



DECEMBER 2023

LEGAL UPDATE

NEW REGULATIONS ON
STATE INVESTMENT CREDIT



On 7 November 2023, the Government issued Decree No. 78/2023/ND-CP (“**Decree 78**”) amending and supplementing Decree No. 32/2017/ND-CP dated 31 March 2017 (“**Decree 32**”) on State investment credit. Accordingly, many important articles related to state investment loans such as credit lending conditions, cases of credit overextensions, and loan interest rates... have been adjusted by the Government, these changes are expected to make it more convenient and provide more clarity for businesses, agencies, organizations, and individuals when utilizing state investment credit in the coming time.

Decree 78 takes effect from 22 December 2023.

This update will highlight some significant changes

1. Conditions for State investment loans

Decree 78 has amended clause 3, clause 4, clause 6, and annulled clause 7 and clause 8 of Article 6 Decree 32. Under Decree 78, clients must meet the following conditions to get a state investment credit loan:

- Having investment projects on the list of projects eligible for receiving state investment loans;
- Having full legal capacity and having carried out the prescribed investment procedures;
- Having an investment project that needs a loan has been appraised and assessed by Vietnam Development Bank (“VDB”) as being efficient; and financially capable of repaying the loan at the time VDB considers deciding to grant the loan;
- Equity capital for the project execution accounts for at least 20% of the total investment capital for the project (exclusive of working capital). The specific amount that shall be considered and decided by VDB within the financial capacity of the investor and debt payment plan of the project.
- Providing loan security under Decree 78 and relevant regulation;
- Clients have no bad debt owed to any credit institutions or foreign bank branches at the time the Vietnam Development Bank considers deciding to grant loans.

The adjustment of the content in Article 6 of Decree 32 has shown the lending conditions in a more detailed and reasonable way, and at the same time annulled the condition that clients must have purchased property insurance from an insurance business for the collateral property, and the condition

that the borrower must observe the regulations on accounting, annual financial statements, and audit of annual financial statements. The changes in Decree 78 will make it easier for borrowers to obtain investment state credit.

2. Credit overextensions

Decree 32 does not have regulations on cases where credit exceeds the limit, however, this regulation has been added in Decree 78, thereby helping businesses borrow capital to invest in production and business key projects that are more effective and contribute to the country's economic development. Specifically, Clause 5, Article 1 of Decree 78 stipulates that clients and projects requesting VDB for credit must meet the following conditions:

- The client fully meets conditions for credit extension according to the lending conditions specified in Decree 78, the Law on Credit Institutions, and its guiding documents; has not incurred any bad debt for 03 years preceding the year of submission of their application for credit overextensions; their debt is not more than three times the equity written on their latest quarterly or annual financial statement audited before the date of submission of the application for credit overextensions;
- The clients need capital to execute a project of socio-economic, national defense, or security significance or urgent project to perform a socio-economic development task, national defense or security task or meet the basic human needs in the fields and sectors given priority under a Resolution of National Assembly or Government or direction of the Prime Minister from time to time or to execute any program or project whose investment guidelines are decided by the National Assembly or Prime Minister.

Besides, to undertake the task of socio-economic development, national defense, and security, if the combined lending limit of VDB and other credit institutions has failed to meet the needs of a single client, VDB may prepare an application for credit overextensions and submit it to the Ministry of Finance, which will make a report to the Prime Minister for consideration and decision. Accordingly, VDB shall, upon applying for credit overextension, meet the following conditions specified in Article 6 of Decree 78:

- VDB has cooperated with other credit institutions in granting loans to a project offered credit overextensions while the need for a loan of a single client exceeds the combined lending limit of VDB and other credit institutions; or has released the combined lending invitation letter to at least 05 other credit institutions, posted it on its website and mass media for at least 30 working days but no credit institutions participate in the combined lending;
- At the time of applying for credit overextension, VDB shall meet the requirements for prudential ratios according to regulations of law applicable to VDB;
- The limit on the total amount of outstanding debts incurred from the credit extension is not more than four times VDB's own capital and the remaining balance of bonds guaranteed by the Government for a term of 05 years or more when calculating the credit overextensions in request.

3. Loan interest rates at Vietnam Development Bank

Under Decree 78, regulations on loan interest rates have been significantly adjusted compared to the regulations in Decree 32. Specifically, the method of determining loan interest rates has been changed through the Government's approval of allowing the VDB to decide the state investment credit interest rate on the principle that it is sufficient to offset the cost of capital raising, operating costs, and the cost of setting up provisions for loan losses under credit contracts from 22 December 2023, but is not lower than 85% of the average lending interest rate of domestic commercial banks in the same period according to data provided in advance by the State Bank of Vietnam before January 25 every year.

In addition, regulations on interest rate announcements have also been changed. In Decree 32, the interest rate is determined and announced periodically by the VDB on the last day of the quarter. On the other hand, Decree 78 stipulates that the State Bank of Vietnam provides a document specifying average loan interest rates of domestic commercial banks in the same period, then within 3 days the Ministry of Finance provides the VDB such documents and the VDB decides the interest rate no later than 3 working days after receiving the document from the Ministry of Finance.

4. Regulations on loan limits and loan terms

Decree 78 is no longer too restrictive on loan limits and loan terms but has expanded the legal framework

more reasonably for clients and projects that need loans.

Specifically, regarding loan limit, Decree 78 still maintains the maximum state investment loan for a project equal to 70% of the total investment capital of such project (excluding liquid/working capital). However, clause 2, Article 7 of Decree 32 has been amended, accordingly, the ratio of VDB's total amount of outstanding debts incurred from the credit extension (exclusive of the loans of which the risk is not incurred by VDB) to its own capital and remaining balance of bonds guaranteed by the Government for a term of 05 years or more must not exceed 15% for a single client, 25% for a single client and his/her related person, except in special cases, to undertake the task of socio-economic development, national defense and security, but the combined lending limit of VDB and other credit institutions has failed to meet the need of a single client. For the above special cases, Decree 78 also has additional regulations related to granting credit overextensions.

Regarding the loan term, previously in Decree 32, the Government stipulated that the loan term was determined to be no more than 12 years, and for group A investment projects, the maximum loan term was 15 years. After Decree 78 was issued, the above regulation was annulled, instead the VDB shall rely on project assessment results, production and business characteristics, capital recovery ability of each project, and the client's solvency to decide the loan term for each project.

5. Limit on total period of debt extension

In Decree 32, the total period of debt extension for a project borrowing state investment loans shall be decided by the VDB but must not exceed one-third of the maximum loan term. However, the regulation on the maximum loan term in Decree 32 has been annulled, and the regulation on the total period of debt extension is also annulled in Decree 78. Thus, in the latest regulation, clients who need loans are no longer limited in terms of debt extension and have more time to repay debt.

Regulations on the total period of debt extension have been replaced by clause 10, Article 1 of Decree 78, specifically, the VDB is allowed to decide on restructuring the debt repayment period based on the clients' request and assessment results of the VDB on clients' ability to repay debt.

At the same time, the VDB is also allowed to consider and decide on the exemption or reduction of the client's loan interest based on the financial situation of the VDB and the customer's ability to repay debt.

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