

client alert

BANKING & FINANCE | VIETNAM |

OCTOBER 2013

NEW REGISTRATION REGIME FOR VIETNAM GOVERNMENT GUARANTEED FOREIGN LOANS AND BONDS

On 24 September 2013, the State Bank of Vietnam ("**SBV**") issued *Circular No. 22/2013/TT-NHNN* on the procedures for registration and amendment to registration of foreign loans (loans from non-resident lenders to resident borrowers) and foreign bonds (bonds issued outside Vietnam by Vietnamese issuers) guaranteed by the Government of Vietnam ("**Circular 22**") for purposes of foreign exchange control.

Circular 22 came into effect on 1 October 2013 and has established a **dedicated registration regime** applicable to foreign loans and bonds guaranteed by the Government. The pre-existing regime introduced by *Circular 09/2004/TT-NHNN* dated 21 December 2004 ("**Circular 09**") as amended by *Circular 25/2011/TT-NHNN* ("**Circular 25**") will continue to apply to foreign loans and foreign bond issuances not guaranteed by the Government with tenors over one year.

This client alert summarises the main provisions of and the key changes introduced by Circular 22.

Scope of application

Circular 22 applies to foreign loans and bonds guaranteed by the Government of Vietnam pursuant to *Decree 15/2011/ND-CP* dated 16 February 2011 on provision and management of Government guarantees. According to the Law on Public Debt Management No. 29/2009/QH12 dated 17 June 2009, only foreign loans in an amount exceeding USD 50 million or foreign bond issuances in an amount exceeding USD 100 million, in each case with tenors over 10 years for purposes of implementing the Government's priority projects, are eligible to be secured by Government guarantees.

Registration Process

In terms of registration procedures and dossiers, Circular 22 contains some differences from Circular 25, summarised in the following table:

	Document	Circular 25 (applicable to non-Government guaranteed foreign debt)	Circular 22 (applicable to Government guaranteed foreign debt)
1	Document from the Ministry of Finance ("MOF") and the managing Ministry approving the foreign loan	Required in respect of loans to, or issuances by, State-owned groups and corporations	Not required
2	SBV application for registration of foreign loan/bond issuance	Required	Required
3	Constitutional documents of the borrower (decision on establishment/enterprise registration certificate/investment certificate)	Required, but not applicable to credit institutions	Required
4	Copy of the MOF letter of guarantee	Required	Required
5	Written approval from the competent authority in respect of the underlying investment project or production and business plan	Required, but not applicable to enterprises with foreign-owned capital and credit institutions	Required in respect of all borrowers/bond issuers
6	Decision from the competent authority permitting enterprises to issue bonds overseas	Required (in the case of a bond issuance)	Not required
7	Copy of the executed foreign loan agreement and Vietnamese translation	Required (in the case of a foreign loan)	Required
8	Copy of contracts in relation to the international bonds issuance and their Vietnamese translations (e.g. underwriting or agency agreements)	Not required	Required

Timeline

The deadline for the submission of the registration request to the SBV is shortened to 30 **calendar** days following the issuance of the Government guarantee instead of 30 working days as is currently required by Circular 25.

The timeline for the SBV to issue the loan/bond registration certificate is also shortened to 15 **calendar** days instead of 15 working days following the submission of a duly completed application file.

Reporting Regime

The reporting regime has been aligned with that provided for in Decree 15, which requires the borrower/bond issuer to send a series of reports on its financial situation and the use of borrowed funds and project implementation to the MOF. The SBV will no longer receive separate reports as was required under Circular 09 but will receive copies of the reports sent to the MOF.

Clarification on the effectiveness of Circular 09

When Circular 25 was issued to introduce a new general foreign loan/bonds registration procedure, it omitted to state that the relevant provisions of Circular 09 were abolished. This created some uncertainty as to the documentation and procedures to follow. In order to eliminate doubts, Circular 22 formally repeals the relevant registration and registration amendment procedures of Circular 09.

CONTACTS

SAMANTHA CAMPBELL

Partner

samantha.campbell@gide.com

BACH DUONG PHAM

Associate

bach-duong.pham@gide.com

You can also find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).