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Newsflash



In this newsflash, Grant Thornton (Vietnam) would like to update some changes in procedures regarding the initial registration and registration for changes applicable to enterprises' foreign loans, which are not guaranteed by the Government.

On 15 September 2014, the State Bank of Vietnam ("SBV") issued Circular No. 25/2014/TT-NHNN providing guidance on procedures for the initial registration and registration for changes in enterprises' foreign loans, which are not covered by guarantees of the Government.

Circular No. 25/2014/TT-NHNN takes effect from 1 November 2014, and abolishes Article 1 of Circular No. 25/2011/TT-NHNN dated 31 August 2011, Chapter I, and Section I of Chapter IV of Circular No. 09/2004/TT-NHNN dated 21 December 2004.

The foreign loans of the borrower, which have been implemented before the effective date of this Circular, shall continue to be implemented according to the written confirmation of initial registration, registration for changes (if any) of the SBV.

Where there are changes with regards to the Borrower's foreign loans after the effective date of this Circular, the Borrower would have to register for such changes pursuant to provisions set out in this Circular.

Attention should be made to the following provisions of Circular No. 25/2014/TT-NHNN with effect from 1 November 2014:

1. Borrowers subject to the scope of application of this Circular include:

- enterprises
- cooperatives, Cooperative Unions
- credit institutions (excluding state owned commercial banks)
- branches of foreign banks, which are established and operating in Vietnam.

2. Foreign loans subject to registration requirements with the SBV include:

- medium and long-term foreign loans
- extended short-term foreign loans, for which the total term is more than 01 year
- short-term foreign loans, for which there are no extension contracts, but remain outstanding as at 1 year after the first disbursement date, except where the Borrower completes the repayment within 10 days after 1 year from the first disbursement date.

It should be noted that loans associated with **Import Contracts with deferred payment terms and Finance lease Contracts** with the same payment terms as above, are also subject to registration requirements with the SBV.

3. Deadline for initial registration and registration for changes in foreign loans with the SBV

Initial registration

Borrowers are obliged to carry out the registration procedures with the SBV **within 30 days** from:

- The date of signing the medium, long-term foreign loan agreements, or the date of signing the guarantee for the guaranteed loans, or the date of signing disbursement agreements where there have been signed frame agreements prior to the disbursement.
- Date of signing agreements extending short-term foreign loans, turning them into medium, long-term loans.
- End of year one, counting from the first disbursement date of unextended short-term foreign loans, but remain outstanding as at the end of 01 year after the first disbursement date.

With regards to loans associated with Import Contracts with deferred payment terms and Finance lease Contracts, the customs clearance date is the disbursement date that is subject to the above registration requirements.

Registration for changes

With regards to the registered foreign loans, the Borrower must register the changes with the SBV **within 30 days** from the date of signing the amendment agreement **and** before the amended contents take effect, **or** before the changes take effect where such changes do not require amendment agreements and are in accordance with the foreign loan agreements.

4. Application dossier for registering the foreign loans with the SBV

Circular No. 25/2014 / TT-NHNN provides the list of required documents for the registration of the foreign loans with the SBV.

Notably, apart from the documents which have been referred to in previous regulations, the SBV

requests enterprises to provide additional documents, such as:

- documents proving the borrowing purpose (such as production and business plan, debt restructuring schemes, etc.);
- reports on the status of complying with the SBV's regulations on safety ratios for banking operations as at the nearest month-end prior to the foreign loan agreements' signing dates;
- written confirmation from credit institutions, branches of foreign bank where the Borrower carries out the disbursement and repayment of the foreign loans;
- a written explanation on the specific circumstances of the Enterprise.

This Circular does not provide templates for documents proving the borrowing purpose, explanation documents, etc. Accordingly, Enterprises must consider their specific circumstances for preparing appropriate explanation to the SBV when submitting the foreign loan registration application.

5. Periodic compliance reporting to the SBV

- On a quarterly basis, within **5 days from the end of the reporting quarter**, the Borrower is required to report the implementation status of short, medium and long-term foreign loans, which are not covered by the Government's guarantees, to the SBV's branches at provinces, cities where the Borrower's head offices are located.
- In ad-hoc cases or where necessary, the SBV might request for reports from the Borrowers, commercial banks providing banking account services.

6. Cases where the Borrower commits administrative violation in the areas of foreign currency controls, foreign loan and repayment management

Circular No. 25/2014/TT-NHNN provides a distinctive provision on this issue, according to which, **where the SBV detects that the**

Borrower has committed administrative violations in the areas of foreign exchange controls, foreign borrowing and repayment management (including non-compliance with reporting requirements), **the applications for foreign loan initial registration, registration for changes in foreign loans would only be considered by the SBV upon the completion of treatment measures for such violation.**

In general, conducting treatment measures for administrative violations in the areas of foreign exchange controls, foreign borrowing and repayment management is time- consuming. Accordingly, Enterprises are placed in a passive position in waiting for the written confirmation from the SBV regarding the submitted application for initial registration, registration for changes in foreign loans.

Consequently, the credit institutions and branches of foreign banks where the Borrower performs the disbursement and repayment would not be able to perform the disbursement until there is a written confirmation from the SBV due to such administrative violation, which would in turn affect the business activities the enterprises.

Grant Thornton (Vietnam) could provide the following support:

- (1) Reviewing the compliance status with regards to regulations concerning the enterprises' foreign loans, based on which providing advice on potential impact and corresponding solution on areas of foreign currency controls, foreign borrowing and repayment, taxation and transfer pricing regarding the related party transactions.
- (2) Assistance in preparing the foreign loan Agreements, Agreements extending short-term foreign loans into medium, long-term loans, or Disbursement Agreements, attached with corresponding Frame Agreements.
- (3) Preparation of documents proving the borrowing purposes, explanation memo applicable to the Enterprises' specific situation.
- (4) Supporting Enterprises to work with the SBV for completing the consideration process where there are administrative violations in the areas of foreign exchange controls, foreign borrowing and repayment management.
- (5) Preparation of quarterly compliance reports on the implementation status of the enterprises' short, medium and long- term foreign loans.
- (6) Supporting the Enterprises during the process of SBV's inspection, audit on the status of complying with regulations on foreign exchange controls, foreign borrowing and repayment management.

Should you wish to explore the above changes further, and assess their impact on your specific business circumstances, please contact the professional advisors of Grant Thornton (Vietnam) for detailed consultation.

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