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A scenic aerial view of Halong Bay in Vietnam at sunset. The sky is a vibrant mix of orange, yellow, and red, with the sun low on the horizon. The water is calm, reflecting the warm colors of the sky. Numerous traditional wooden boats with multiple decks and masts are scattered across the bay. In the background, dark, jagged limestone karsts rise from the water, creating a dramatic landscape.

ASIA COUNSEL UPDATE

NEW CIRCULAR ON OFFSHORE LOANS

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On 30 June 2023, the State Bank of Vietnam ('**SBV**') issued Circular No. 08/2023/TT-NHNN ('**Circular 08**') on conditions for offshore loans without government guarantee in replacement of the preceding Circular No. 12/2014/TT-NHNN ('**Circular 12**'). Circular 08 took effect from 15 August 2023. This note focuses on the key changes affecting offshore loan to borrowers that are non-credit institutions.

Permitted purposes for short-term offshore loan

Circular 08 regulates the following specific permitted purposes for short-term offshore loans:

- (i) Payment of short-term liabilities in cash (principal of onshore loans excluded) of the borrower. Short-term liabilities are determined in accordance with Vietnam accounting system; or
- (ii) Refinancing of the borrower's existing offshore loan.

Under Circular 12, short-term offshore loans must not be used for medium to long term purposes. However, there is no definition of medium to long term purposes. Therefore, in practice, it is quite common for the borrower to use short-term for financing M&A purposes (e.g. purchasing shares or contributing capital in other companies) due to no explicit restriction. This approach no longer works under Circular 08, which limits the permitted purposes for short-term loans. The financing of M&A purposes is not classified as short-term liability under Vietnam accounting system.

With respect to the use of short-term offshore loans for refinancing purpose, Circular 08 is silent on whether the refinanced offshore loan is short-term or medium to long-term loan. This is currently interpreted to mean that a short-term offshore loan can be used to refinance all types of the borrower's offshore loans (short-term or medium to long-term). This interpretation seems to make sense in the context that Circular 08 no longer includes a restriction on using short-term loans for medium to long term purposes.



Permitted purposes for medium to long-term offshore loan

Circular 08 removes the permitted purposes for implementation of production and business plan, and investment projects of the borrower's direct subsidiary. Accordingly, Circular 08 only allows using medium to long-term offshore loan for the following purposes:

- (i) Implementation of the borrower's investment project (which is issued with an investment registration certificate, investment certificate, or investment in-principle approval ('**Investment License**'));
- (ii) Implementation of the borrower's production and business plan, and other projects (which is not issued with Investment License); or
- (iii) Refinancing of the borrower's existing offshore loan.

In addition, Circular 08 is unclear whether the medium to long-term offshore loan used for M&A purposes (e.g. shares purchase, or capital contribution in other companies) is treated as implementing production and business plan, or implementing other projects of the borrower. This may need further interpretation from the SBV.

Loan caps

Generally, the loan cap in case of implementation of an investment project ('**Investment Cap**') and implementation of production and business plan, or other projects ('**Loan Utilisation Cap**') under Circular 08 remain the same as those provided under Circular 12.

However, Circular 08 provides clearer caps on offshore loan for refinancing as follows:

- (i) The loan amount cannot exceed the aggregate unpaid principal, interest, fees of the existing loan and the loan fees of the new loan; and
- (ii) Only applicable to medium to long-term loans, the new loan must be used for the repayment of the existing loans within 5 working days from the drawdown date to ensure that the Investment Cap or Loan Utilisation Cap is met after the repayment.

Document justifying loan purposes

Under Circular 08, the following documents are used to justify the permitted loan purposes:

Loan purpose	Documents
Payment of short-term liabilities	Loan utilisation plan, and statement of capital needs (in the form attached to Circular 08)
Implementation of investment projects	Investment licenses
Implementation of production and business plan, or other	Loan utilisation plan
Refinancing	Refinancing plan

Circular 08 requires the borrower to prepare documents to justify the loan purpose of short-term offshore loans, while Circular 12 did not require the borrower to do so. As such, although the borrower does not have to register short-term offshore loans with the SBV, it must prepare and submit the loan utilisation plan/refinancing plan to the credit institution where the DICA or the offshore loan service account of the borrower is opened.

In addition, Circular 08 sets out compulsory contents that must be included in the loan utilisation plan (previously in Circular 12, business plan) and refinancing plan.





Loan currency

In principle, offshore loans can be denominated in any foreign currency. However, Circular 08 contemplates the following scenarios where VND-denominated loans are allowed:

- (i) the borrowers are microfinance institutions;
- (ii) foreign owned companies borrowing the distributed dividends of their parent company; or
- (iii) drawdown and repayment of offshore loan in foreign currency, but the relevant indebtedness being recorded in VND.

Other notable changes

The borrower can place bank deposits from idle offshore loan proceeds (i.e., funds drawdown but temporarily unused) at local credit institution. Each deposit term cannot exceed one month.



Contact us today to learn more about how we can support your banking and finance projects in Vietnam.



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