**ESSENTIAL NOTES FOR FOREIGN LOANS**

Currently, because of the Covid-19 pandemic, many enterprises are in a financial predicament. This leads to the increase in enterprises' demand to borrow from their foreign parent companies and foreign partners in order to ensure that they would be able to operate during this epidemic period. On another issue, it is also due to Covid-19 that a lot of enterprises that had short-term loans of less than 1 year from foreign companies/organizations are unable to pay their debts and decided to extend the loan for a few more years.

For these foreign loans, the enterprises should pay attention to the following issues to avoid being penalized:

1. **Foreign loans subject to registration with the State Bank**
2. Foreign medium and long-term loans.
3. Short-term loans are extended for which the total term of the loan is over 01 (one) year.
4. Short-term loans without any renewal contract but remain the outstanding principal owed on the date which the duration from the first fund withdrawal is a full 01 (one) calendar year, except to the extent that Borrowers have already fulfilled their debt obligations within a permitted duration of 10 (ten) days after the date which the duration from the first fund withdrawal is a full 01 (one) calendar year.

Thus, in the foreign loan process, depending on the term of each loan, the Borrowing Enterprises must register with the State Bank before taking out foreign loans.

In case the Borrower fails to register the loan with the State Bank, it may be fined from VND 20 million to VND 30 million.

1. **Foreign loan and foreign loan repayment account**

* Foreign loan and foreign loan repayment account is the Borrower's payment account opened at the banks providing the service of loan account to withdraw, repay foreign loans and other money transfer transactions related to activities of borrowing, paying foreign debts, and securing foreign loans.
* If the borrower is a directly foreign-invested enterprise:
* For foreign medium and long-term loans: 2. Foreign loan and foreign loan repayment account is a direct investment capital account. In addition to the monetary collection or spending pertaining to activities of borrowing, paying foreign debts, the borrower is a directly foreign-invested enterprise use the direct investment capital account (as foreign loan and foreign loan repayment account) for other monetary collection or spending relating to foreign direct investment in Vietnam in accordance with current laws and regulations on foreign exchange administration in respect of foreign direct investment in Vietnam.

* For foreign short-term loans: Borrower could use the direct investment capital account or other foreign loan and foreign loan repayment accounts (not the direct investment capital account) to perform the monetary collection or spending pertaining to foreign loans.

Each short-term foreign loan can only be made through 01 (one) bank providing the service of loan account. The borrower can use 01 (one) account for 01 (one) or more short-term foreign loans.

* Borrowers who are not directly foreign-invested enterprises must open foreign loan and foreign loan repayment accounts at the bank providing the service of loan account to perform money transfer transactions related to foreign loans (withdrawing, paying the principal, and paying interest).

Each foreign loan can only be made through 01 (one) the bank providing the service of loan account. The borrower can use 01 (one) account for 01 (one) or more foreign loans.

* The failure of the Borrower to borrow and pay foreign debts by the correct loan account in accordance with the law may be fined from VND 30 million to VND 50 million.

1. **Loan purpose:**

Borrowers are allowed to borrow from foreign sources for the following purposes:

1. Conduct production and business plans, investment projects using foreign loans of the following subjects:

a) Borrowers;

b) Enterprises in which the Borrower contributes investment capital directly (only applicable to medium and long-term foreign loans). In this case, the Borrower's loan limit on the total loan turnover for that production and business plan or investment project must not exceed the Borrower's capital contribution ratio in this enterprise.

Production and business plans, investment projects using foreign loans specified here must be approved by competent authorities in accordance with Vietnamese laws and in accordance with the scope of the establishment license, enterprise registration certificate, business registration certificate, investment registration certificate, cooperative or cooperative federation registration certificate of the Borrower or of enterprises to which the Borrower contributes investment capital directly.

1. Restructure foreign debts of the borrower without increasing borrowing costs.
2. **Periodic reports:**

**The Borrowers must make quarterly reports,** no later than the 5th day of the next month after the reporting period. Borrowers may be subject to administrative fines if they commit the following acts:

* A monetary fine ranging from VND 5 million to VND 10 million may be imposed if reports are not submitted on time as prescribed by law;

* A monetary fine ranging from VND 10 million to VND 15 million shall be imposed if insufficient reports or reports with insufficient contents are submitted as prescribed by law;

* A monetary fine ranging from VND 30 million to VND 40 million shall be imposed if reports are dishonestly made.

1. **Other notes:**

* In case the Borrower has an investment project using foreign loans and has been granted an investment registration certificate, the balance of medium and long-term loans (including domestic loans) of the Borrower to serve that project must **not exceed the difference between the total investment capital and the contributed capital recorded in the investment registration certificate**.

This means that, for the Borrowers who had an investment registration certificate, the borrowed capital amount does not exceed the mobilized capital amount registered on the investment registration certificate. In this case, if the Borrowers desire to borrow a larger amount, it must adjust the mobilized capital equivalent to the expected loan amount. So that, the State bank has a basis to approve the foreign loan.

* In case the Borrower borrows foreign loans to implement production and business plans, investment projects which are not granted investment registration certificates, the balance of medium and long-term loans (including domestic loans) of Borrower **must not exceed the amount for the total demand of the production and business plan, the investment project** approved by the competent authority in accordance with the law.

In summary, when borrowing foreign loans, enterprises should pay special attention to the above issues. Accordingly, the foreign loan process can take place smoothly and not be subject to fines in this financial predicament.