

# State Bank of Vietnam's New Circular on Foreign Loan Registration

**On 30 September 2022** - The State Bank of Vietnam (**SBV**) has issued Circular No. 12/2022/TT-NHNN, Guiding Foreign Exchange Control of Foreign Loans borrowed by Enterprises and Loan Repayment ("**Circular No. 12/22**"). The Circular No. 12/22 updates and replaces of the earlier Circular No. 03/2016/TT-NHNN dated 26 February 2016 on Foreign Exchange Control of Foreign Loans Borrowed by Enterprises and Loan Repayment ("**Circular No. 03/16**"), Circular No. 05/2016/TT-NHNN dated 15 April 2016 on Amendment to Some Articles of Circular No. 03/16, and Circular No. 05/2017/TT-NHNN dated 30 June 2016 on Amendment to Some Articles of Circular No. 03/16. Circular No. 12/22 will be coming into force on 15 November 2022.

Circular No. 12/22 is set to address the foreign loan registration requirements by, and registration procedures of SBV that bind the domestic enterprise-borrower. Circular No. 12/22 has also set out the new form of foreign loan registration as an annex ("**New Form**") which allows SBV seeks intricate details from the borrower during the loan registration.

Note that Circular No. 12/22 does not replace Circular No. 12/2014/TT-NHNN dated 31 March 2014 on Conditions for Enterprises to Borrow Non-Government Guaranteed Foreign Loans ("**Circular No. 12/14**"). Circular No. 12/14 will have an update and it is in drafting stage as SBV is contemplating the feedback from public and private sectors concerning its proposed stricter conditions on foreign loan approval. Once the update of Circular No. 12/14 has been issued by SBV, it will apply to all foreign loans of domestic borrowers alongside with Circular No. 12/22.

## Notable updates

The following are the notable updates of Circular No. 12/22.

Notable updates in Circular No. 12/22	Commentaries
“Investment project” has been defined in Circular No. 12/22 as the projects that are granted Investment Certificates, Investment Registration Certificates (IRC) or Decisions on approval of investment policies by a competent authority in accordance with the law on investment and regulations or applicable laws and regulations.	In Circular No. 12/14, the investment project shares the same meaning under the Law on Investment, which is comparably broader than the definition provided under Circular No. 12/22. This leads to the permitted purposes of obtaining the foreign loan narrowed.
The New Form has set out the examples of the purpose of the foreign loan as follow: (i) implementation of investment projects; (ii) increase the scale of business capital according to the loan use plan; (iii) restructuring of foreign debt.	The list of foreign loan purposes under the New Form may potentially replicate as the limited purposes of the foreign loan under the pending issuance of the update of Circular No.12/14.
Certain changes in the registered foreign loan are only required to file for a notification with SBV without the need to register for an amendment of foreign loan.	The update under Circular No. 12/22 provides a sound flexibility on interests or charges/fees payment plan updates by filing a notification on SBV’s website only.
The New Form requires the borrower to set out the security arrangement details such as type of security, type of collateral, securing party and specify terms of reference in the foreign loan agreement.	<p>The form of the foreign loan registration set out in the replaced Circular No. 03/16 (“<b>Old Form</b>”) does not require borrower to disclose the security arrangement details for the foreign loan registration.</p> <p>However, as to the best of our knowledge, the practice during the enforcing period of the Old Form required the security agreements be a part of the foreign loan registration dossiers.</p>
<p>Loan repayment is only permitted for the remittance made to the lender’s bank account in Vietnam Dong opened with a commercial bank or branch of foreign bank in Vietnam in event of, among others:</p> <ul style="list-style-type: none"> <li>• The loan is a short-term loan but becoming a mid-term loan, and its foreign loan registration is rejected by SBV.</li> <li>• The loan has an outstanding principal but SBV’s foreign loan registration confirmation letter is withdrawn due to borrower submitted fraudulent documents or false information on the foreign loan registration.</li> </ul> <p>The exchange rate from the foreign currency under the loan to Vietnam Dong shall be determined by Ministry of Finance or the bank of lender’s Vietnam Dong account as applicable from time to time.</p>	<p>Despite the borrower is permitted to remit the loan repayment amid of the foreign loan registration being rejected or the confirmation of such registration being withdrawn by SBV, limitation of remittance in Vietnam Dong bank account applied.</p> <p>This indicates that the foreign lender would need to transfer the loan repayment amount from its Vietnam Dong account to its foreign-lending account.</p> <p>Circular No. 12/22 has further deterred any foreign loan to domestic borrower in consideration of the potential currency loss of the lender.</p>

<p>Vietnamese banks that service foreign loans are now responsible to conduct throughout due diligence prior to providing any banking services not only to mid/long-term loan, but the short-term loan as well.</p> <p>In respect to short-term loans services, the Vietnamese banks are required to inspect, among others, the plan for use of foreign loans together with borrower's undertaking that the plan has been approved by competent authority and documents proving the borrower's compliance with the SBV's online reporting regime on short-term foreign loan borrowing and repayment.</p>	<p>The extent of responsibilities to the Vietnamese banks that service the short-term foreign loan may potentially delay the drawdown or repayment of loan that could lead to breach of loan agreement of the borrower and lender.</p> <p>The loan agreement should consider the drawback of the additional administrative procedure from the servicing Vietnamese bank.</p>
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### What will happen next?

The intention of SBV to tighten its grip over foreign loan among domestic borrowers has long been a spotlight of the banking and finance industry. Circular 12/22 alone is insufficient to assess extensiveness of SBV's reformation on foreign loan control. Thus, the much-awaited Circular 12/14 updates will most probably paint the picture in full. As the Circular 12/22 will be coming into force on 15 November 2022, it suggests that the update of Circular 12/14 may be issued in the mere future, otherwise, overlapping or contradicting between certain provisions of Circular 12/14 and Circular 12/22 may occur.

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