

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



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In this article, the authors will clarify some points to note in *Circular 08/2023/TT-NHNN on conditions for foreign loans not guaranteed by the Government* issued by the Governor of the State Bank of Vietnam ("SBV") effective on August 15, 2023 ("**Circular 08**") for enterprises that are not credit institutions or foreign bank branches in Vietnam.

1. Institutionalization of foreign short-term borrowing

Article 11.1.a of Circular 12/2014/TT-NHNN on *Regulations on conditions foreign loan not guaranteed by the Government of enterprises* stipulates that enterprises are not allowed to borrow short-term foreign loans for long-term purposes. However, in the remaining regulations, it is not clear which purposes are for short-term loans, and which purposes are for long-term loans.

In the new provisions of Article 17.1 of Circular 08, short-term foreign loans can only be made to serve (i) the fulfillment of short-term payment obligations and (ii) the restructuring of foreign debts.

This means that short-term foreign loans of enterprises must be made on the following grounds:

- Unpaid invoices;
- Contracts that have payment obligations within 01 year;
- Other documents to prove that the enterprise has payables within 01 year.

In addition, enterprises with capital requirements are allowed to borrow short-term loans to serve their professional activities.

It can be seen that the new regulations in Circular 08 have institutionalized short-term foreign borrowing, making commercial banks more confident in providing account services for these loans and helping businesses access these loans more easily.

2. The usage of unused foreign loans for termed deposits

Article 6.2 of Circular 08 stipulates that enterprises may use loan amounts that have been withdrawn but not yet used for registered purposes can be used to deposit in term savings accounts with terms not exceeding 01 month. However, this provision gives rise to the following problems:

- Under current regulations, termed deposits can only be made in VND. This means that enterprises can disburse the loan amount from the loan account to the payment account in VND and then deposit it into a term savings account. Therefore, except for some cases when the difference in balance is obvious, it is impossible to distinguish between the available capital of the enterprise and the borrowed capital, so the enterprise is effectively free to use this money to deposit into any term account;
- There is no provision for the renewal of term accounts based on borrowed funds. If a term savings account is automatically renewed, it can be used as collateral for domestic loans for other purposes.

From the above issues, it can be seen that regulations on depositing money into term savings accounts from unused loans need further guidance from SBV.

3. Streamlining regulations on registration of foreign loans in Vietnamese dong

Clause 4, Article 21, Circular 08 amending *Circular No. 12/2022/TT-NHNN on Guiding foreign exchange management for foreign loans and repayment of enterprises* has abolished and amended several provisions related to the competence of the SBV Governor in approving foreign loans in VND.

Accordingly, when foreign loans denominated in Vietnamese dong have met the conditions for borrowing under Article 10 of Circular 08, they need only comply with normal procedures for foreign loans and could be registered without the approval of the SBV Governor as compared with the old regulations.

THE END.