**CIRCULAR 08 IS EFFECTIVE, ARE FOREIGN LOANS STILL EASY TO IMPLEMENT?**

**Abstract:**

On June 30, 2023, the Government issued Circular 08/2023/TT-NHNN (“**Circular 08**”), replacing Circular 12/2014/TT-NHNN, regulating conditions for foreign loans not guaranteed by the government. Accordingly, foreign loans will be tightened, ensuring the management of the country's finances and treasury.

Circular 08/2023/TT-NHNN officially takes effect from August 15, 2023 and has a number of changes compared to previous legal documents. In this article, we will mention new points related to the limit on the purpose of foreign loans in cases where the borrower is not a credit institution or foreign bank branch (enterprise).

1. **For short-term loans**

According to the provisions of Circular 08, the enterprises when borrowing foreign capital for short-term loans need to prove their borrowing purpose, in which short-term foreign loans are only allowed to “*pay short-term debts payable*”. According to Circular 200/2014/TT-BTC guiding corporate accounting regimes, short-term debt is understood as the total value of the debts payable with payment term of within 12 months or less than one normal operating, such as loans and short-term finance lease liabilities or supplier payables, taxes and payables to the State and employees, payable costs, inter-company payables, unearned revenue, provisions payable... at the time of reporting.

The regulations of the Circular 08 are considered as a limited corridor, facilitating financial management for state authority when approached with the "positive approach" method instead of "negative approach" as in the regulations of Circular 12/2014/TT-NHNN.

Previously, Circular 12/2014/TT-NHNN only stipulated that short-term foreign loans could not be used for medium and long-term capital purposes, therefore, short-term foreign loans could be entirely for the purpose of paying long-term debts. The permission and the ease of capital mobilization procedures, however, result in a high growth rate in short-term loan flows, easily causing virtual assets and capital for enterprises,[[1]](#footnote-1) which end up victimizing financial investment investors in the "quagmire" of the stock bubble.

In addition, when borrowing foreign capital, the enterprises also need to provide additional documents on the loan use plan, clearly stating information, purpose of the loan, need to use foreign loan capital, etc. This is the requirement that has never been applied for short-term loans in Circular 12/2014/TT-NHNN as well as Circular 12/2022/TT-NHNN guidance on foreign exchange administration in respect of enterprise’s foreign borrowing and foreign debt repayment of enterprises. Hence, it is no longer just a regulation, but now the plan for using loan capital has detailed instructions for its content, showing that the state bank is determined to tighten the criteria applied to short-term foreign loans.

1. **For medium and long-term loans** :

The most notable point of medium and long-term loans is the expansion of the purpose of using these loans not only to serve investment projects that have been granted investment registration certificates but also for "other projects". In which,

* **An investment project** is "*a collection of proposals for the expenditure of mid-term or long-term capital to carry out investment activities in a particular administrative division over a certain period of time.*"[[2]](#footnote-2) or “*a project for which an investment certificate, investment registration certificate or written approval for investment guidelines is granted by a competent authority as prescribed by the investment law and other relevant laws.* ”[[3]](#footnote-3)
* **Other projects** are projects that do not fall under the investment projects as prescribed above.[[4]](#footnote-4)

Accordingly, with the phrase of "other projects", lawmakers continue to "empty" the regulations governing whether foreign loans can be approved for capital investment activities, while indirectly allowing the State Banks to have certain rights to consider allowing the use of loan capital for capital investment (M&A), specifically to pay for the purchase or transfer of capital contributions in a limited liability company or shares in an unlisted joint stock company. This is also partly compatible in the situation that domestic loans for the same purpose are no longer limited with the provisions in Circular 10/2023/TT-NHNN amending Circular 06/2023/TT-NHNN regulations on abolishing restrictions on borrowing capital for capital investment. Thanks to that, it creates conditions for enterprises to access available capital, support M&A activities, and improve supply to the market.

1. **Tighten regulations on short-term foreign loans, loosen medium and long-term foreign loans**

In fact, short, medium and long-term foreign loan flows are accounting for a high proportion in the stock and real estate markets, accounting for about 70-80% of the economy's total self-borrowed and self-repaid foreign loan.[[5]](#footnote-5) Therefore, it is completely reasonable that lawmakers are increasingly tightening regulations on short-term foreign loans, but at the same time expanding medium and long-term loans (on loans for capital investment). There are still many difficulties in our country's economy, and tightening all foreign loans will have a significant impact on the production and business activities of the enterprises, so we need to keep and/or expand medium- and long-term loans to support businesses, as well as create conditions for economic growth. Meanwhile, short-term foreign loans are not guaranteed by any procedure, while medium- and long-term loans must be approved through loan registration with the state bank. Therefore, it is still necessary to tighten regulations requiring state agencies to inspect and control short-term loan capital.

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1. <https://plo.vn/han-che-vay-ngan-han-nuoc-ngoai-cua-cac-ong-lon-post680745.html>. [↑](#footnote-ref-1)
2. Article 3.4 Law on Investment 2020. [↑](#footnote-ref-2)
3. Article 3.3 Circular 08/2023/TT-NHNN. [↑](#footnote-ref-3)
4. Article 3.4 Circular 08/2023/TT-NHNN. [↑](#footnote-ref-4)
5. <https://vneconomy.vn/ngan-hang-nha-nuoc-lap-rao-ngan-von-vay-nuoc-ngoai-ngan-han-do-vao-chung-khoan-bat-dong-san.htm> [↑](#footnote-ref-5)