

**CIRCULAR**

**Guiding the foreign exchange management regarding enterprises’  
borrowing of foreign loans and payment of foreign debts**

*Pursuant to the Law on the State bank of Vietnam dated June 16, 2010;*

*Pursuant to the Law on Credit Institutions dated June 16, 2010 and the Law Amending and Supplementing a Number of Articles of the Law on Credit Institutions dated November 20, 2017;*

*Pursuant to the Law on the Management and Use of State Capital Invested in Production and Business at Enterprises dated November 26, 2014;*

*Pursuant to the Ordinance on Foreign Exchange dated December 13, 2005 and the Ordinance on amendments to a number of Articles of the Ordinance on Foreign Exchange dated March 18, 2013;*

*Pursuant to the Government's Decree No. 219/2013/ND-CP dated December 26, 2013, on management of enterprises’ borrowing of foreign loans and payment of foreign debts without government guarantee;*

*Pursuant to the Government’s Decree No. 16/2017/ND-CP dated February 17, 2017, defining the functions, tasks, powers and organizational structure of the State Bank of Vietnam;*

*At request of the Director of the Foreign Exchange Management Department;*

*The Governor of the State Bank of Vietnam hereby promulgates the Circular guiding the foreign exchange management regarding enterprises’ borrowing of foreign loans and payment of foreign debts.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation**

1. This Circular provides regulations on:

- a) Procedures for registration, registration for change to enterprises' foreign loans without government guarantee;
- b) Open and use of accounts for borrowing and paying foreign debts; open and use of lenders' spend accounts at licensed credit institutions in Vietnam for the execution of foreign loans;
- c) Fund withdrawal, debt payment and other fund transfer transactions in relation to execution of foreign loans;
- d) Foreign exchange management regarding money transfer transactions in relation to the handling of collaterals in the territory of Vietnam, transfer of caution money for foreign loans and reimbursement of indebtedness amount between the borrower and securing party in relation to the foreign loans without government guarantee;
- dd) Provision, use and management of information posted on the websites for management of borrowing of foreign loans and payment of foreign debts without government guarantee (hereinafter referred to as the websites);
- e) Mechanism for making statistical reports on enterprises' borrowing of foreign loans and payment of foreign debts without government guarantee.

2. The registration and registration for change to foreign loans in the form of issuance of international bonds by enterprises not entitled to government guarantee shall comply with the State Bank of Vietnam's regulations (hereinafter referred to as the State Bank), and guidance on foreign exchange management regarding the issuance of bonds to international market by enterprises not entitled to government guarantee.

3. The registration and registration for change to foreign loans entitled to government guarantee shall comply with the State Bank's regulations on guiding the procedures for registration and registration for change to foreign loans and issuance of international bonds that are entitled to government guarantee.

4. The open and use of foreign currency accounts in other countries to execute the foreign loans shall comply with the State Bank's regulations on opening and using foreign loans in foreign countries by institutional residents.

## **Article 2. Subjects of application**

1. Residents being enterprises, cooperatives, cooperative unions, credit institutions and foreign bank branches established and operating in Vietnam who are known as the party applying for foreign loans (hereinafter referred to as the borrower).

2. Credit institutions and foreign bank branches in Vietnam providing services of accounts for borrowing and paying foreign debts for the borrowers; providing bank transfer services that are related to the borrowing of foreign loans and payment of foreign debts without government guarantee.

3. Organizations and individuals who are known as the guarantors or securing party for the borrowers' foreign loans.

4. Credit institutions and foreign bank branches that are entrusted with lending tasks by the non-resident trusting party.

5. Other organizations and individuals involved in the borrowers' foreign borrowing operations.

6. Individuals and units of the State Bank that assume responsibilities for use and management of information posted on the website.

### **Article 3. Interpretation of terms**

In this Circular, the terms below are construed as follows:

1. Foreign loan is a generic term which means foreign loans that are not guaranteed by the Government (hereinafter referred to as loans by the mode of self-borrowing and self-payment) and those that are guaranteed by the Government by means of foreign borrowing through borrowing contracts, deferred payment contracts for import of goods, lending entrustment contracts, contracts for financial lease or debt instrument issuance on the international market of the borrower.

2. A bank providing account services means a credit institution or foreign bank branch operating in Vietnam where the borrower opens a payment account to withdraw capital, pay foreign loans and conduct other money transfer transactions related to foreign borrowing and debt payment.

3. A bank serving security transactions means a credit institution or foreign bank branch in Vietnam where the money transfer service is provided, the performance of the obligation to guarantee, transfer money, and handling of collaterals related to foreign loans are carried out.

4. Financial lease means the receipt of medium- and long-term credit by the lessee being a resident on the basis of a financial leasing contract with a non-resident lessor. The determination of the financial lease contract shall comply with the guidance on implementation of accounting standards prescribed by the Ministry of Finance.

5. Debt instruments refer to treasury bills, bills of exchange, bonds issued by the borrower outside the territory of Vietnam to non-resident entities.

6. Foreign loans denominated in Vietnamese dong refer to foreign loans which capital can be withdrawn into the borrower's accounts for borrowing and paying foreign debts in Vietnamese dong or debt obligations of these loans denominated in Vietnamese dong.

7. Investment projects mean projects that are granted Investment Certificates, Investment Registration Certificates or Decisions on Approval of

Investment Policies by competent authorities in accordance with the law on investment and the current provisions of relevant laws.

8. A plan funded by foreign loan means a production and business plan which is funded by foreign loan, and proves the borrower's lawful and reasonable purpose of, and demand for a foreign loan.

#### **Article 4. Principles of foreign exchange management of foreign loans in the form of deferred payment for import of goods**

1. A foreign loan in the form of deferred payment for import of goods is the amount for import of goods with the first withdrawal date before the last payment date. In which:

a) The capital withdrawal date of foreign loans in the form of deferred payment for import of goods shall be:

The 90<sup>th</sup> day from the date of issuance of transport documents in case the bank providing account services requires transport documents in the set of payment documents;

The 45<sup>th</sup> day from the date of completion of the inspection stated on the customs declaration that has been cleared in case the bank providing account services does not require a set of payment documents to have transport documents;

b) The final payment date shall be determined as:

The last payment date of the payment period as stated in the contract;

The last actual payment date in case of non-performance according to the contract or the contract does not specify the payment period;

c) The period of a foreign loan in the form of deferred payment for import of goods shall be the period from the date of first capital withdrawal to the last payment date.

2. Loans by the mode of self-borrowing and self-payment in the form of deferred payment for import of goods shall not be covered by the provisions on registration or registration for changes of foreign loans prescribed in Chapter III of this Circular.

3. Transactions of money transfer for debt repayment (principal, interest), payment of fees relating to foreign loans in the form of deferred payment for import of goods are not required to be done through account for borrowing and paying foreign debts

#### **Article 5. Use of the websites for declaration of information for registration or registration for changes of loans, and preparing review reports on the implementation of self-borrowing and self-payment loans**

1. In case the borrower chooses to declare registration information or register changes to reduce the time to process administrative procedures, the borrower shall use the websites to declare information relating to registered loans, declare information about the contents of the request for certification of registration for changes before submitting dossiers for registration or registration for changes of foreign loans.

2. For reports on the implementation of foreign loans, the borrower shall use the websites to implement the online reporting regime as prescribed in this Circular.

#### **Article 6. Implementation of foreign loans after borrowers are divided, split, consolidated or merged**

1. When the borrower is divided, split, consolidated or merged, an institution inheriting the rights and obligations relating to the foreign loans shall continue to perform the borrower's responsibilities as prescribed in this Circular.

2. In case there is only one institution inheriting the rights and obligations related to foreign loans of the divided or split borrower, the lender, the institution established after the division, the splitting institution or the split institution shall agree in writing to determine an institution that will inherit the rights and obligations of the divided or split borrower of the foreign loans, ensuring compliance with relevant laws.

3. In case after the division or split, there are several institutions jointly taking responsibility for the obligation to pay foreign loans:

a) They shall agree in writing to authorize an institution to carry out administrative procedures and comply with the reporting regime related to foreign loans as prescribed in this Circular;

b) Institutions jointly liable for performing foreign loan payment obligations shall jointly open a shared account as an account for borrowing and paying foreign debts. In case of failing to open a shared account as an account for borrowing and paying foreign debts, these institutions must ensure the opening of accounts for borrowing and paying foreign debts at the same bank providing account services to continue to repay foreign loans;

c) If one of the institutions jointly liable for performing foreign loan payment obligations is a directly foreign-invested enterprise, the use of the account to repay such loans shall comply with this Article. The bank where the institutions jointly liable for performing foreign loan payment obligations open an account to repay the foreign loans is not required to be the bank where the foreign direct investment capital account is opened.

4. A bank providing account services of a borrower that is divided, split, consolidated or merged shall be responsible for coordinating in providing

information on the withdrawal and repayment of foreign loans at the request of the institution inheriting the responsibility for foreign loan repayment and/or the bank providing account services of the institution inheriting the responsibility for foreign loan repayment so that the parties can continue to perform loans, ensuring compliance with the law on foreign borrowing and debt repayment.

#### **Article 7. Principles for compilation and submission of dossiers**

1. The borrower shall send one set of dossiers for carrying out administrative procedures in accordance with this Circular by one of two methods as follows:

- a) Direct submission at the Single-window section of the State Bank;
- b) Send by post.

2. Documents in the dossier must be an original or a copy from the original, certified by the borrower.

3. Vietnamese translations of documents in foreign languages must be those self-translated by the borrower or provided by a translation service provider. The borrower shall certify the consistence of the Vietnamese translations with contents in foreign languages.

4. In case the borrower carries out the procedures for registration, registration for changes of different foreign loans at the same time, or during the period the State Bank (the Foreign Exchange Management Department) or the provincial-level State Bank branch (hereinafter referred to as the State Bank branch) is processing the borrower's dossiers for registration or registration for changes to other foreign loans, the borrower is not required to re-submit the dossier components with the same content to the agency processing administrative procedures.

## **Chapter II**

### **MANAGEMENT AND USE OF WEBSITES**

#### **Article 8. Websites**

1. The State Bank shall manage data and information about enterprises' borrowing and payment of foreign debts which are not guaranteed by the Government via the website address [www.sbv.gov.vn](http://www.sbv.gov.vn) or [www.qlnh-sbv.cic.org.vn](http://www qlnh-sbv.cic.org.vn).

2. The use of websites for declaring information for registration and registration for changes of loans and preparing review reports on executing the self-borrowing and self-payment loans shall comply with this Circular and user instruction manuals available on these websites.

3. Borrowers shall register their accounts on these websites in accordance with Article 10 of this Circular.

**Article 9. Actions to be taken against technical failures arising from the use of websites**

1. Where any technical failure in websites arises (not due to the borrower's fault), the borrower shall temporarily report the implementation of the foreign loan in writing. After successfully dealing with such failure, the State Bank branch shall be responsible for updating the borrower's report on the websites on the basis of the borrower's written report.

2. Where any technical failure results from fault of the borrower, the borrower shall assume the following responsibilities:

a) Urgently and proactively finding solutions to successfully dealing with such failure, or acting on his/her/its own initiative in cooperating with the technical department in charge of the websites to find solutions to correcting errors;

b) Temporarily reporting the implementation of self-borrowing and self-payment foreign loans in writing according to the report form in Appendix 05 to this Circular, and reporting to the State Bank (the Foreign Exchange Management Department) about this technical problem;

c) Updating the reports on implementation of self-borrowing and self-payment loans to the websites promptly after such failure is successfully corrected.

**Article 10. Log-in accounts**

1. Log-in account refers to name and password entered to access websites which are given to users, including the following information:

a) Borrowers;

b) Officers of the Foreign Exchange Management Department and the State Bank branches of cities and provinces engaged in the management of foreign borrowing and repayment of foreign loans which are not guaranteed by the Government;

c) Affiliates of the State Bank assigned to have access to facts and figures pertaining to borrowing and repayment of foreign loans which are not guaranteed by the Government.

2. After being granted log-in accounts, users shall log in their accounts to declare information, prepare reports, manage and use information on the websites.

3. Procedures for registration and issuance of log-in accounts for users who are borrowers:

a) Users shall fill their information in online declaration forms to apply for log-in accounts according to instructions available on websites, and then print out these forms and append their signatures and stamps;

b) Users shall send the declaration forms referred to at Point a of this Clause by post or directly submit these forms to branches of the State Bank according to Point a Clause 5 of this Article;

c) Within a maximum duration of 03 working days of receipt of the request for issuance of users' accounts along with valid and sufficient information, competent agencies defined at Point a Clause 5 of this Article shall consider approving and granting log-in accounts sent to the registered email address of users. In case of refusal, an online response including clear explanation is required.

4. Procedures for registration of changes of information about log-in accounts:

a) Borrowers must register changes to information about their accounts if there is any change made to name of the borrower, type of the borrower's enterprise, address, tax identification number, contact phone number and email address;

b) Implementation procedures:

Borrowers shall fill their information in online declaration forms to apply for changes made to their accounts according to instructions available on websites;

Within a maximum duration of 03 working days of receipt of the request for registration for changes of log-in accounts, competent agencies specified at Point a Clause 5 of this Article shall approve change contents and notify users of this to their registered email address. In case of refusal, an online response including clear explanation is required.

5. Competence to issue and manage log-in accounts:

a) The State Bank branch in the province or city where the borrower's head office is located shall grant and manage log-in accounts for the borrowers in the area under its management;

b) The Foreign Exchange Management Department - the State Bank shall grant and manage log-in accounts for individuals and units specified at Points b and c Clause 1 of this Article.

### **Chapter III**

## **PROCEDURES FOR REGISTRATION AND REGISTRATION FOR CHANGES TO SELF-BORROWING AND SELF-PAYMENT FOREIGN LOANS**



## **Section 1**

### **LOAN REGISTRATION**

#### **Article 11. Loans subject to registration**

Loans subject to registration with the State Bank include:

1. Mid-term and long-term foreign loans.
2. Short-term loans with the principal repayment period extended, which have more than 01 year of maturity term.
3. Short-term loans which are not covered by any loan extension agreement but remain the principal balance (including principally entered interest) on the anniversary of the date of first fund withdrawal in a full 01 calendar year, except for the cases where the borrowers complete the payment of the above principal balance within 30 working days from the date of full 01 year from the date of the first capital withdrawal.

#### **Article 12. Loan term as the basis for determination of registration obligations**

1. In respect of loans specified in Clause 1 Article 11 of this Circular, loan term shall be determined from the scheduled date of first fund withdrawal to the scheduled date of final repayment of principal under terms and conditions of foreign loan agreements.

2. In respect of loans specified in Clause 2 Article 11 of this Circular, loan term shall be determined from the date of first fund withdrawal to the scheduled date of final repayment of principal under terms and conditions of foreign loan agreements and foreign loan extension agreements.

3. In respect of loans specified in Clause 3 Article 11 of this Circular, loan term shall be determined from the date of first fund withdrawal to the scheduled date of final debt repayment of principal.

4. The fund withdrawal date defined in this Article shall be:

a) The date on which money is credited to the borrower's account for loans disbursed in cash;

b) The date the lender makes payment to the non-resident beneficiary providing goods or services under goods or service sale and purchase contracts with residents being the borrower;

c) The date when the borrower is recorded as fulfilling the payment obligation toward the lender in case the parties choose to withdraw capital from the medium- and long-term foreign loans in the form of clearing payment as prescribed at Point d Clause 1 Article 34 of this Circular.

d) The date the borrower receives the leased assets for loans in the form of a foreign financial lease in consistence with relevant laws;

dd) The date the borrower is granted the Enterprise Registration Certificate, the License for establishment and operation in accordance with specialized laws, the date of signing an investment contract in the form of public-private partnership (PPP), the date of signing a foreign loan agreement to convert the amount of money prepared for investment into loan capital between the parties (whichever is later), applicable to foreign loans arising from the transfer of money for investment preparation of projects that have been granted investment registration certificates into foreign loans according to the law on foreign exchange management regarding foreign direct investment activities in Vietnam.

### **Article 13. Foreign loan agreement as the basis for loan registration**

1. Foreign loan agreements which are used as the basis for loan registration (hereinafter referred to as foreign loan agreements) refer to agreements effecting fund withdrawal which are entered into between the borrower and non-resident lender; debt instruments issued by residents to non-residents outside the territory of Vietnam; loan entrustment agreements or loan entrustment agreements together with the on-lending agreements in case the trustee is the party responsible for direct repayment to the entrusting party who is a non-resident.

2. The borrower shall not be subject to procedures for loan registration when signing agreements which effect fund withdrawal with non-residents such as credit framework agreements, memorandums of understanding and other similar arrangements. Contents of these framework agreements must ensure consistency with Vietnamese laws.

3. In case a medium- or long-term self-borrowing and self-payment loan arises, when there is a document giving rise to the capital withdrawal effect of the agreements mentioned in Clause 2 of this Article, the borrower shall register loans in accordance with this Circular. In this case, the foreign loan agreements include the original agreements and the documents giving rise to the withdrawal effect of such agreement.

### **Article 14. Entities subject to application for registration or registration for changes of loans**

Borrowers subject to registration or registration for changes of loans include:

1. Borrowers who are parties to foreign borrowing agreements with non-resident lenders.

2. Institutions that take responsibility for paying debt directly to the entrusting party in case credit institution or foreign bank branch signs a contract

to receive entrustment for on-lending with the entrusting party who is a non-resident.

3. Parties who are obliged to repay debts according to debt instruments issued outside the territory of Vietnam to the non-resident.

4. Lessees who are parties to financial lease contracts with non-resident lessors.

5. Institutions inheriting the obligation to repay foreign loans subject to registration or registration for changes under the provisions of this Circular, in case the borrower divides, splits, separates, merges or consolidates when executing foreign loans.

### **Article 15. Order for loan registration**

1. Preparing the registration form for foreign loans which are not guaranteed by the Government:

a) In case borrowers have declared loan information on the websites before submitting dossiers for foreign loan registration, the borrowers shall print the applications from the websites, sign and stamp them;

b) In case borrowers fail to declare loan information on the websites before submitting dossiers, the borrowers shall complete the applications for registration of foreign loans according to Appendix 01 attached to this Circular.

2. Time limit for submission of dossiers:

The borrower shall send one set of dossiers for registration of foreign loans to the agency competent to certify as prescribed in Article 20 of this Circular within the time limit of:

a) 30 working days from the date of signing the medium- or long-term foreign loan agreement;

b) 30 working days from the date of signing the agreement to extend the short-term foreign loan into a medium- or long-term one for loans specified in Clause 2 Article 11 of this Circular, with the date of signing the agreement to extend within 01 year from the date of first capital withdrawal;

c) 30 working days from the date of the borrower is granted the Enterprise Registration Certificate, the License for establishment and operation in accordance with specialized laws, the date of signing an investment contract in the form of public-private partnership (PPP), the date of signing a foreign loan agreement to convert the amount of money prepared for investment into loan capital between the parties (whichever is later), applicable to foreign loans arising from the transfer of money for investment preparation of projects that have been granted investment registration certificates into foreign loans.

d) 60 working days from the anniversary of the date of first fund withdrawal in a full 01 calendar year, applicable to:

Loans specified in Clause 2 Article 11 of this Circular, with the date of signing the agreement to extend after 01 year from the date of first capital withdrawal; and

Loans specified in Clause 3 Article 11 of this Circular.

3. The State Bank shall issue a written certification or refusal to certify the loan registration (clearly stating the reason) within the time limit of:

a) 12 working days from the date of receiving the valid and complete dossiers from the borrower in case the borrower has already declared the loan information on the websites;

b) 15 working days from the date of receiving complete and valid dossiers from the borrower in case the borrower fails to declare loan information on the websites;

c) 45 working days from the date of receiving the complete and valid dossiers from the borrower, for the case of loans in Vietnamese dong, which must be reviewed and approved by the Governor of the State Bank as prescribed in Clause 3 Article 20 of this Circular.

4. Agencies competent to certify the registration or registration for changes to foreign loans as prescribed in Article 20 of this Circular shall take responsibility for:

a) Checking the consistency and accuracy of dossiers submitted to apply for loans and information declared on websites; keeping borrowers updated on the processing status of registration application on websites if the borrowers have declared loan information on the websites before submitting the dossiers for foreign loan registration;

b) Updating relevant information of loans on the websites to create loan codes and archive the information in the database of foreign loans and repayments of enterprises that are not guaranteed by the Government in case the borrowers fail to declare loan information on the websites before submitting dossiers for foreign loan registration; updating the dossier processing status on the websites for timely monitoring by the borrowers.

5. In respect of loans denominated in Vietnamese dong, they must be approved by the Governor of the State Bank in accordance with applicable laws on conditions for foreign borrowing, and procedures for loan registration cum procedures for requesting the Governor of the State Bank to consider approving loans; written certification of registration of loans cum written approval of loans issued by the Governor of the State Bank.

#### **Article 16. Loan registration dossier**

1. Application for loan registration as prescribed in Clause 1 Article 15 of this Circular.

2. Copies of the borrower's legal dossiers: Establishment license, business registration certificate, registration certificate of cooperatives, unions of cooperatives and amending and supplementing documents (if any) or other equivalent documents.

3. Copies or originals of written proof of borrowing purposes, including:

a) For loans for implementation of investment projects: Investment certificates, investment registration certificates or decisions on approval of investment policies in accordance with the law on investment and the current provisions of relevant laws;

b) For loans for implementation of production and business plans other than investment projects: Plans for using foreign loans approved by the competent authorities in accordance with the Law on Investment, the Law on Enterprises and the charter of the enterprise, the Law on Cooperatives and the charter of the cooperative, and relevant legal documents;

c) For loans to restructure foreign debts of the borrower: The borrower's foreign debt restructuring plans approved by competent authorities in accordance with the Law on Enterprise and the charter of the enterprise, the Law on Cooperatives and the charter of the cooperative, and other relevant legal documents;

d) For loans specified in Clauses 2 and 3 Article 11 of this Circular: Report on the initial use of short-term foreign loans to meet the requirements for short-term foreign loans (enclosed with supporting documents such as the borrower's plan for using foreign loans, the basic plan for foreign debt restructure);

dd) The dossier components specified at Points a, b and c of this Clause do not apply to loans from commercial banks with state capital approved by the State Bank in accordance with regulations on management and use of state capital in enterprises, in which the State Bank is the agency representing the owner.

4. Copies and Vietnamese translations of foreign loan agreements and agreements on extension of short-term loans into mid-term or long-term loans (if any).

5. Copy of foreign language and Vietnamese translation of guarantee commitment (performance guarantee, guarantee contract or other form of guarantee commitment) in case the loan is guaranteed.

6. Copies of competent authorities' documents approving foreign loans in accordance with the law on assigning the implementation of tasks, powers and responsibilities of state owner, agency representing the state owner in accordance with regulations on management and use of state capital in enterprises for borrowers being state enterprises (not applicable to loans from

commercial banks where the State Bank is the agency representing the owner, that has been approved by the State Bank according to regulations on management and use of state capital in enterprises).

7. Report on compliance with the State Bank's regulations on limits and prudential ratios in operations of credit institutions and foreign bank branches under the regulations on foreign loan conditions for self-borrowing and self-payment at the end of the last 3 months prior to the date of signing the loan agreement to the end of the latest month before the time of submitting complete dossiers for registration of foreign loans according to the form specified in Appendix 02 attached to this Circular, or written proof of non-compliance with the law on credit limits and prudential ratios approved by the Prime Minister or the Governor of the State Bank in accordance with laws (if any) in the event that the borrowers are credit institutions or foreign bank branches.

8. Certification of the bank providing account services on the capital withdrawal and debt repayment (principal and interest) up to the time of loan registration (applicable to the borrower opening an account for borrowing and paying foreign debts at the bank providing account services) in the following cases:

a) In case of foreign borrowing to serve the purpose of restructuring foreign debts, documents given by the bank providing account services of the borrower on fund withdrawal and repayment of debts incurred from foreign loans to be restructured by other foreign loans are required;

b) In case foreign investors' fund transmitted to Vietnam which have already been used for meeting pre-investment expenses are converted into mid-term or long-term foreign loans of directly foreign-invested enterprises in accordance with regulations on foreign direct investment in Vietnam, copies of documents on revenue and expenditure transactions related to the loan formation, provided by the bank providing account services, and their Vietnamese translations;

c) In case the foreign loan is covered by Points 2 and 3 Article 11 of this Circular, documents given by the borrower's bank providing account services, on fund withdrawal and repayment of an initial short-term foreign loan are required;

d) If the borrower fails to provide the certification of the bank providing account services as prescribed at Points a, b, c of this Clause due to the fact that:

The bank providing account services has closed or suspended operations before the borrower changes to another bank providing account services, or;

The withdrawal of capital and repayment of foreign loans in the cases of capital withdrawal and debt repayment are not required to be made through accounts for borrowing and paying foreign debts in accordance with Article 34 of this Circular;

The borrower shall choose one of the following documents to prove the capital withdrawal and loan repayment: Copy of the audited or reviewed financial statement with information proving that the borrower has received loans and outstanding balance up to the time of requesting the State Bank to certify the registration of foreign loans; copy and Vietnamese translation of the written certification of the overseas commercial bank where the borrower opens and uses a foreign currency account abroad for capital withdraw and loan repayment; copy and Vietnamese translation of the letter of certification from the overseas bank on the amount of money the lender has directly paid to the beneficiary who is a non-resident for the provision of goods and services under the goods and service purchase and sale contract with the resident being the borrower.

9. Documents or invoices indicating legally distributed Vietnam-dong profits gained from direct investments of the lender who is the foreign investor making the capital contribution to the borrower, and certification of the bank providing account services on distribution and transmission of profits to the home country of the lender are required to serve as evidence of disbursement of foreign loans in respect of foreign borrowing in Vietnamese dong in accordance with regulations on conditions for foreign borrowing in Vietnamese dong.

10. Explanatory documents on demands for foreign borrowing in Vietnamese dong in respect of foreign borrowing in Vietnamese dong under the State Bank Governor's permission in accordance with the State Bank's current regulations on conditions for foreign borrowing in Vietnamese dong.

## **Section 2**

### **REGISTRATION FOR CHANGES OF FOREIGN LOANS**

#### **Article 17. Registration for changes of foreign loans**

1. Unless otherwise prescribed by Clause 2 of this Article, if there is any change to contents relating to loans referred to in the State Bank's written certification of registration, or registration for changes of foreign loans, the borrower shall be responsible for making registration for changes of foreign loans with the State Bank in accordance with this Circular.

2. The borrower shall notify the changes on the websites without registering the changes of foreign loans in the following cases:

a) Changing the time of capital withdrawal, principal payment within 10 working days compared to the plan approved by the State Bank;

b) Changing address of the borrower without changing the province or city where the borrower's head office is located. The borrower shall send a

notice of address change to the agency competent to certify the borrower's registration or registration for change of foreign loans;

c) Changing the lender, related information about the lender in respect of a syndicated loan that designate the representative for lenders, except when the lender is also the representative for lenders in respect of a syndicated loan, and any change of lender that may entail changes to the roles of the representative for lenders;

d) Changing the trade name of the bank providing account services, or the bank security transactions;

dd) Changing the plan for payment of interest and fees on foreign loans compared to the plan confirmed by the State Bank in the written certification of registration or registration for change of foreign loans, without changing the method of determining interest and fees specified in the foreign loan agreement. The borrower shall be responsible for making the sheet to calculate payable interests and fees so as the bank providing account services has a ground for inspection and supervision upon making bank transfer;

e) Changing (increase or decrease) the amount of capital withdrawal, repayment of principal, interest and fees within 100 currency units of the foreign loan currency compared with the amount stated in the written certification of registration or registration for change of foreign loans;

g) Changing the actual amount of capital withdrawal or repayment of principal of a specific period which is less than the amount stated in the capital withdrawal or debt repayment plan in the written certification of registration or registration for change of foreign loans.

3. For the changes specified at Point g Clause 2 of this Article, before withdrawing and paying the remaining amount of that period, the borrower shall register to change the plan for capital withdrawal and debt repayment for the remaining amount which has not yet been implemented in accordance with this Circular.

### **Article 18. Orders for registration for changes of loans**

1. Preparing the application for registration for changes of foreign loans:

a) In case the borrower has declared loan change information on the website before submitting the dossier, the borrower shall print the application from the websites, sign and stamp it;

b) In case the borrower fails to declare loan change information on the websites before submitting the dossier, the borrower shall complete the application form for registration of foreign loan changes according to Appendix 04 attached to this Circular.

2. Deadline for submitting the dossier for registration for changes of foreign loan:



Within 30 working days from the date on which:

a) The parties sign the change agreement or before the time of implementation of the changed contents (for the case of changes where the signing of change agreement is not required but still ensuring compliance with the foreign loan agreement);

b) The institution inheriting the foreign loan repayment obligation is granted a business registration certificate or the date the parties sign an agreement on the change of the borrower in case the initial borrower is divided or separated, consolidated, or merged (whichever comes later) and before continuing the capital withdraw and repayment of foreign loans;

c) The borrower completes the update of changes to name and/or address, relocation of the head office to another province or city on the National Business Registration Database;

d) The lender (or the institution representing the lender in the syndicated loan – if any), the securing party or other related parties mentioned in the written certification of registration or registration for changes shall send written notice to the borrower of the name change and before making money transfers involving these parties.

3. The State Bank shall issue a written certification or refusal to certify the registration for changes of loans (clearly stating the reason) within the time limit of:

a) 12 working days from the date of receiving the complete and valid dossiers of the borrower in case the borrower has declared loan change information on the websites before submitting the dossiers of registration for changes, or;

b) 15 working days from the date of receiving the complete and valid dossiers of the borrower in case the borrower fails to declare loan change information on the websites before submitting the dossiers of registration for changes.

4. Competent agencies specified to in Article 20 of this Circular shall assume the following responsibilities:

a) Checking the consistency and accuracy of dossiers of registration for loan changes and information declared on websites; keeping borrowers updated on the processing status of registration application on websites if the borrowers have declared loan change information on the websites before submitting such dossiers;

b) Organizing to update relevant information of loans on the websites to archive the information in the database of foreign loans and repayments of enterprises that are not guaranteed by the Government in case the borrowers fail to declare loan change information on the websites before submitting dossiers

for loan change registration; updating the dossier processing status on the websites for timely monitoring by the borrowers.

### **Article 19. Dossiers of registration for changes of loans**

1. An application for loan change shall be made according to Clause 1 Article 18 of this Circular.

2. Copies and Vietnamese translations of the change agreements related to the contents registered for change by the borrower.

3. Copies of competent authorities' documents as prescribed by the law on assigning the implementation of the state owner's tasks, powers and responsibilities toward state enterprises, and state capital invested in enterprises, regarding the approval of changes to the foreign loan plan of the borrower being a state enterprise in the case of an increase in the loan amount or extension of the loan term (not applicable to loans from commercial banks where the State Bank is the agency representing the owner and has been approved by the State Bank according to regulations on management and use of state capital in enterprises).

4. The composition of dossiers is specified in Clause 3 Article 16 of this Circular, for the case of an increase in the loan amount or a change in the loan use purpose for the unrealized portion of the loan.

5. The composition of dossiers is specified in Clause 7 Article 16 of this Circular, for the case where the borrower is a credit institution or foreign bank branch that increases foreign loan amount.

6. Written certification issued by the bank providing account services of fund withdrawal and debt repayment (principal and interest) till the date of registration for changes of loans, in case of registration for changes of the loan amount, or the plan for fund withdrawal or debt repayment, or the change of the commercial bank providing account services.

In case the borrower fails to provide the certification of the bank providing account services under this Clause because the bank providing account services has closed or suspended operations before the borrower changes to another bank providing account services, and/or the withdrawal of capital and repayment of foreign loans in the cases of capital withdrawal and debt repayment which are not made through an account for borrowing and paying foreign debts as prescribed in Article 34 of this Circular, the borrower shall provide other documents as specified at Point d Clause 8, Article 16 of this Circular.

### **Section 3**

## **CERTIFICATION OF REGISTRATION OR REGISTRATION FOR CHANGES OF LOANS**

## **Article 20. Competence to certify the registration or registration for changes of loans**

1. The agency competent to certify the registration or registration for changes of foreign loans (hereinafter referred to as the competent agency) shall be:

a) The State Bank (the Foreign Exchange Management Department), for loans over USD 10 million (or other currency of equivalent value);

b) The State Bank branch of the city or province where the borrower's head office is located, for loans up to USD 10 million (or other currency of equivalent value) except foreign loans in Vietnamese dong, which must be considered and approved by the Governor of the State Bank.

2. Where there is any increase or reduction in loan amount, or any change to currency unit of a loan or the borrower's head office, or the borrower is requested to contact an enterprise whose head office is located in another province or city, which entails changes to the agency competent to certify the registration for changes of loans:

a) The borrower shall send dossiers of registration for change of foreign loans to the latest agency competent to certify the registration or registration for changes of foreign loans.

b) The latest agency certifying the registration or registration for changes of foreign loans shall act as the focal point to receive the borrower's dossiers of registration for changes of loans. Within 07 working days from the date of receiving the dossiers of registration for changes, the latest agency certifying the registration or registration for changes of foreign loans shall transfer all original dossiers of registration for changes of loans and copies of the completed dossiers of registration or registration for changes of loans (if any) to competent agencies as prescribed in Clause 1 of this Article for processing.

3. Where foreign loans denominated in Vietnamese dong are subject to the State Bank Governor's consideration or approval, the Foreign Exchange Management Department shall act as the focal point and cooperate with relevant affiliates of the State Bank in reporting to the State Bank Governor for consideration or decision according to the competence.

4. The exchange rate used to determine the agency competent to certify the registration or registration for changes of foreign loans is the exchange rate for accounting announced by the Ministry of Finance and applied at the time of signing foreign loan agreements or change agreements related to the loan amounts.

## **Article 21. Grounds for certification of registration or registration for changes of loans**

1. The value of the foreign loans must be in the total annual limits of external commercial loans by the mode of self-borrowing and self-payment that are approved by the Prime Minister.

2. The borrower's compliance with and fulfillment of regulations on conditions for foreign borrowing, management of foreign exchange in respect of foreign borrowing and repayment in accordance with current regulations of the State Bank and other relevant laws at the time of dossier submission.

**Article 22. Termination of the validity of the written certification of registration or registration for changes of loans**

The agency competent to process the registration or registration for changes of foreign loans shall issue a written termination of the validity of the certification of registration or registration for changes of loans in case the dossiers of registration or registration for changes of foreign loans contain fraudulent information, forged documents proving eligibility for certification of registration or registration for change of foreign loans.

**Article 23. Cases in which the written certification of registration or registration for changes of loans will become automatically void and null**

1. The written certification of registration or registration for changes of foreign loans issued by the State Bank shall become automatically void and null in the event that, in excess of the maximum period of 06 months after the last date of the fund withdrawal term, and though the State Bank has given its certification, the borrower fails to implement fund withdrawal and register changes to the plan for loan fund withdrawal in accordance with this Circular.

2. After the written certification of registration or registration for changes of foreign loans becomes void and null under Clause 1 of this Article, if the borrower wishes to proceed with such loans, he/she/it must repeat procedures for registration for foreign loans as stipulated in Chapter III of this Circular within 30 days from the date on which parties reach arrangements in writing to proceed to effect such loans.

**Article 24. Handling foreign loans when the validity of the written certification of registration or registration for changes is terminated due to fraudulent information or forged documents in the dossier**

1. If the dossier of registration or registration for changes of foreign loans is found to contain fraudulent information, forged documents proving the satisfaction of foreign loan conditions for certification of registration or registration for change of foreign loans, the competent agency shall send a written notice to the borrower (and send a copy to the bank providing account services and bank serving security transactions - if any) to notify the termination of validity of the written certification of the borrower's registration or registration for changes of foreign loans.

2. After receiving the official letter of termination of the validity of the certification of registration or registration for change of foreign loans mentioned in Clause 1 of this Article, the bank providing account services and bank serving security transactions shall not continue to conduct money transfer related to the foreign loans according to the contents stated in the written certification of registration or registration for change of foreign loans. The bank providing account services and bank serving security transactions shall notify in writing the competent agency of money transfer transactions related to foreign loans made through such banks up to the time of the written notice of termination of validity of the certification of registration or registration for changes at request of the competent agency.

3. From the time when the validity of the written certification of registration or registration for changes is terminated, the borrower shall use the spend account in Vietnamese dong opened at the bank providing account services to repay the outstanding foreign loan and indebtedness amount (if any).

4. The parties agree to use the exchange rate for accounting announced by the Ministry of Finance, or the foreign exchange rate for buying and selling set by the bank providing account services or other credit institutions, foreign bank branches in Vietnam at the time the validity of the written certification of registration or registration for changes is terminated or the time of debt payment is transferred to determine the amount in Vietnamese dong to be paid to the lender.

**Article 25. Duplication and sending of the written certification of registration or registration for changes of loans, and the statement on termination of the validity of the written certification thereof**

1. The State Bank (the Foreign Exchange Management Department and the State Bank branches) shall duplicate and send the following documents to the bank providing account services and bank serving security transactions to request their cooperation in monitoring and implementing:

a) The written certification of registration or registration for changes of loans;

b) The statement on termination of the validity of the written certification of registration or registration for changes of loans.

2. The State Bank (the Foreign Exchange Department) shall duplicate and send the documents referred to in Clause 1 of this Article to the State Bank branch of province or city where the borrower's head office is located in order to cooperate in managing, monitoring and urging the preparation of reports.

3. The State Bank branch of province or city shall duplicate and send the statement on termination of the validity of the written certification of registration or registration for changes of loans to the State Bank (the Foreign

Exchange Management Department) for the purpose of cooperation in administrative activities.

## **Chapter IV**

### **OPENING AND USE OF ACCOUNTS FOR BORROWING AND PAYING FOREIGN DEBTS**

#### **Section 1**

#### **ACCOUNTS FOR BORROWING AND PAYING FOREIGN DEBTS**

##### **Article 26. Borrowers' accounts for borrowing and paying foreign debts**

1. The borrower's account for borrowing and paying foreign debts refers to the spend account that the borrower opens at a bank providing account services to withdraw fund and repay debts incurred from foreign loans and other money transfer activities relating to foreign borrowing and foreign debt repayment and foreign loan guarantee.

2. For the borrower that is a directly foreign-invested enterprise:

a) For medium- and long-term foreign loans (excluding loans mentioned at Point c of this Clause):

The borrower shall use the direct investment capital account to conduct revenue and expenditure transactions related to foreign loans specified in Articles 28 and 29 of this Circular. In case the loan currency is not the currency of the direct investment capital account, the borrower may open another account for borrowing and paying foreign debts for execution of foreign loans at the bank where the borrower opens a direct investment capital account.

The borrower may use one account for one or multiple foreign loans. The contents of revenue and expenditure of this account are specified in Articles 28 and 29 of this Circular;

b) For short-term foreign loans: The borrower may use the direct investment capital account specified at Point a of this Clause or other accounts for borrowing and paying foreign debts (other than direct investment capital accounts) to conduct revenue and expenditure transactions related to foreign loans. Each loan specified in this Clause can only be made through a bank providing account services. The borrower may use one account for one or multiple short-term foreign loans. The contents of revenue and expenditure of this account are specified in Articles 28 and 29 of this Circular;

c) For short-term loans with outstanding principal at the time of full 01 year from the date of capital withdrawal and the borrower must make debt repayment within 30 working days from the date of full 01 year from the date of capital withdrawal, the borrower shall repay the debt through the account for borrowing and paying foreign debts currently used for these loans;

d) In case a directly foreign-invested enterprise is an institution jointly liable for the performance of foreign loan repayment obligations of the initial borrower after the division, split, consolidation or merger, the directly foreign-invested enterprise is not required to use a direct investment capital account to repay the debt for which this institution is jointly responsible.

3. The borrower that is not a directly foreign-invested enterprise must open an account for borrowing and paying foreign debts at a bank providing account services in order to perform money transfer transactions relating to foreign loans (including fund withdrawal, principal and interest payment). Each foreign loan shall be allowed to open its account at only one bank providing account services. The borrower may use one account for one or multiple foreign loans. The contents of revenue and expenditure of this account are specified in Articles 28 and 29 of this Circular;

#### **Article 27. Monitoring of foreign borrowing and foreign debt repayment carried out by the borrower being a commercial bank or foreign bank branch**

1. A commercial bank or foreign bank branch that is the borrower is not required to open and use an account for borrowing and paying foreign debts at a credit institution or foreign bank branch to execute foreign loans.

2. Commercial bank or foreign bank branch that is the borrower shall be responsible for monitoring transactions relating to its foreign borrowing in accordance with current regulations on account-recording and accounting applicable to commercial banks and foreign bank branches; take responsibility and ensure performance of transactions relating to foreign loans in compliance with contents of the State Bank's written certification of registration or registration for changes of foreign loans of that commercial bank or foreign bank branch.

#### **Article 28. Monetary collection or spending on accounts for borrowing and paying foreign debts in foreign currency**

Accounts for borrowing and paying foreign debts in foreign currency shall only be used for performing transactions relating to foreign borrowing and debt repayment activities as follows:

1. Collection from:
  - a) Withdrawing foreign loan funds;

b) Buying foreign currency from licensed credit institutions to transfer money for debt repayment (principal and interest) of foreign loans or indebtedness amount between the borrower and non-resident securing party, payment of fees according to the loan agreement;

c) Converting foreign currency from foreign loan fund withdrawals in the event that the lender's disbursements are not denominated in the currency unit used in the account for borrowing and paying foreign debts;

d) Foreign-currency spend account that the borrower opens at a credit institution licensed within the territory of Vietnam, and foreign currency account that the borrower opens abroad;

dd) Collecting authorized revenues from derivative transactions related to foreign loans;

e) Earning interest calculating on the account balance in accordance with current law.

## 2. Spending on:

a) Transferring money to repay debts (principal and interest) incurred from foreign loans;

b) Transferring money abroad to pay fees according to the loan agreement, payment of indebtedness amount between the borrower and the non-resident securing party as prescribed in Chapter V of this Circular;

c) Transferring money to the borrower's foreign-currency spend accounts;

d) Selling foreign currency to licensed credit institutions;

dd) Transferring money to the foreign currency account that the borrower opens abroad to secure commitments stated in foreign loan agreements;

g) Buying foreign currency to pay debts (principal and interest) incurred from foreign loans in the event that currency used for debt repayment is not the one used in accounts for borrowing and paying foreign loan;

g) Paying service fees related to account management and money transfer transactions through accounts in accordance with regulations of banks providing account services;

h) Paying allowed expenses under derivative transactions to prevent exchange rate and interest rate risks related to foreign loans.

## **Article 29. Monetary collection or spending on accounts for borrowing and paying foreign debts in Vietnamese dong**

Accounts for borrowing and paying foreign debts in Vietnamese dong shall only be used for performing transactions relating to foreign loans as follows:



1. Collection from:

a) Transferring foreign loan fund withdrawals in the event that the lender uses Vietnam-dong spend accounts opened at credit institutions, foreign bank branches located within the territory of Vietnam;

b) Withdrawing funds from sale of foreign currency to licensed credit institutions located within the territory of Vietnam unless the lender uses Vietnam-dong spend accounts opened within the territory of Vietnam for loan disbursement purposes;

c) Transferring money from Vietnam-dong spend accounts of the borrower.

d) Earning interest calculating on the account balance in accordance with current law.

2. Spending on:

a) Transferring money to Vietnam-dong spend accounts of the borrower to pay debts (principal and interest) in the event that the lender uses Vietnam-dong spend accounts for the purpose of recovering debts agreed upon in loan agreements;

b) Buying foreign currency to pay debts (principal and interest) incurred from foreign loans in case the lender fails to use Vietnam-dong spend accounts for the purpose of recovering debts agreed upon in loan agreements;

c) Paying indebtedness amount between the borrower and the securing party in accordance with Chapter V of this Circular;

d) Paying fees denominated in Vietnamese dong, and buying foreign currency to pay fees denominated in foreign currency in relation to foreign loans;

dd) Transferring money to Vietnam-dong spend accounts of the borrower;

e) Paying service fees related to account management and money transfer transactions through accounts in accordance with regulations of banks providing account services.

**Article 30. Lender's accounts for execution of foreign loans opened at credit institutions and foreign bank branches in Vietnam**

1. The lender shall open and use Vietnam-dong spend accounts of a non-resident at credit institution or foreign bank branch in Vietnam for the following purposes:

a) Disbursing and recovering debt of foreign loans in Vietnamese dong in case the borrower is a directly foreign-invested enterprise borrowing from

profits gained from direct investment activities in the territory of Vietnam of the lender that is a foreign investor contributing capital at the borrower;

b) Recovering debts of loans subject to registration as prescribed in Clauses 2 and 3 Article 11 of this Circular but ineligible for registration certification;

c) Recovering debts of outstanding foreign loans but the written certification of registration or registration for changes is terminated due to fraudulent information or forged documents in the dossier as prescribed in this Circular.

2. The lender shall not use Vietnam-dong spend accounts specified in Clause 1 of this Article for other purposes except for the following transactions:

a) Earnings from the profits distributed from direct investment activities in the territory of Vietnam by the lender;

b) Spending to buy foreign currency to transfer to overseas lender's accounts;

c) Transferring to another Vietnam-dong spend account of the lender that is opened at credit institution or foreign bank branch in Vietnam;

d) Paying service fees related to account management and money transfer transactions through accounts in accordance with regulations of banks providing account services.

3. The lender's use of foreign currency accounts of non-residents at commercial banks for disbursement and debt recovery for foreign loans must comply with the law on restrictions on the use of foreign exchange in the territory of Vietnam.

4. In case of opening and using an account in the territory of Vietnam, the lender shall take responsibility for complying with the law on open and use of accounts of non-residents at commercial banks in Vietnam for execution of revenue and expenditure transactions related to foreign loans.

## **Section 2**

### **FUND WITHDRAWAL, MONEY TRANSFER FOR FOREIGN LOAN EXECUTION**

#### **Article 31. Principle of cash flow transparency**

1. If the borrower is not a commercial bank or foreign bank branch, every money transfer transaction (fund withdrawal or debt repayment) relating to foreign loans must be performed through accounts for borrowing and paying

foreign debts of the borrower, unless otherwise prescribed in Article 34 of this Circular.

2. Money transfer orders between residents and non-residents in relation to the implementation of fund withdrawal and repayment of debt (principal and interest), payment of fees for foreign loans must be clarified in terms of money transfer purpose in order for the banks providing account services to have the basis for checking, comparing and preserving documents and perform transactions.

3. The borrower shall be responsible for specifying and requesting the lender to clarify the purpose of money transfer transactions relating to foreign loans as the basis for determining foreign debt liabilities and transferring money to pay debts incurred from loans (principal, interest) on the payment due date.

### **Article 32. Money transfer for executing foreign loans**

1. The borrower shall transfer the amount for fund withdrawal and debt repayment (principal and interest) through a bank providing the service of accounts for borrowing and paying foreign debts.

a) In case of changing the bank providing account services, the borrower shall request the current bank providing account services to give certification of fund withdrawal and debt repayment relating to foreign loans in order for the new bank to continue to monitor the execution of foreign loans in accordance with applicable laws on management of foreign borrowing and foreign debt repayment;

b) In case of changing currency without changing the bank providing account services, such bank shall be responsible for overseeing fund withdrawal and foreign debt repayment in accordance with applicable laws on management of foreign borrowing and foreign debt repayment.

2. Regarding foreign loans subject to registration with the State Bank, the borrower shall be allowed to withdraw funds and repay debts (principal, interest) of foreign loans only after registration, or registration for changes for such loans is certified by the State Bank, except for the following cases:

a) Fund withdrawal or payment of a part of principal or interest in the first year of the loan subject to registration as prescribed in Clauses 2 and 3 Article 11 of this Circular. Regarding short-term loans for which the agreement for change into medium- or long-term loans within 12 months from the date of the first fund withdrawal, from the date of signing the extension agreement, the fund withdrawal or debt repayment (principal and interest) shall only continue to be executed after the registration for such loans is certified by the State Bank. The borrower shall be responsible for notifying the bank providing account services of the signing to change the short-term loans into medium- or long-term loans;

b) Withdrawal of the loans arising from loan agreements in order to change the money amount prepared for investment into foreign loans.

3. The borrower shall only be allowed to receive disbursed loans and transfer money to pay debts (principal, interest) from the account of the lender, lender's representative or payment bank agents of lenders in the event of a syndicated loan or loan in a loan agreement under which a bank acts as a payment agent.

4. Where fund disbursement and transfer of money for payment of debts (principal, interest) of foreign loans denominated in foreign currency are carried out through the account of the non-resident third party other than those prescribed in Clause 3 of this Article, this content must be clearly defined in loan agreements (or change agreements). If foreign loans are subject to registration with the State Bank, this content must be certified in the written certification of registration or registration for changes of foreign loans.

5. The borrower shall pay debt into the lender's spend account in Vietnamese dong which is opened at a credit institution or foreign bank branch in Vietnam in the following cases:

a) Loans subject to registration as prescribed in Clauses 2, 3 Article 11 of this Circular but fail to meet conditions for registration certification. The foreign exchange rate applied to determine an amount in Vietnamese dong payable to the lender under this Point is the exchange rate for accounting announced by the Ministry of Finance, or the rate for buying or selling foreign currency listed at the time the competent agency issues a written refusal to certify the foreign loan registration, or at the time of transferring money for debt payment by the bank providing account services, or another credit institution or foreign bank branch in Vietnam;

b) Foreign loans have not yet been fully repaid, but the written certification of registration or registration for changes has its validity terminated due to fraudulent information or false document in the dossier. The foreign exchange rate applied to determine an amount in Vietnamese dong to be paid to the lender in accordance with Clause 4 Article 24 of this Circular.

c) Foreign loans in Vietnamese dong are from profits from direct investment activities in the Vietnamese territory of the lender being a foreign investor contributing capital at the borrower.

### **Article 33. Purchase of foreign currency and transfer of money for foreign debt repayment**

1. The borrower shall purchase foreign currency from a licensed credit institution to perform obligations relating to the payment of principal and interest and fee of foreign loans on the basis of presenting documents and vouchers indicating demands of legal foreign currency payment in accordance with laws and upon the request of the licensed credit institution.

2. A licensed credit institution shall set out regulations on vouchers and documents indicating the demands for legal use of foreign currency on the principle of verification of legal debt obligations of the borrower under foreign loan agreements, proof of loan fund withdrawal and written certification of registration for foreign loans issued by the State Bank (applicable to the case in which foreign loans must be registered with the State Bank) and other dossiers (if any) upon the request of the licensed credit institution.

**Article 34. Cases in which fund withdrawal or debt repayment is not carried out through accounts for borrowing and paying foreign debts**

1. Cases in which fund withdrawal is not carried out through accounts for borrowing and paying foreign debts include:

a) Withdrawing funds from the borrower to directly pay the non-resident beneficiary providing goods or services under goods or service sale and purchase contracts with the resident borrower;

b) Withdrawing foreign loan funds in the form of finance lease;

c) Withdrawing funds through the account opened abroad by the borrower in case the borrower is allowed to open accounts abroad to execute the foreign loans;

d) Withdrawing funds from mid-term, long-term foreign loans through settling or clearing against direct payment obligations to the lender, including the obligation of payment under import contracts, obligation of debt payment for foreign loans, obligation of direct reimbursement of indebtedness amount to the lender in accordance with this Circular;

dd) Withdrawing funds in case the money amount prepared for investment is converted into foreign loans as agreed by the parties in accordance with the law on foreign exchange management regarding foreign direct investment into Vietnam.

2. Cases in which debt repayment is not carried out through accounts for borrowing and paying foreign debts include:

a) Paying debts by providing goods or services for the lender;

b) Debt repayment through an agreement between the lender and borrower on switching outstanding debts to shares or capital contribution portions in the borrower;

c) Debt repayment through an agreement between the lender and borrower on swapping loan balance to shares or capital contribution portions in the borrower;

d) Paying debts incurred from mid-term or long-term loans through settling or clearing against direct receivables with the lender;

dd) Paying debts through the account that the borrower opens abroad (in case the borrower is allowed to open accounts abroad for executing foreign loans).

3. Within 05 working days from the date of fund withdrawal or debt repayment in cases specified in Clauses 1, 2 of this Article, the borrower shall be responsible for notifying and sending documents providing the fund withdrawal and debt repayment in the form of not using accounts for borrowing and paying foreign debts to the bank providing account services, and continuing to monitor the foreign loans of the borrower.

## **Chapter V**

### **REGULATIONS ON FOREIGN EXCHANGE MANAGEMENT REGARDING SECURITY TRANSACTIONS OF THE LOANS BY THE MODE OF SELF-BORROWING AND SELF-PAYMENT**

#### **Article 35. Performance of guarantee obligations**

1. Regarding guaranteed foreign loans, the guarantor shall perform guarantee obligations to the foreign lender (the guarantee) as requested under commitments of the loan agreements, written guarantee commitments (performance guarantee, guarantee contract or other guarantee commitments) which have been reached between parties involved and are not contrary to current laws.

2. The guarantor being resident that make money transfer shall perform the guarantee obligations via one bank serving security transactions (except for the cases specified in Clause 3 of this Article).

3. In case where the guarantor is a credit institution or foreign bank branch in Vietnam, the caution money is not required to transfer via a bank serving security transactions. The credit institution or foreign bank branch in Vietnam that guarantees the foreign loans shall be responsible for complying with the law on bank guarantee and notifying the bank providing account services of the caution money.

#### **Article 36. Use of assets as security for performance of obligations**

1. When arising security obligations by assets for foreign loans, the securing party shall perform the security obligations according to commitments in the loan agreement and guarantee agreements which are not in contravention of Vietnamese law on security transactions and other relevant laws.

2. The transfer of the amount collected after handling collaterals in the territory of Vietnam for the lender or the lender's representative to perform the asset security obligations (hereinafter referred to as “money transfer for asset

security obligation performance”) shall be carried out via a bank serving security transactions in accordance with this Circular.

3. In case of handling collaterals according the method that the secured party shall receive such collaterals as a substitute for the performance of obligations, the borrower shall be responsible for notifying the bank providing account services the fact that the debt liabilities have been paid by receiving collaterals as a substitute for performance of the obligations.

### **Article 37. Banks serving security transactions**

1. The transfer of money for asset security obligation performance (including money transfer for guarantee obligation performance and money transfer for asset security obligation performance) shall be carried out via a bank serving security transactions, except for the cases specified in Clause 3 Article 36 of this Circular.

2. In case where the bank serving security transactions is concurrently the bank providing account services of the foreign loans, such bank shall be responsible for checking and keeping relevant documents as prescribed by law when making money transfer for security obligations in accordance with this Circular.

3. In case where the bank serving security transactions is not the bank providing account services of the foreign loans, when making money transfer for security obligations, it shall be responsible for:

a) Checking and keeping documents, and making money transfer based on the documents specified in Clause 4 of this Article;

b) Within 07 working days from the date of money transfer for security obligations, notifying and sending the bank providing account services document proving the debt amount (principal, interest and fee) already paid to the lender by performing security obligations so as the bank providing account services monitors and determines the principal balance, interest and fee of the loans which serve as the basis for the money transfer for reimbursement of the indebtedness amount between the borrower and securing party in accordance with this Circular.

4. Documents required to obtain the bank serving security transactions’ permission to carry out money transfer for security obligations for foreign loans include:

a) Foreign loan agreement;

b) Agreements on guarantee and security by assets, relating to foreign loans;

c) Written request for security obligation performance from the lender (or the lender's representative organization, or representative organization of the lender in handling collaterals) according to the parties’ agreement on

guaranteeing or handling collaterals, specifying payment obligations the borrower fails to fulfill according to the loan agreement;

d) Written certification of the borrower's bank providing account services of the fund withdrawal and debt repayment up to the time of requesting the money transfer for security obligation performance;

dd) Written certification of registration or registration for changes of foreign loans issued by the State Bank, specifying information about security measures applied to foreign loans (applicable to the case in which foreign loans are subject to registration with the State Bank);

e) Other documents and vouchers (if any) according to regulations of the bank serving security transactions.

5. The borrower shall be responsible for notifying the securing party the bank providing account services, the bank security transactions, and declaring sufficient information about such banks when registering or registering changes to foreign loans (in case where the loans are subject to registration in accordance with this Circular).

### **Article 38. Indebtedness amount between the borrower and securing party**

1. Indebtedness amount (if any) between the borrower and securing party means an amount that the borrower is obligated to reimburse to the securing party after the securing party fulfills security obligations as agreed between the borrower, securing party and the lender involved in the foreign loans (hereinafter referred to as the “indebtedness amount”).

2. The maximum indebtedness amount must not exceed an amount equivalent to the debt liability as stated in the foreign loan agreement already performed by execution of security measures.

3. In case where the borrower and securing party are residents and have reached an agreement on interests and fees for the indebtedness amount, such agreement must be consistent with the Civil Code in force.

4. In case where the borrower and securing party are nonresidents and have reached an agreement on interests and fees for the indebtedness amount, the total interest and fee amount payable to the securing party by the borrower which is converted according to the annual percentage on total indebtedness amount must not exceed the interest applicable to the late payment loan amount specified in the foreign loan agreement with security measures.

5. Agreement on currency used for indebtedness and payment for indebtedness amounts within a territory must be consistent with regulations on restrictions on use of foreign exchange in the territory of Vietnam.

### **Article 39. Reimbursement of indebtedness amounts**



1. The borrower shall carry out reimbursement of indebtedness amounts to the securing party on the basis of presenting the followings to the bank providing account services:

a) Foreign loan agreement and security agreements relating to foreign loans;

b) Agreement between the parties on the borrower's obligation of reimbursement of indebtedness amounts toward the securing party;

c) Documents proving the securing party's performance of security obligations relating to foreign loans (copies of transfer receipts proving the securing party's payment on behalf of the borrower, documents proving the amount for security obligation performance which has been transferred to serve security transactions, documents proving the transfer of collaterals for obligation performance);

d) Other documents or vouchers (if any) according to regulations of the bank providing account services.

2. The reimbursement of indebtedness amount to the securing party must be carried out via accounts for borrowing and paying foreign debts. In case where the currency used for payment of the indebtedness amount is different from the one of the accounts for borrowing and paying foreign debts, the borrower may use another account opened at the same bank providing account services.

## **Chapter VI**

### **STATISTICAL REPORTING REGIME APPLICABLE TO THE LOANS BY THE MODE OF SELF-BORROWING AND SELF-PAYMENT**

#### **Article 40. Statistical reporting regime applicable to banks providing account services**

The banks providing account services shall implement the reporting regime in accordance with provisions set forth by the State Bank on statistical reporting regime applicable to licensed credit institutions and foreign bank branches.

#### **Article 41. Reporting regime applicable to borrowers**

1. On a quarterly basis, no later than the 5<sup>th</sup> of the month following the reporting period, the borrower must prepare an online review report on short-term, mid-term and long-term loans on the website. In case where the report cannot be sent due to the website's technical errors, the borrower shall send a written report made according to the form provided in Appendix 05 to this Circular.

2. Within 10 working days after receiving the borrower's report on the websites, the State Bank branch shall approve the report on the websites (or update information from the written report if the websites encounter technical errors) to archive information to the database. Where reporting information is accurate, the borrower shall be notified of completion of reporting by emails in accordance with regulations. Where there is inaccurate information or any information that need to be clarified, the State Bank branch shall send the notification email to the borrower to make data adjustments.

3. Within 03 working days from the date on which the errors in reports on foreign borrowing and debt repayment are detected, the borrower shall be responsible for making online report on the websites (or written report if the websites encounter technical errors) of the execution of short-term, medium-term and long-term loans with corrected data; at the same time, notify the State Bank branch by emails for the latter to check and approve in accordance with this Circular.

#### **Article 42. Irregular reports**

In some unexpected events or whenever necessary, the borrower or the bank providing account services shall send reports upon the request of the State Bank.

## **Chapter VII**

### **RESPONSIBILITIES OF RELATED PARTIES**

#### **Article 43. Responsibilities of borrowers**

1. To comply with regulations on management of foreign borrowing or foreign debt repayment in this Circular and other relevant regulations when signing and executing foreign loan agreements and agreements on foreign loan security.

2. To produce documents as prescribed by law upon requests of the banks providing account services when determining where the loans are provided in cash, or financial lease and/or other forms, and when carrying out bank transfer transactions related to foreign loans.

3. To implement regulations on declaring information, making reports and maintaining information security in accordance with this Circular.

4. To take responsibility before the law for:

a) Determining where the loans are provided in cash, or financial lease and/or other forms. In case where the foreign loans are provided in the form of financial lease, the borrower shall be responsible for determining the date of

receiving leased assets and providing information for the competent agencies and banks providing account services as required;

b) The accuracy and truthfulness of information provided and declared on the websites by their accounts; information and documents provided together with dossiers of registration or registration for changes to loans, reports submitted to competent agencies; information provided and documents produced to commercial banks when carrying out bank transfer transactions related to foreign loans.

#### **Article 44. Responsibilities of banks serving security transactions**

1. To provide bank transfer services and perform security obligations in accordance with this Circular.

2. To check and keep documents when providing bank transfer services and performing security obligations in accordance with this Circular.

3. To provide accurate information about the bank transfer with security obligations at request of the competent agencies, borrowers and the borrowers' banks providing account services.

#### **Article 45. Responsibilities of banks providing account services**

1. To provide account services for foreign loan transactions (fund withdrawal, debt repayment, fee payment or those relating to foreign loan security in accordance with this Circular) on the basis of:

a) A written certification of registration or registration for changes to foreign loans (in case where the loans are subject to registration or registration for changes), documents relating to the termination of validity of the written certification of registration or registration for changes to foreign loans;

b) Loan agreements, agreements on change to loan agreements and others relating to foreign loans;

c) Plans on use of loan capital, investment projects funded by short-term foreign loan capital of the short-term foreign loans (with the borrowers' commitments on the fact that these plans have been approved by competent authorities according to regulations on conditions for foreign borrowing and debt repayment), and are applied to short-term foreign loans;

d) Documents proving the securing party has fulfilled its security obligations relating to the conventional loan (bank transfer documents proving that the guarantor has paid debt on behalf of the borrower, documents proving that the money amount has been transferred to the lender or the lenders' representative by the guarantor or an organization representing to handle collaterals, or other equivalent documents);

dd) Documents the borrower's compliance with the online reporting regime on short-term foreign borrowing and debt repayment according to the

provisions of this Circular (screenshot of the report on the websites certified by the borrower);

e) Documents proving the borrower's performance of the foreign currency risk prevention operations for the payment period of foreign loans in accordance with applicable regulations on management of foreign borrowing and debt repayment (if any);

g) Other dossiers and documents according to internal regulations of the banks providing account services.

2. To check and compare the accuracy and coincidence of transfer orders (fund withdrawal or debt repayment) with documents presented by the borrower and involved parties to ensure that money transfer transactions relating to foreign loans are consistent with the written certification of registration or registration for changes (in the event of loans subject to registration or registration for changes), loan agreements and other relevant arrangements according to regulations on foreign exchange management.

3. To provide the borrower's accurate information about foreign loans (including amount of fund withdrawn or debt paid; withdrawal or repayment time; reference information about loan agreements or borrower) in the written certification of the execution of the borrower's foreign loans at the borrower's request or at request of the competent agencies.

#### **Article 46. Responsibilities of the Foreign Exchange Management Department**

1. To assume the prime responsibility for establishing the model of management of information about foreign borrowing and debt repayment via the website.

2. To perform functions and duties in accordance with this Circular.

3. To make best use of the database on foreign borrowing and foreign debt repayment which assists the work of formulating and operating policies in consistency with its functions and duties.

4. To assume the prime responsibility for, and coordinate with the National Credit Information Center of Vietnam in:

a) Developing user's manuals, posting and updating information on the websites in a regular manner;

b) Revising and improving contents of the websites in order to offer users advantages, and undertaking that the database must assist the management of foreign borrowing and repayment of foreign debts which are not guaranteed by the Government;

c) Answering any question about the website; receiving and providing timely guidance, and dealing with any difficulty or requests of users during the operation of the website;

d) Providing instructions on registration and grant of accounts, registration for changes to information about these accounts for subjects prescribed at Points b and c Clause 1 Article 10 of this Circular.

#### **Article 47. Responsibilities of the National Credit Information Center of Vietnam**

1. To maintain safety and stability during operation of the website, and prevent unauthorized access to the websites and database for management of foreign borrowing and foreign debt repayment.

2. To use information about enterprises' foreign borrowing and debt repayment to develop a database on national credit, serving the State Bank's management and business, risk management of credit institutions and foreign bank branches.

3. To cooperate with the Foreign Exchange Management Department in implementing provisions laid down in Clause 4 Article 46 of this Circular.

#### **Article 48. Responsibilities of the State Bank branches**

1. To perform functions or tasks under the competence as stipulated by this Circular.

2. To take responsibility for guiding, monitoring, reminding and urging borrowers to declare information, and make reports in accordance with this Circular.

3. To make best use of the database on foreign borrowing and foreign debt repayment within the competence which assists the management of foreign borrowing or foreign debt repayment in localities in consistency with the functions and tasks.

4. To provide supervision opinions on the compliance of the law on prudential ratios in banking operations of borrowers being credit institutions and foreign bank branches (subject to the micro-safety supervision and inspection of the State Bank branches when the competent agencies request for opinions). The scope of supervision opinions includes opinions on separate criteria and consolidated criteria of ratios and limits reported by the credit institutions and foreign bank branches in Appendix 02 to this Circular;

5. To inspect, examine and impose penalties for administrative violations within the competence in respect of cases of administrative violations in the course of implementing provisions laid down in this Circular.

#### **Article 49. Responsibilities of the Banking Supervision Agency**

1. To provide supervision opinions on the compliance of the law on prudential ratios in banking operations of credit institutions and foreign bank branches (subject to the micro-safety supervision and inspection of the Banking Supervision Agency when the competent agencies request for opinions). The scope of supervision opinions includes opinions on separate criteria and consolidated criteria of ratios and limits reported by the credit institutions and foreign bank branches in Appendix 02 to this Circular.

2. To inspect, examine and impose penalties for administrative violations within the competence in respect of cases of administrative violations in the course of implementing provisions laid down in this Circular.

## **Chapter VIII**

### **IMPLEMENTATION PROVISIONS**

#### **Article 50. Effect**

1. This Circular takes effect on November 15, 2022, except for provisions of Clause 2 of this Article.

2. Provisions on prevention of foreign currency risks for the payment period of the foreign loans, and provisions on responsibilities of the banks providing account services for checking documents proving that the borrowers have implemented operations for foreign currency risk prevention shall be applied from the time the provisions on conditions for foreign borrowing without government guarantee (including provisions on prevention of foreign currency risks for foreign loans) take effect.

3. From the effective date of this Circular, the following documents shall cease to be effective:

a) Circular No. 03/2016/TT-NHNN dated February 26, 2016, of the Governor of the State Bank of Vietnam, providing several instructions on foreign exchange administration in respect of foreign borrowing and foreign debt repayment of enterprises;

b) Circular No. 05/2016/TT-NHNN dated April 15, 2016, of the Governor of the State Bank of Vietnam, amending and supplementing a number of articles of Circular No. 03/2016/TT-NHNN dated February 26, 2016, of the Governor of the State Bank of Vietnam, providing several instructions on foreign exchange administration in respect of foreign borrowing and foreign debt repayment of enterprises;

c) Circular No 05/2017/TT-NHNN dated June 30, 2017, of the Governor of the State Bank of Vietnam, amending and supplementing a number of Circular No. 03/2016/TT-NHNN dated February 26, 2016, of the Governor of

the State Bank of Vietnam, providing several instructions on foreign exchange administration in respect of foreign borrowing and foreign debt repayment of enterprises.

### **Article 51. Transitional provisions**

1. Regarding the execution of foreign loans in the form of deferred payment for import of goods: Mid-term or long-term foreign loans arranged in the form of deferred payment for import of goods of which registration or registration for changes has been certified by the State Bank before the effective date of this Circular shall continue to be executed (including fund withdrawal or debt repayment) according to written certification of registration or registration for changes of foreign loans. In case of arising changes stated in the written certification of registration or registration for changes of foreign loans, the borrowers shall execute based on the agreement with the lenders without registering changes with the State Bank.

2. Regarding foreign loans denominated in Vietnamese dong:

a) Foreign loans denominated in Vietnamese dong of which registration or registration for changes has been certified before April 15, 2016 by the State Bank shall continue to be executed according to the written certification of registration or registration for changes of such foreign loans issued by State Bank branches.

b) In case of arising changes of foreign loans denominated in Vietnamese dong of which the registration or registration for changes has been certified by the State Bank (the Foreign Exchange Management Department), the determination of agencies competent to process the dossiers of registration for changes shall comply with Article 20 of this Circular.

3. Regarding the execution of short-term foreign loans: Short-term foreign loans which have been executed (fund withdrawal or debt repayment) before the effective date of this Circular shall continue to be executed via current accounts.

4. Regarding foreign loans of which the lender's address has been certified in the written certification of registration or registration for changes, if there is any change to the lender's address without changing the creditor's country, the lender is not required to register the change to foreign loans in accordance with this Circular.

5. Dossiers of registration or registration for changes to foreign loans, that have been fully submitted to the State Bank before the effective date of this Circular, shall continue to be processed under Circular No. 03/2016/TT-NHNN dated February 26, 2016, of the Governor of the State Bank of Vietnam, providing several instructions on foreign exchange administration in respect of foreign borrowing and foreign debt repayment of enterprises (and amending and supplementing documents), except for the cases where the foreign loans or

contents of registration for changes to foreign loans are no longer subject to registration or registration for changes in accordance with this Circular.

**Article 52. Implementation organization**

The Chief of Office, Director of the Foreign Exchange Management Department, Heads of units affiliated to the State Bank; credit institutions, foreign bank branches, enterprises, cooperatives and unions of cooperatives shall be responsible for the organization and implementation of this Circular.

**FOR THE GOVERNOR  
THE DEPUTY GOVERNOR**

**Pham Thanh Ha**

*\* All Appendices are not translated herein.*