

KEY TAKEAWAYS OF CIRCULAR NO. 08/2023/TT-NHNN

REGULATING CONDITIONS ON OFFSHORE LOANS WITHOUT GOVERNMENT GUARANTEE

I. Background:

On June 30, 2023 the State Bank of Vietnam (“**SBV**”) issued Circular No. 08/2023/TT-NHNN (“**Circular 08/2023**”) to replace Circular No. 12/2014/TT-NHNN (“**Circular 12/2014**”) on regulating conditions on offshore loans without the government guarantee. Circular 08/2023 will take effect from August 15, 2023.

Circular 08/2023 introduces stricter control over the conditions on offshore borrowing without the government guarantee which is dissimilar to the last draft released for public consultation in 2022, from the interest rate, the borrowing cost cap to hedging requirements and/or non-current debt to equity ratio. In this post, we will set out some of the key takeaways of Circular 08/2023.

II. Significant changes of Circular 08/2023

No	Classifications		Old provisions	New Provisions and Comments
1.	New definition	Other projects		<p>For the first time, other projects are unquestionably allowed to take offshore loans by defining them as projects in general and those are not projects approved under investment certificates, investment registration certificates, or investment policy decisions.</p> <p>Specifically, the borrower is allowed to use the offshore loans for financing its “other project” if its utilization plan is legitimate and justifiable. However, this still remains untested and unclear in practice.</p>

2.	Principle of offshore borrowing	Borrowers and the offshore loans must satisfy the general requirements and additional requirements corresponding to each offshore loan	<p>Under the new provisions, borrowers shall take full responsibility for the lawful use of offshore loans in accordance with the Circular instead of merely satisfying the general requirements and additional requirements corresponding to each offshore loan.</p> <p>In case the loan has been drawn but has yet to be used for lawful offshore borrowing purposes, the borrowers may use the loan proceeds to deposit money at credit institutions, or foreign bank branches operating in Vietnam. The maximum term of each deposit must not be more than 01 month.</p>	
3.	Offshore loan agreement	Form	By written documents	By written documents or electronic data messages but must be in compliance with the law of Vietnam.
		Term	Except for credit institutions or branches of offshore banks with short-term loans, a written offshore loan agreement must be concluded by the time of loan disbursement.	<p>- Before the date of drawdown of offshore loans</p> <p>- On the drawdown date of offshore loan in the following cases:</p> <p>+ Offshore short-term loans provided that the loan disbursement is made after the parties execute the loan agreement.</p>

				+ Offshore loans arising from the conversion of pre-investment amounts of projects into offshore loans.
4.	Currencies of offshore loans	Circular 12/2014 set forth the authority of the Governor to consider and approve VND-denominated loans.		Circular 08/2023 removes regulation on other cases approved by the Governor of the State bank as a condition. Besides, a VND-denominated offshore loan is determined as a loan disbursed into an offshore loan account in VND and the debt liability of the VND-denominated offshore loan.
5.	Costs	Refinancing costs must not exceed the costs of the existing loans.		Offshore loan refinancing emerges with its definition and elaboration on the refinancing plan required for a new offshore loan. It is of note that the condition that the borrowing cost of the new loan must not exceed the cost of the existing one is left out, however, the reason behind this ease is not clear and the regulation is fresh, how the registries address it should further be taken into consideration.
6.	Refinancing and utilization plans	Previously, offshore-loan business plan means a business plan that proves the legitimate, reasonable purposes and the need for offshore loans, as well as the ability to repay		Instead of retaining the term of business plan and letting the borrowers devise the plans themselves, Circular 08/2023 accommodates the term of offshore loan utilization plan specified under Circular

			the debt of the borrower.	No. 12/2022/TT-NHNN and prescribes the compulsory contents of such plan. Moreover, Circular 08/2023 provides the essential points of the refinancing plan with a restrictive perspective indeed.
7.	Additional conditions for credit institutions, branches of foreign bank (CIs)	Loan purpose (applicable to medium and long-term offshore loans)	Earlier, the loan purpose was the general condition of offshore loans, so it is applicable to both CIs and non-CIs, the borrower is permitted to use its offshore loans to fund investment projects or business/production plans of entities in which it has directly invested.	The purpose of borrowing offshore loan must satisfy plans on using offshore loans and refinancing.
		Limits on short-term offshore loans		Borrowers may only borrow short-term offshore loans in case the limit on short-term offshore loans is met as at December 31 of the year prior to the drawdown of the offshore loans. Limit on short-term offshore loans is the maximum ratio of the total principal balance of short-term offshore loans to the separate equity capital of a bank. The ratios are applicable to commercial banks (30%) and branches of foreign banks, other credit institutions (150%).

8.	Additional conditions for non-credit institutions, branches of foreign bank (non-CIs)	Loan purpose	<ul style="list-style-type: none"> - Implementing production, business plans or investment projects using offshore loans of the borrower or enterprise in which the borrower invest directly. - Implementing the offshore debts incurred by the borrower without increasing the loan expense. 	<ul style="list-style-type: none"> - Short-term offshore loans: <ul style="list-style-type: none"> + Refinancing offshore loans and repaying other short-term payables (excluding the principal of onshore loan) of the borrower. + The borrower who must ensure financial safety criteria according to specialized laws may use short-term offshore loans to serve its licensed activities with a maximum capital use term of 12 months from the drawdown of offshore loans. - Medium and long-term offshore loans: <ul style="list-style-type: none"> + Implementing investment projects of the borrower. + Implementing production, business plans and other projects of the borrower. + Refinancing the borrower's offshore loans.
		Limits on medium - long- term offshore loans	Loans for the implementation of investment projects: <ul style="list-style-type: none"> + The balance of medium and long-term loans (including domestic loan balances) of the borrower serving such projects 	Loans to implement investment projects: <ul style="list-style-type: none"> + The principal balance of onshore and offshore medium and long-term loans of the borrower (including short-term loans extended and short-term overdue into medium and long-term)

			<p>must not exceed the difference between the total investment capital and contributed capital recorded in the investment certificate.</p> <p>Loans for implementation of production and business plan:</p> <ul style="list-style-type: none"> + The balance of medium- and long-term loans (including onshore loan balances) of the borrower must not exceed the total loan demand in production and business plans or investment projects approved by competent authorities in accordance with the laws. 	<p>serving the investment project must not exceed the borrowing limit of the investment project.</p> <p>Loans for the implementation of production, business plans or other projects:</p> <ul style="list-style-type: none"> + The balance of onshore and offshore medium and long-term loans of the Borrower (including short-term loans extended and short-term overdue into medium and long-term) for this purpose shall not exceed the total loan demand in the offshore loan use plan approved by a competent authority. - Loans for refinancing offshore loan: <ul style="list-style-type: none"> + The maximum loan amount does not exceed the total value of the principal balance, the amount of interest, outstanding fees of the existing offshore debt and the fee of the new loan determined at the time of refinancing. + In case the new offshore loan is a medium and long-term loan, within 05 working days from the drawdown date of the new loan, the Borrower must repay the existing offshore loan to comply with the regulatory limits
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9.	Exchange rate and loan room			The borrowers are obliged to use the rate announced by the Ministry of Finance (the State Treasury) which is applied at the time of signing loan agreements or amendment agreements, preparing for their loan utilization plans or the refinancing plans to calculate the loan room.