



## LEGAL UPDATE

### NOTABLE PROPOSALS IN THE DRAFT CIRCULAR AMENDING CIRCULAR NO. 12/2022/TT-NHNN ON FOREIGN BORROWING AND DEBT REPAYMENT

#### 1. Background

The State Bank of Vietnam (“SBV”) has released a draft circular (“**Draft Circular**”) amending Circular No. 12/2022/TT-NHNN dated 30 September 2022 on guidelines for foreign exchange administration in respect of the foreign borrowing and foreign debt repayment of enterprises (“**Circular 12**”).

The Draft Circular aims to simplify and modernize administrative procedures pertaining to foreign borrowing and debt repayment and to address several outstanding issues under Circular 12.

This Legal Update highlights the most notable and substantive amendments, reflecting key policies and legal developments introduced by the Draft Circular.

#### 2. Innovating Administrative Procedures

The Draft Circular introduces several notable procedural reforms as follows:

##### i. Abolition of the access-account requirement for SBV’s electronic portal

The Draft Circular proposes eliminating the requirement for enterprises to obtain an access account for the SBV’s electronic portal used for managing offshore borrowing and repayment activities. Under this proposal, enterprises would instead use their organizational identification on the VNeID application to register offshore loans, make amendments, and report implementation status. Accordingly, procedures relating to access-account registration - covering both new registration and change registration - on the SBV’s electronic portal would no longer be required.

##### ii. Guidance on online submission of dossiers

The Draft Circular provides comprehensive instructions on submitting dossiers online via the National Public Service Portal and the SBV Public Service Portal, thereby ensuring consistency and formalizing the online submission process in practice.

##### iii. Reduction of required dossier components

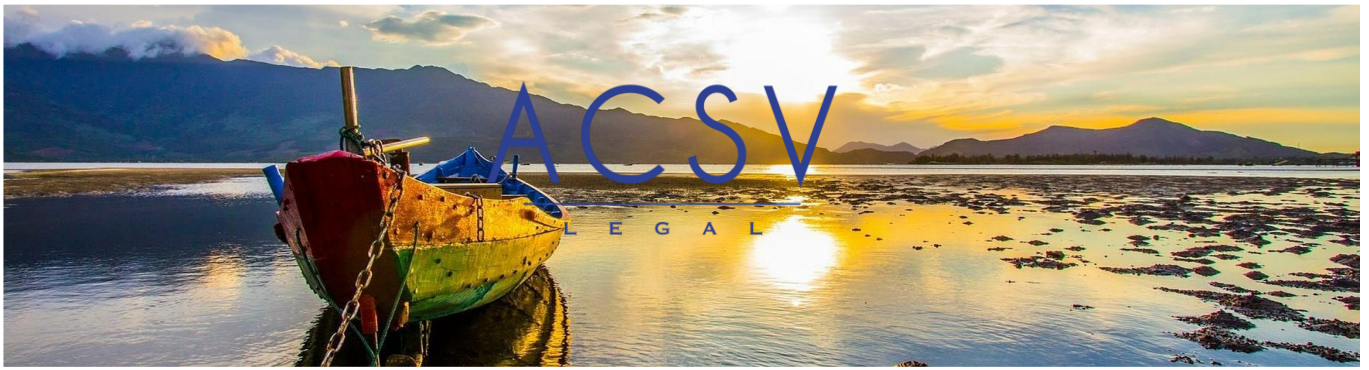
Certain documents are removed from the required components for both new offshore loan registration and amendments (e.g., legal incorporation documents of the borrower, guarantee commitment documents, and compliance reports). Notably, the Draft Circular allows borrowers to submit a short-form loan agreement, provided that it sufficiently reflects the key terms of the official loan agreement - such as the loan amount, disbursement period, loan tenor, and interest rate - and includes references to the specific provisions of the official agreement.

By digitalizing the submission process and reducing the required dossier components, administrative procedures are simplified. As a result, the processing time for registration dossiers and amendments to offshore loans is shortened from fifteen (15) working days to ten (10) working days. This reduction not only streamlines compliance but also creates more favorable conditions for enterprises.

#### 3. Supplementing Cases Exempt from Registration Obligations

Under the Draft Circular, short-term loans without an extension agreement but with outstanding principal at the one (01) year mark from the first disbursement date shall not be subject to registration with the SBV if: (i) the borrower repays the outstanding principal within thirty (30) days from such one-year maturity date, or (ii) the lender fully releases the borrower from all debt obligations.

This amendment broadens the exemption scope under Circular 12 by expressly covering debt write-offs, thereby aligning with the practical treatment of intra-group debt transactions and easing compliance for enterprises where the debt obligation no longer exists. It should be noted, however, that the exemption applies only when the debt obligation is entirely written off, and such write-off must be substantiated with adequate documentary evidence.



Furthermore, the obligation to register changes to the offshore loan repayment plan is also removed in cases where:

- i. the lender writes off such loan; and/or
- ii. the guarantor performs its guaranteed obligations; and/or
- iii. the related parties initiate the disposal of collateral.

In these circumstances, only a reduction of the outstanding foreign debt balance is recorded for reporting purposes.

#### **4. Refining the Regulations on Offshore Loan Receipt and Repayment Transactions**

##### **4.1. Supplementing the permitted payments from the Foreign Loan Borrowing and Repayment Account ("FBRA")**

For FBRA's denominated in foreign currency, the Draft Circular expressly permits the remittance of funds from the FBRA to guarantors - whether non-residents or residents authorized to receive foreign currency - to repay outstanding principal, interest, and associated fees. This aligns with the current regulatory practice, under which foreign-loan-related payments, including those arising from guarantee obligations, are required to be executed via the FBRA to ensure proper oversight, compliance, and consistent management of cross-border debt flows.

With respect to FBRA's in Vietnamese dong, the Draft Circular supplements the list of permitted expenditures, including:

- i. payment of principal, interest and applicable fees arising from the debt receivable between the guarantor and the borrower; and
- ii. payment of outstanding principal to the lender in case where the offshore loan is not eligible for registration or where the registration confirmation is terminated due to fraudulent information or documents.

These amendments provide greater clarity and flexibility for enterprises, explicitly permitting the payment of interest, fees, and principal from FBRA's in Vietnamese dong, even for loans not eligible for registration or invalidated due to fraudulent information.

##### **4.2. Permitting repayment of outstanding amounts through early bond repurchase**

The Draft Circular allows the borrower to repay an offshore loan through an intermediary organization in cases where the borrower repays the loan via early bond repurchase, provided that the transaction complies with (i) the terms and conditions of the bond and (ii) the regulations of the market where the bond is listed and traded. However, the Draft Circular does not define what constitutes an "intermediary organization" in the context of state management. Accordingly, clearer instructions may be required in practice once this regulation is formalized.

#### **5. Conclusion**

As of today, the SBV has not disclosed a specific timeline for formalizing the Draft Circular. However, this legal document reflects the SBV's efforts to simplify administrative procedures related to offshore loans, eliminate redundant procedures, and at the same time, maintain a sufficiently stringent legal framework under Circular 12. We will continue to monitor the developments and provide timely updates once the relevant legislation comes into effect.

#### **For more information, please contact:**

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