

A Practical Guide for Borrowers  
**FOREIGN LOANS**



## I. Introduction

This guide focuses on the practical aspects of obtaining a foreign loan in Vietnam, including the steps and actions that borrowers must undertake throughout the process. It does not delve into the technical details of loan terminology or definitions but instead provides a clear roadmap for borrowers to follow. Please note that this guide is based on general principles and practices, and individual circumstances may vary.

## II. Preliminary Considerations

### A. Assess Financial Needs and Objectives

Before seeking a foreign loan, the borrower must first evaluate its financial needs and objectives. This includes determining the purpose of the loan, the required amount, and the desired repayment period. Additionally, the borrower should assess its current financial situation and ability to repay the loan. This will help the borrower present a strong case to potential lenders and ensure the borrower chooses the most suitable loan product.

### B. Identify Potential Lenders

The borrower should research and identify potential foreign lenders suitable for its specific needs, such as:

- International financial institutions: Such as the World Bank, Asian Development Bank, and other development banks.
- Foreign banks: Commercial banks from other countries with a presence in Vietnam or offering cross-border loans.
- Private investors: Including venture capital firms, private equity firms, and high-net-worth individuals interested in investing in Vietnamese businesses.

# Navigating Foreign Loans in Vietnam: A Practical Guide for Borrowers

Different types of investors may have different requirements and procedures for granting loans, and these differences should be taken into account when negotiating the loan agreement.

## C. Investment Amount and Currency

The borrower should be clear about the amount and currency of the loan it is seeking. This information is essential for determining the appropriate legal requirements and procedures that apply to the loan transaction.

## D. Evaluating the Business's Creditworthiness

To increase the likelihood of securing a foreign loan, the borrower should assess its creditworthiness and take steps to improve its credit rating. This may involve:

- Review financial statements: Analyze the borrower's balance sheet, income statement, and cash flow statement to determine the borrower's financial health and creditworthiness.
- Calculate financial ratios: Use key financial ratios such as debt-to-equity, current ratio, and debt service coverage ratio to assess the borrower's financial strength and ability to repay the loan.
- Assess credit history: Review the borrower's credit history and report (if any), including any outstanding loans and payment records. Address any credit issues before applying for a foreign loan.

## E. Preparing a Comprehensive Business Plan

A well-prepared business plan is essential for convincing potential lenders of the viability and profitability of the borrower's business. The plan should include a detailed description of the business, market analysis, financial projections, and a clear explanation of how the loan proceeds will be utilized.

## III. Pre-Loan Stages

### A. Due Diligence Process

Before proceeding with the loan, the foreign lender may conduct financial and legal due diligence processes. This will enable the lender to assess the borrower's compliance with Vietnamese laws and regulations and the borrower's creditworthiness and financial stability. The borrower should prepare all necessary documentation and information as required by the lender, such as the company's charter, tax registration certificate, any required licenses and permits, financial statements, details of existing loans, and any other relevant information.

### B. Loan Negotiation

- Commercial terms

The borrower and the foreign lender will need to negotiate and agree upon the specific commercial terms of the loan, including the loan amount, term, interest rate, repayment schedule, and any fees or charges.

The borrower should carefully evaluate the terms of the proposed loan to ensure that it is feasible and affordable. This assessment should consider the company's cash flow projections, the impact of interest payments on profitability, and the ability to meet loan covenants and collateral requirements.

- Types of loan structure and form

The parties involved must engage in a thorough discussion to determine the most suitable loan structure (e.g., term loans, revolving credit facilities, syndicated loans, mezzanine financing, etc.) and loan form (e.g., secured loans, unsecured loans, backed loans, asset-based loans, bonds, etc.) within the confines of Vietnam's legal framework.

# Navigating Foreign Loans in Vietnam: A Practical Guide for Borrowers

Each loan structure and form caters to distinct needs and objectives, and accommodates varying capacities of borrowers and lenders. Moreover, these options present different degrees of flexibility depending on the specific circumstances, as well as varied benefits and risks. To ensure the most appropriate choice, it is crucial for the borrower, in particular, to enlist the expertise of legal and financial advisors. These professionals will assist in evaluating and comparing the available loan options within the context of Vietnam's legal framework.

## C. Drafting Loan Agreement

Once the terms have been agreed upon, the lender will prepare a formal loan agreement, which should be reviewed carefully by the borrower and its legal advisors. The loan agreement should include all relevant terms and conditions agreed upon by the borrower and the foreign lender. Key clauses to be included in the loan agreement are the loan amount, currency, interest rate, repayment schedule, security and guarantees, events of default, and remedies in case of default. Any discrepancies or concerns should be addressed before signing the agreement to ensure a clear understanding of the obligations and responsibilities of both parties. The agreement should also address any specific requirements and conditions imposed by Vietnamese law.

Besides the loan agreement, there might be other related documents, such as security documents, intercreditor agreement or a subordination agreement.

## IV. Registering Foreign Loans

### A. Types of Foreign Loans Requiring Registration

Foreign loans that must be registered with the SBV include:

1. Medium- and long-term foreign loans;
2. Short-term loans extended with a repayment term exceeding one year;
3. Short-term loans without an extension agreement, but with an outstanding principal balance (including accrued interest) at the end of one year from the first disbursement date, unless the borrower completes payment of the outstanding principal balance within 30 working days from the end of the first year since disbursement.

### B. Procedures for Registering Foreign Loans

The foreign loan registration process involves the following steps:

1. Signing a Foreign Loan Agreement: The borrower and the foreign lender enter into a legally binding agreement, specifying the terms and conditions of the loan.
2. Opening a Foreign Loan Account: The borrower must open a foreign loan and repayment account at a bank providing account services. This account is used for withdrawing foreign loans, repaying them, conducting risk-hedging derivative transactions, and other related money transfer transactions.
3. Submitting an Application for Foreign Loan Registration: Within 30 working days from signing the medium- or long-term foreign loan agreement or the short-term foreign loan extension agreement, the borrower must submit a registration application to the competent authority. Other specific deadlines may apply to special cases.

4. Confirmation or Rejection of the Foreign Loan Registration by the SBV: The SBV will issue a written confirmation or rejection of the foreign loan registration (stating the reason) within 15 business days from receiving the complete and valid dossier. In practice, this period may be much longer and may involve requests for additional documents or information.
5. Periodic Reporting of Foreign Loans to the SBV: Borrowers must report the implementation status of short-term, medium-term, and long-term loans online on a monthly basis, no later than the 5th day of the following month. In case of technical errors preventing online submission, alternative reporting methods may be utilized. In emergencies or when necessary, the borrower or account-servicing banks must report upon the SBV's request.

## V. Loan Disbursement and utilization

### A. Disbursement Schedule and Conditions Precedent for Disbursement

The loan disbursement schedule should be agreed upon by the borrower and the foreign lender and documented in the loan agreement. Disbursement can be made in one lump sum or in installments, depending on the terms of the agreement. The borrower must ensure that it is prepared to receive the loan disbursements as per the agreed-upon schedule.

There might be conditions precedent must be satisfied before the lender disburses the funds. These may include obtaining specific approvals, providing evidence of insurance, or executing security documents. The borrower shall keep the lender informed about the progress in satisfying the conditions precedent, and promptly provide any required documentation or evidence.

# Navigating Foreign Loans in Vietnam: A Practical Guide for Borrowers

## B. Currency Conversion

Foreign loans are usually disbursed in a foreign currency. The borrower will need to convert the funds into Vietnamese Dong (VND) to use them in Vietnam. Currency conversion is subject to regulations issued by the State Bank of Vietnam, and the borrower must ensure compliance with these regulations when converting the loan funds. It is essential to consider the exchange rate risks associated with currency conversion and plan accordingly.

## C. Monitor loan disbursement and fund utilization

The borrower must carefully monitor the disbursement of the loan funds, ensuring that they are used for the intended purpose as outlined in the loan agreement and business plan. This may involve creating a detailed budget and financial plan, tracking expenses, and reporting on the use of funds to the lender as required. Proper monitoring and utilization of the loan funds are crucial for avoiding breaches of the loan covenants and ensuring the success of the borrower's business objectives.

## D. Maintain proper documentation and records

Throughout the disbursement and utilization process, the borrower should maintain comprehensive records of all transactions, expenses, and financial activities related to the loan. These records may be required for audits, reporting to the lender, or future loan applications. Maintaining accurate and organized records will help the borrower demonstrate its responsible management of the loan funds and facilitate compliance with the loan covenants and reporting requirements.



## E. Environmental and Social Safeguards

Some foreign lenders, especially socially responsible investors and development banks, often require the borrower to adopt an Environmental and Social Management System (ESMS) and comply with certain Environmental and Social Safeguards Policy and Framework, which is a framework for managing environmental and social risks associated with the projects financed by the foreign loan, and can include processes for identifying and assessing risks, implementing mitigation measures, and monitoring and reporting on performance.

## **VI. Post-Loan Stage**

### A. Loan Repayment

- Repayment schedule

The borrower must adhere to the repayment schedule agreed upon in the loan agreement. This schedule typically includes the repayment dates, amounts, and the currency in which the repayments must be made. It is crucial for the borrower to ensure that it has sufficient funds available to make timely repayments and avoid defaulting on the loan.

- Develop a repayment plan

To ensure timely repayment of the loan, the borrower should develop a detailed repayment plan that aligns with the agreed-upon repayment schedule in the loan agreement. This plan should consider the company's cash flow projections, anticipated revenues, and any seasonal fluctuations in the business that may impact the ability to make payments.

# Navigating Foreign Loans in Vietnam: A Practical Guide for Borrowers

- Manage foreign exchange risks

As foreign loans are often denominated in a currency different from the borrower's local currency, the borrower should be aware of the potential foreign exchange risks associated with the loan. This may involve monitoring exchange rates, implementing strategies to hedge against currency fluctuations, and considering the impact of exchange rate movements on the company's financial performance and loan repayments.

- Early repayment and prepayment penalties

If the borrower wishes to repay the loan early or make additional payments beyond the agreed-upon schedule, it should first consult the loan agreement and check for any prepayment penalties or fees. Some foreign lenders may charge a penalty for early repayment to compensate for the loss of expected interest income. The borrower should carefully consider the costs and benefits of early repayment before proceeding.

## B. Loan Monitoring and Reporting

- Financial reporting requirements

The foreign lender may require the borrower to provide periodic financial reports and updates on its business activities. This may include the submission of audited financial statements, cash flow projections, tracking financial ratios, or other relevant financial information. The borrower should be prepared to meet these reporting requirements and maintain open lines of communication with the foreign lender.

- Compliance with loan covenants

The loan agreement may include various covenants, which are conditions or undertakings that the borrower must comply with throughout the loan term. These covenants may relate to the borrower's financial performance, business operations, or legal compliance. The borrower should be aware of and comply with all loan covenants to avoid potential breaches and the associated consequences.

## C. Default and Remedies

- Events of default

The loan agreement should clearly define the events of default, which are circumstances that trigger the lender's right to take legal action against the borrower or enforce the loan's security. Common events of default include failure to make timely repayments, breaches of loan covenants, and insolvency events. The borrower should strive to avoid any events of default to maintain a positive relationship with the foreign lender and minimize potential legal risks.

- Remedies available to lender

In case of a default, the foreign lender may have various remedies available under the loan agreement and Vietnamese law. These remedies may include accelerating the loan repayment, enforcing security, or taking legal action against the borrower. The borrower should be aware of these potential remedies and take all necessary steps to avoid default and the associated consequences.

## D. Loan Restructuring

In the event that the borrower encounters difficulties in repaying its debts or face the risk of default, the borrower may consider debt restructuring with the foreign lender. Debt restructuring may involve adjusting the repayment schedule, lowering the interest rate, or converting the currency of the loan. However, the borrower needs to negotiate carefully with the lender to achieve the best possible terms and avoid negative consequences for the future.

## VII. CONCLUDING AND ASSESSING EFFECTIVENESS

### A. Fulfilling the Repayment Obligations:

As the borrower approaches the end of the loan term, the borrower must ensure that it has met all repayment obligations, including principal and interest payments, in accordance with the terms and conditions of the loan agreement. The borrower should promptly address any outstanding issues or discrepancies with the lender.

### B. Obtaining a Loan Clearance Certificate

Once the borrower has fully repaid the loan, it should request a loan clearance certificate from the lender. This document serves as proof that the borrower has successfully repaid the loan and have no outstanding liabilities.

### C. Documentation

The borrower should keep a record of its loan experience, including the loan terms, repayment history, and any challenges encountered. This documentation will serve as a valuable reference for future financial planning and loan applications.

### D. Assessing Effectiveness

The borrower should assess the overall impact of the loan on its business or personal financial situation. Based on the assessment of the loan's effectiveness, the borrower may plan for any future financing needs, and develop a strategy to secure loans with favorable terms and conditions.



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