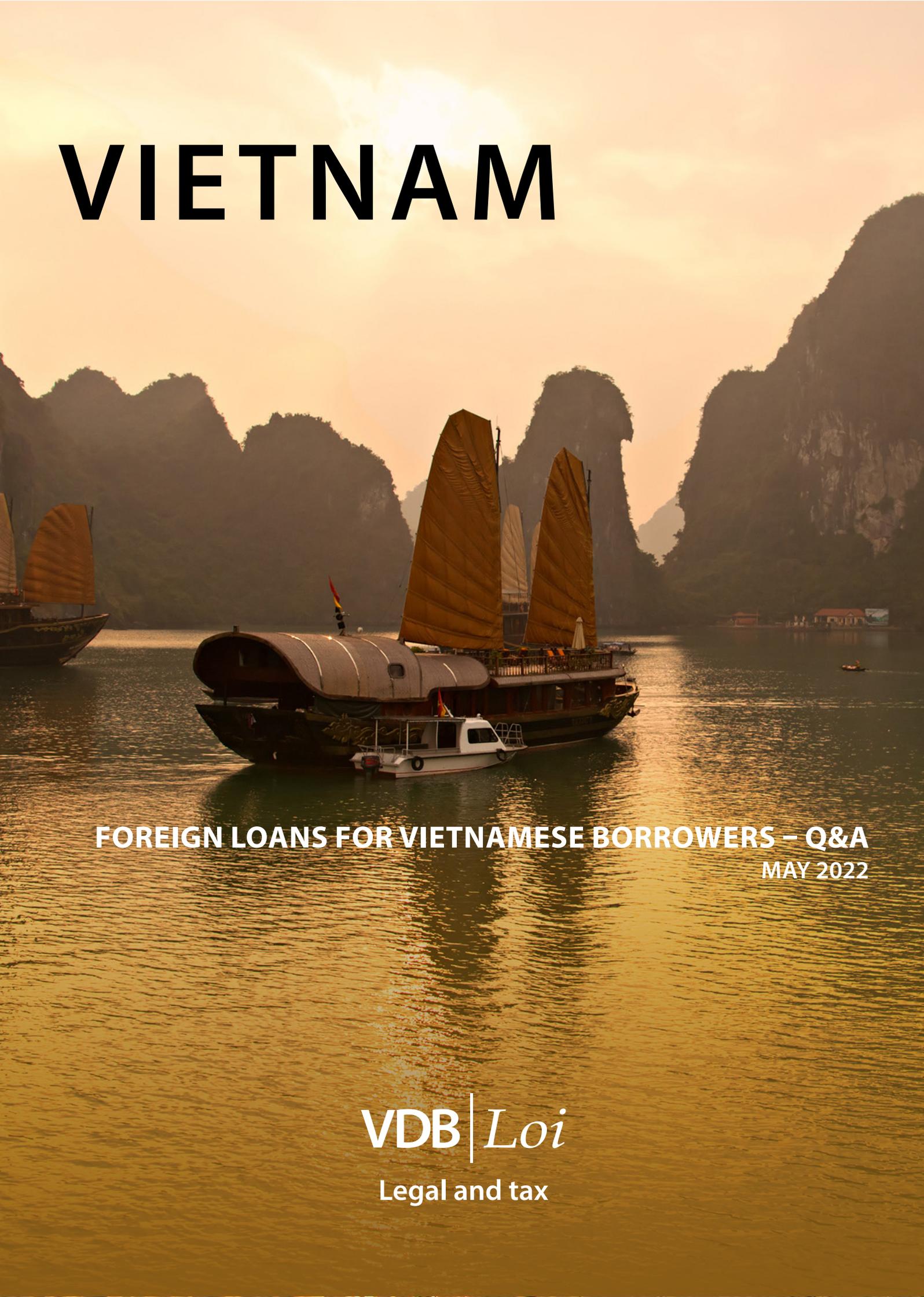


VIETNAM



FOREIGN LOANS FOR VIETNAMESE BORROWERS – Q&A
MAY 2022

VDB | *Loi*
Legal and tax

In this briefing the team of VDB Loi (Vietnam) answers to the most frequently raised questions relating to the provision of foreign loans to companies in Vietnam. This article generally assumes that parties are looking to implement long-term financing for a company registered in Vietnam. Note that additional requirements may apply to certain specifically regulated entities (e.g. banks or state-owned enterprises). Structuring of multi-lender (syndicated) loans is also associated with additional considerations that will be addressed separately.

1. What are the requirements applicable to a Vietnamese company to make it capable of receiving a loan from abroad?

When structuring a loan transaction with a borrower in Vietnam, several aspects are typically verified to ensure compliance with local laws. Some of the key points to be kept in mind are summarized below:

Overall cap

There is an annual cap on foreign loans approved by the Prime Minister of Vietnam. The limit for mid- and long-term loans for 2022 was set at 7,300 million US dollars.

IRC cap

For the company-holder of an Investment Registration Certificate, it is necessary to check that the new mid- or long-term loan will be within the approved total investment size (as reduced by the amount of contributed equity investment and of the earlier obtained long-term loans).

Debt-to-Equity Ratio (real estate developers)

For borrowers who are developing real estate projects, there is an additional requirement that their equity capital shall not be less than 20% of the total investment capital (if its land area under development is less than 20 hectares). If the land exceeds 20 hectares, the share of equity shall be not less than 15% of the total investment capital.

Purpose

There are requirements with respect to the purpose for which foreign loans can be obtained. In short, the typical permitted purposes are:

- a. to refinance an existing foreign loan (in this case, the additional requirement is that the borrowing costs of the new loan shall not exceed those of the loan that is being refinanced);

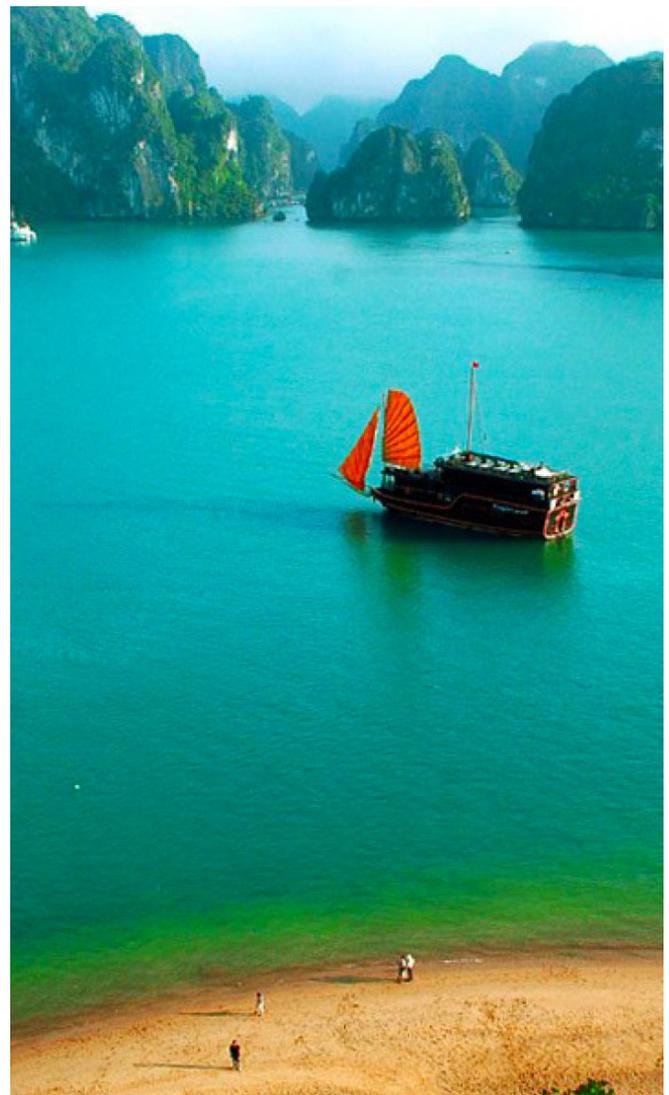
- b. to implement an investment project of the company.

Parties should note that compliance with these requirements can be verified by authorities on continued basis, and deviation from permitted purpose of using loan proceeds may result in penalties.

2. Which permits are required to receive / repay the loan and pay interest?

Under the current regulations, certain foreign loans are subject to registration with the SBV. This includes, among others:

- Medium- and long-term foreign loans (with a term of over 1 year). The loan duration is generally determined from the expected date of the first disbursement to the last expected date of repayment.
- Short-term foreign loans for which the loan term has been extended and the total duration of the loan is more than one year.



Registration procedure can be completed by making submission of a hardcopy application or online (through a registered online account of the borrower with SBV). Submission of a copy of loan agreement with translation into Vietnamese language is required.

The statutory period during which the registration should be effected by the SBV is approximately one calendar month. Upon completion, the SBV would issue a certification (ruling) confirming that the loan has been registered.

3. Are there any limitations on the interest rate?

Based on available legal regulations, the lender and borrower can agree on the cost of the loan in their contract.

SBV has the authority to set a cap from time to time, if it deems necessary. In practice, loans where interest rate could be considered unreasonably high compared with what is the market range, could potentially face challenges at the stage of registration with the SBV.

4. Would any withholding tax apply on interest payments?

As a general rule, borrower would be required to withhold 5% from the interest or any associated fees paid to the offshore lender. Tax gross-up provisions are frequently included into the finance documentation.

It should be noted that in loans from related parties, the borrower will be limited to deduction of interest cost in the amount not exceeding 30% EBITDA for the year. The surplus, however, can still be carried forward to a maximum of five subsequent years.

5. Are there any stamping, notarisation or similar duties applicable upon signing loan agreement?

There is no stamp duty in Vietnam for execution or registration of the loan agreement.

Notarization fees (in relation to the security documents) typically depend on the value of the charged property or the value of the transaction.

6. Is there any specifics in relation to bank accounts? For example, can a Vietnamese borrower open an offshore bank account ?

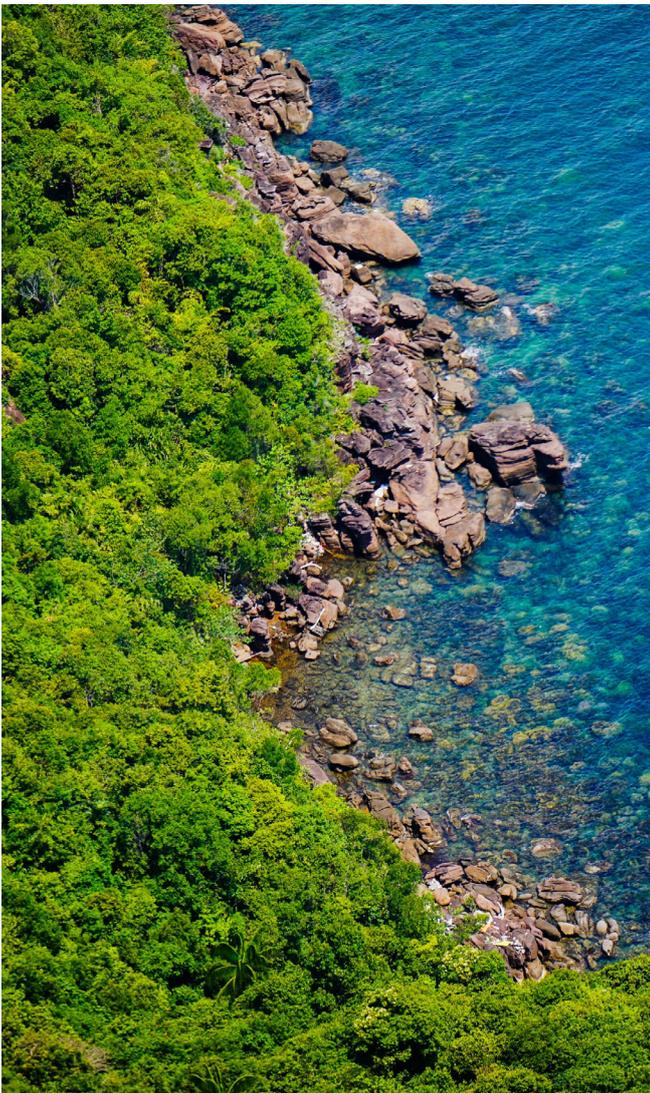
In order to receive and repay the loan, the borrower must open a special bank account. It is referred to either as a Direct Investment Capital Account (DICA) (for companies holding Investment Registration Certificate) or Foreign Loan Account (for other companies).

If the borrower is a company that already has a DICA, it will use it to receive and repay the loan or interest.

A Vietnamese corporate borrower can open an offshore account, however, this requires special approval from SBV.

7. What types of security can be offered by a Vietnamese borrower and are there any restrictions applicable to security for loans for foreign lenders?

Variety of assets can be used as security in projects in Vietnam, including shares, equipment and contract rights. Given that enforcement process may potentially require resort to court proceedings (in particular, where the borrower is not cooperating), the security is generally regarded to be more of defensive nature for the lenders.



Significance of share pledge is particularly high, taking into account limitations on availability of security over immovables for the benefit of foreign lenders. When structuring a deal, parties also consider whether additional governmental approvals would need to be obtained at the enforcement stage (e.g. due to change of control in the company upon enforcement of the share pledge).

The two most common forms of security over assets are mortgages and pledges. In a mortgage, property is used as security without the actual transfer of property to the creditor.

In a pledge, property is transferred from the pledgor to the pledgee for the purposes of securing an obligation.

8. What are the major perfection requirements for security and how difficult is the process?

For both mortgage and pledge form of security, the major perfection requirement is its registration in Vietnam.

Registration of security over land (in the cases when it is possible to take it) is carried out with the Department of Natural Resources and Environment. Such security over immovables is also subject to notarization.

Security over assets other than immovables is, as a matter of practice, registered with the National Registration Agency for Security Transactions (NRAST) this is by way of additional protection for the secured Lenders. The registration process is relatively straightforward.

9. Can guarantees be provided by a Vietnamese company to secure a loan obtained by a Vietnamese borrower?

Guarantees by one Vietnamese company to secure obligations under a foreign loan of another Vietnamese company are provided. Registration with SBV is required, and it is usually done when applying to register the underlying loan.

Note that a company in Vietnam cannot provide a security or guarantee to a foreign lender in respect of an offshore loan to a foreign borrower, without prior approval of the Prime Minister of Vietnam. The detailed guidance on how such approval can be obtained is being developed.

As a matter of practice, such approvals are so far usually limited to projects of state-owned enterprises investing overseas in accordance with government policies.

10. Are there any developments that are expected in terms of legal framework for cross-border loans?

Several initiatives are in progress in terms of further development of the regulatory framework for cross-border loans.

SBV is now collecting feedback from organizations and individuals on the draft new Circular stipulating the conditions for foreign loans. Currently this is regulated by Circular 12/2014/TT-NHNN which was issued in 2014.

Based on the draft new Circular the following changes could be expected:

- More detailed regulation of the interest cost: (i) for loans using the reference interest rate, there could be a maximum rate equivalent to the reference interest rate + 8%/year; (ii) for loans that do not use a reference interest rate, the maximum of 6-month SOFR + 8%/per annum can be made applicable.
- Enterprises may not be allowed to use short-term foreign loans for the purposes of acquiring investment projects, buying shares, and undertaking other acquisitions, which represent long-term activities.

Borrowers may be required to put in place hedge protection in several cases. In particular entry into a foreign currency derivative transaction may be required in the amount of least 30% of the loan, where principal amount of the loan would exceed USD500,000.

The above principle, however, should not apply where (i) the borrower is a foreign credit institution or bank branch or (ii) the borrower is expected to have sufficient foreign currency revenue to repay the debt.

Thin capitalization rule may be introduced in connection with the approval of mid- or long- term loan. Specifically, in case of using foreign loans to increase the size of capital for production and business activities of the borrower, the borrower may be required to ensure that the balance of medium and long-term domestic and foreign loans does not exceed 3 times the size of its equity according to the most recent audited financial statements.

ABOUT VDB LOI IN VIETNAM

VDB Loi has been operating in Vietnam since **2013**. We have particularly strong expertise in Energy and Infrastructure, Project Finance, Real Estate, TMT, and Tax practices. VDB Loi also provides on-going support to its clients at all stages of their investments in Vietnam, from initial market entry, business set up, obtaining regulatory approvals, to continued compliance with reporting and filing requirements.

For more information and other legal and tax updates for Vietnam, please refer our web-site: [LINK](#)

Please also refer to VDB Loi regional **Green Finance** overview covering Bangladesh, Cambodia, Lao and Vietnam: [LINK](#)

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