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Legal and Tax

# VIETNAM: NEW REGULATION FROM STATE BANK OF VIETNAM ON FOREIGN LOANS

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## VDB LOI IN VIETNAM

VDB Loi has been operating in Vietnam since **2013**. Our practice concentrates on the natural synergies that exist between legal and tax. We solve our clients' issues by knowing their business, their industry and seeing the broad picture of doing business in Vietnam.

A combination of Vietnamese and international experts in our team allows us to provide in-depth local law and tax advice that takes into account modern international standards and approaches, thus anticipating clients' expectations and helping them reach their goals in the most efficient manner.

Our advice is relied upon by international and development financial institutions for some of the region's largest ever financing transactions. Multinationals often choose us for multibillion dollar investment projects in a wide range of sectors.

We have particularly strong expertise in Energy and Infrastructure, Project Finance, Real Estate, TMT, and Tax. VDB Loi also provides ongoing support to its clients at all stages of their investments in Vietnam, from initial market entry, business set up, and obtaining regulatory approvals, to continued compliance with reporting and filing requirements.

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## INTRODUCTION

The State Bank of Vietnam (“**SBV**”) has recently released long-awaited new version of the regulations on non-government guaranteed cross-border foreign loans. The new Circular No. 08/2023/TT-NHNN (“**Circular 08/2023**”) scheduled to take effect on 15th August 2023, will replace the previous Circular No. 12/2014/TT-NHNN (“**Circular 12/2014**”) and aims to further regulate the purpose and use of foreign loans.

## KEY CHANGES AND IMPLICATIONS

The new circular introduces several important changes relevant to cross-border lending practices in Vietnam. Here are the key takeaways:

### 1. Loan Purpose

Since Circular 12/2014 did not differentiate between the purposes for short-term and mid to long-term foreign loans, it could be assumed that both types of loans could be used for all permissible purposes, including financing business plans, investment projects, and refinancing foreign debt.

However, with the introduction of Circular 08/2023, stricter controls have been implemented regarding the purposes for each type of loan. Accordingly, the using purpose of short-term loans are now strictly limited to paying short-term payables and restructuring foreign debt. In contrast, medium- to long-term foreign loans can be utilized for debt restructuring or financing licensed investment projects, specific business plans for projects directly undertaken by the borrower.

The regulations applied on the foreign loan purpose in Circular 08/2023 and Circular 12/2014 can be summarised as below:

Permitted purpose	Short term Loans		Mid to Long term Loans	
	Circular 12/2014	Circular 08/2023	Circular 12/2014	Circular 08/2023
Paying short-term payables	Not specifically mentioned	✓	Not specifically mentioned	✗
Restructuring Foreign Debts	✓	✓	✓	✓
Financing borrower’s licensed investment projects	✓	✗	✓	✓
Financing borrower’s business plans	✓	✗	✓	✓
Financing business plans of another company in which the borrower contributes capital	✓	✗	✓	✗

### 2. Borrowers’ Responsibilities

Both Circular 08/2023 and Circular 12/2014 requires the borrowers to prepare comprehensive foreign loan usage plans. However, the Circular 08/2023 introduces a specific requirement for including detailed information in these plans, which was not previously clearly defined.

Another important point of the new regulations is that credit institutions, if acting as borrowers, are now required to provide more detailed information in their business proposals. This includes disclosing information about the group(s) of customers expected to receive credit from foreign loans, anticipated lending interest rates, and expected loan terms, etc.

### 3. More details on loan limitations

Circular 08 not only imposes stricter regulations on loan purposes but also offers more detailed guidance on limitations regarding loan amounts. The regulation pertaining to the maximum permitted loan amount can be summarized as follows:

Purpose	Short term Loans		Mid to Long term Loans	
	Circular 08/2023	Circular 12/2014	Circular 08/2023	Circular 12/2014
Restructure foreign debts	Loan amount shall not exceed the amount of principal and the lending cost of the refinanced loan	No express provision	No express provision	Loan amount shall not exceed the amount of principal and the lending cost of the refinanced loan
Finance the borrower's licensed investment projects (if the project is subject to licensing approval)	N/A	No express provision	Loan amount shall not exceed total approved investment amount, as reduced by the equity contribution	Loan amount shall not exceed total approved investment amount, as reduced by the equity contribution
Finance the borrower's business plans or other projects	N/A	No express provision	Loan amount shall not exceed the lending amount as per the business plan	Loan amount shall not exceed the lending amount as per the business plan
Finance business plans of another company in which the borrower contributes capital	N/A	No express provision	N/A	Loan amount shall not exceed the contributed capital of the borrower

In relation to credit institutions, Circular 12/2014 mandate that the credit institution must adhere to the necessary financial ratios as required by specialized regulations of SBV. However, Circular 08/2023 introduces an additional condition for borrowing parties seeking short-term funds from foreign countries. This condition stipulates that they must satisfy the short-term borrowing limit from foreign countries, which is determined as of December 31 of the preceding year. The short-term borrowing limit from foreign countries is the maximum ratio of the total principal debt of short-term loans from foreign countries, calculated based on separate equity. The specific entities targeted by this limit are as follows: commercial banks are subject to a limit of 30%, while foreign bank branches and other credit institutions face a limit of 150%.

### 4. Execution of Loan agreement

Circular 08/2023 now expressly requires that disbursement of the loan shall not take place on the same date as signing of the loan agreement, except that:

- i. Short term loans; and
- ii. Loans arising as conversion of investment expenses into loan debt

can be disbursed on the same date with signing the agreement.

### 5. Which requirements were not added from the drafts

A few drafts of the regulations were published before the final version was issued.

The SBV has made the decision not to adopt several controversial restrictions proposed in earlier drafts. These include caps on borrowing costs, limitations on total foreign debt for general business activities, foreign exchange hedging requirements, and restrictions on using short-term foreign loans for securities trading, real estate acquisition, and project transfers.

### 6. Existing Loan Agreements

The Circular 08/2023 provides that existing loan agreements signed before the effective date can continue to be performed until their termination, in accordance with the Circular 12/2014 and relevant SBV registrations. However, any amendments to these agreements after the effective date must comply with the provisions of the Circular 08/2023.



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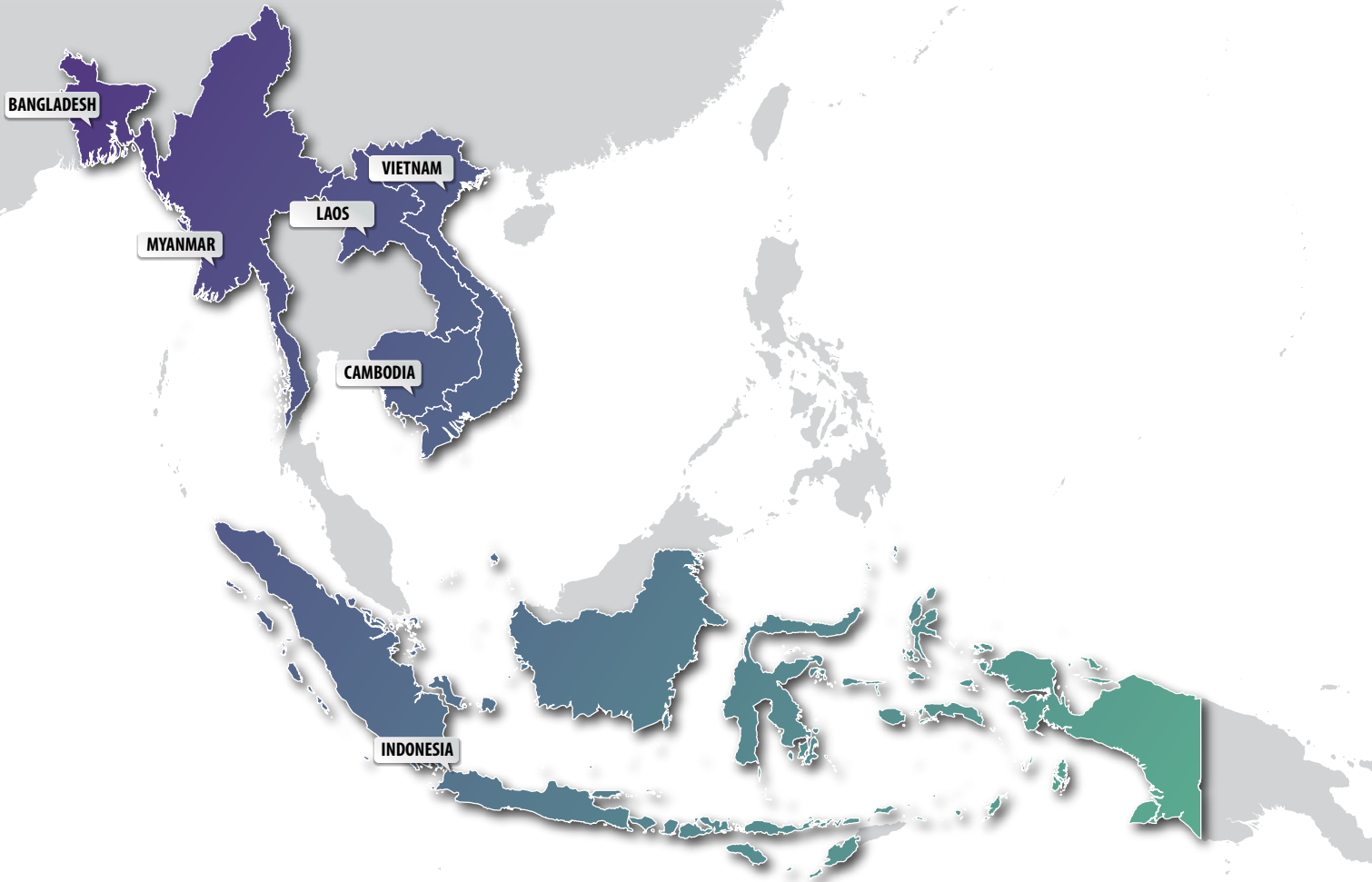
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