminates the case of: “Withdrawing funds in the form of deferred payment for import of goods from the Borrower” and adds “Withdrawing loan proceeds in case the amount of money for investment preparation is converted into a foreign loan as agreed between the parties in accordance with the law on foreign exchange management for foreign direct investment activities into Vietnam.” when the withdrawal of loan proceeds is not carried out through foreign loan accounts.

9. Regulations on cases in which debt repayment without foreign loan account by shares or contributed capital (Article 34)

Circular 12 provides more details on the case of debt repayment by shares or contributed capital, including:

- Parties agree to convert the outstanding debt into shares or contributed capital of the Borrower;
- Parties agree to swap the outstanding debt into shares or contributed capital owned by the Borrower;

10. Detailing regulations on the agency of Guarantor (Article 35)

Circular 03 only stipulates that when the Guarantor uses payment accounts to pay for the guaranteed obligations, the guarantor’s account service provider shall base transfers on certain documents or records. However, Circular 12 provides more details on the types of agents and how to transfer the guaranteed money for each specific target as follows:

- The guarantor is a resident: who transfers money to fulfill the guaranteed obligations via Bank servicing guarantee transactions;
- The guarantor is a credit institution or foreign bank branch in Vietnam: the transfer of money needs not to go through Banks servicing guarantee transactions but must comply with the provisions of the law on bank guarantee and notifying the account service provider on the guarantee amount provided.

11. Detailing regulations on Bank servicing guarantee transactions (Article 37)

Circular 12 adds 01 separate regulation on Bank servicing guarantee transactions to provide guidelines on guaranteed obligation execution and the accompanying documents at such banks.

12. Changes in regulations on indebtedness amount and Reimbursement of indebtedness amounts (Article 38, Article 39)

Circular 03 stipulates that when the guarantor performs the obligation for the debtor, the debtor is required to repay the debt receipt by the guarantor. This refund is no longer mandatory under Circular 12