

Hanoi, 1 November 2005

**DECREE
ISSUING
REGULATIONS ON
CONTROL OF FOREIGN LOANS AND LOAN REPAYMENTS**

The Government

Pursuant to the *Law on Organization of the Government* dated 25 December 2001;

Pursuant to the *Law on State Bank of Vietnam* dated 12 December 1997 as amended on 17 June 2003;

Pursuant to the *Law on Credit Institutions* dated 12 December 1997 as amended on 15 June 2004;

On the proposal of the Minister of Finance;

Decrees:

Article 1

To issue with this Decree the *Regulations on Control of Foreign Loans and Loan Repayments*.

Article 2

This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette and shall replace Decree 90-1998-ND-CP of the Government dated 7 November 1998.

Article 3

The Minister of Finance, the Governor of the State Bank of Vietnam and the Minister of Planning and Investment shall be responsible for the implementation, guidance and inspection of the implementation of the *Regulations on Control of Foreign Loans and Loan Repayments* issued with this Decree.

Article 4

Ministers, ministerial equivalent bodies, heads of Government bodies, chairmen of people's committees of provinces and cities under central authority and head of bodies concerned shall be responsible for implementation of this Decree.

For the Government
Prime Minister

PHAN VAN KHAI

**REGULATIONS
ON
CONTROL OF FOREIGN LOANS
AND LOAN REPAYMENTS**

(Issued with Decree 134-2005-ND-CP of the Government
dated 1 November 2005)

CHAPTER I

General Provisions

Article 1 *Governing scope*

These Regulations regulate activities of borrowing and repayment of foreign loans and control of the foreign debt of Vietnam, with the exception of borrowing and repayment of foreign loans of residents being Vietnamese natural persons.

Article 2 *Interpretation of terms*

In these Regulations, the following terms shall be construed as follows:

1. *Foreign loan* means a loan borrowed by a resident of one country from a non-resident.
2. *Foreign loans of Vietnam* means short term loans (having a term of up to one year) and medium and long term loans (having a term of more than one year), both interest and non-interest bearing, borrowed by the State of Vietnam, the Government of Vietnam or organizations being residents of Vietnam (hereinafter referred to as *borrowers*) from international financial institutions, foreign Governments, or non-resident organizations and individuals (hereinafter referred to as *foreign lenders*).
3. *Residents of Vietnam and non-residents* shall be determined in accordance with the current law on foreign exchange control.
4. *Foreign loans of the Government* means preferential loans in the form of Official Development Aid ("ODA"), commercial loans, export credits and loans obtained from the international capital market (in the form of issuance of bonds in foreign countries) pursuant to an agreement signed between a body in the capacity of the State or the Government of the Socialist Republic of Vietnam as authorized by the State or the Government of Vietnam [on the one hand] and a foreign lender [on the other hand].
5. *Foreign loans of enterprises* means loans obtained by enterprises and economic institutions which are established and operate pursuant to the current laws of Vietnam (hereinafter referred to as *enterprises*) by directly signing an agreement with a foreign lender on the basis of independent borrowing and repayment or by way of issuance of bonds in foreign countries or financial hire purchase with foreign parties.
6. *ODA loans* means loans which satisfy the conditions on ODA in accordance with the Regulations of the Government on management and utilization of ODA loans.

7. *Foreign commercial loans* means foreign loans of Vietnam other than ODA loans.
8. *National foreign debt* means the outstanding debit balance (excluding contingent debt), both principal and interest, of all foreign loans of Vietnam at any one time. *National foreign debt* comprises public sector foreign debt and private sector foreign debt.
9. *Public sector foreign debt* means outstanding foreign loans obtained by the Government; and outstanding foreign loans (if any) of administrative authorities of provinces and cities under central authority, of State owned enterprises, of State owned financial and credit institutions, and of State owned economic institutions (hereinafter all referred to as *State owned enterprises*).
10. *Foreign debt of the Government* means the outstanding debit balance (excluding contingent debt), both principal and interest, of all foreign loans of the Government at any one time.
11. *Private sector foreign debt* means the outstanding foreign debt of enterprises and economic institutions belonging to the private sector (hereinafter referred to as *private enterprises*).
12. *Guarantee for a foreign loan* means the undertaking of a guarantor body with respect to the full and timely repayment of the debt by the borrower (the principal) to the foreign lender. Where the borrower (the principal) fails to repay when the debt falls due, the guarantor body shall be liable to make full payment of the debt on behalf of the borrower (the principal).
13. *Government guarantee for a foreign loan* means the Government, via the Ministry of Finance, undertakes to guarantee a foreign loan for a borrower.
14. *Guaranteed debt of the public sector* means outstanding loans for which the Government or a public sector institution which is authorized to issue guarantees (State owned financial and credit institutions) is the guarantor for repayment of all obligations associated with the loan (principal, interest, fees and so forth).
15. *Contingent debt* means potential debt obligations which have not yet currently arisen but which may arise on the occurrence of one of the previously specified conditions (for example: the principal of a guarantee fails to pay a part or all of the debt obligation, or is declared bankrupt and so forth).
16. *Long term national strategy on foreign loans* (abbreviated to *long term debt strategy*) means an official document which sets out the objectives, direction, solutions and policies applicable to control of the national foreign debt, formulated within the overall strategy on raising investment capital for the economy, in conformity with Vietnam's five year and ten year strategies for socio-economic development.
17. *Program on management of medium term loans* means an official document which details the contents of the strategy on long term debt for periods of from three to five years and which is updated each year, in conformity with the framework on economic and financial policy, and the medium term and annual State Budget targets of the Government.
18. *Annual master plan on foreign loans and loan repayment* means an official document formulated each year containing a plan for drawdown of loan capital and for repayment of loans by the Government, enterprises and institutions belonging to the public sector and the overall quota on national foreign commercial borrowing.
19. *Line body* means a body at the level of a ministry, ministerial equivalent body or people's committee of a province or city under central authority.

20. *Re-lending body* means the Ministry of Finance or a body or institution authorized by the Ministry of Finance to conduct re-lending of foreign loan capital of the Government, with responsibility for supervising the utilization of loan capital and the recovery of re-lending, and with entitlement to a re-lending fee in accordance with law.
21. *Re-lending agreements* means re-lending contracts or re-lending subordinate agreements between a re-lending body and a sub-borrower of foreign loan capital of the Government.
22. *Sub-borrowers of foreign loan capital of the Government* (abbreviated to *sub-borrowers*) means enterprises and organizations which sign a re-lending agreement with and receive loans from a re-lending body. Sub-borrowers shall comprise:
- Enterprises and organizations which are investors of projects using foreign loan capital of the Government pursuant to the re-lending regime;
 - Local administrative authorities which borrow foreign loan capital of the Government for local investment projects.
23. *Domestic contributed capital*¹ means the domestic contributed capital required from the Vietnamese party which, together with the foreign loan capital, is needed to implement the project.

Domestic contributed capital may be in foreign currency (such as security deposits, payments for import of machinery and equipment not financed by loan capital, and so forth) or in Vietnamese dong (such as payments for surveys, design, compensation for site clearance, construction and installation, project management, payment of tax pursuant to law, insurance premiums, and so forth).

CHAPTER II

State Control of National Foreign Loans and Repayment of National Foreign Loans

Article 3 *Objectives of control*

1. To meet the requirements for raising capital from all economic sectors at the lowest cost for investment and development of the country and for restructure of the economy in the direction of [and in accordance with the] strategy for development of the economy and society.
2. To ensure efficient management, allocation and utilization of capital, to reduce the risks to and pressure on national resources (the State Budget and the National Foreign Currency Reserves), and to ensure safety of funds and security of national finances.
3. To facilitate and strengthen international economic integration.

Article 4 *Contents and principles of control*

1. The Government shall exercise unified control throughout the whole country of the national foreign debt from raising, receiving, allocating and using [loan capital] to monitoring and supervising it, by using the following instruments:
 - (a) The long term debt strategy, the program on management of medium term debt, and the annual national master plan on foreign loans and loan repayments as approved by the Prime Minister of the Government;

1 Phillips Fox Note: Alternative translation is "reciprocal capital".

- (b) Appropriate policies and regimes, and delegation of management responsibility to State administrative bodies pursuant to the provisions in these Regulations.
- 2. The effectiveness of a program or project using loan capital shall be the most important criteria in making a decision to borrow a foreign loan.
- 3. Ensuring the balance between borrowings and the ability to repay, the foreign currency balance, and the balancing of other macro-economic factors including in the long term.
- 4. Administrative authorities; mass organizations; administrative bodies at all levels; and political, social and occupational organizations shall not be permitted to obtain foreign loans directly, except in special cases where the current law or the Prime Minister of the Government permits.
- 5. All foreign loans as stipulated in article 2.2 of these Regulations must be officially registered with the competent Governmental body after an agreement is signed in accordance with article 6 of these Regulations.
- 6. In cases where a draft loan agreement or guarantee for a foreign loan contains terms and conditions contrary to or not yet regulated by the law of Vietnam, or where such agreement or guarantee contains undertakings on matters and policies which exceed authority, then the body responsible for negotiation of such agreement shall obtain opinions from the relevant bodies and report to the Prime Minister of the Government for his consideration and decision.
- 7. The signing of foreign loan agreements by the Government shall be implemented in accordance with the law on signing, acceding to and implementing international treaties. If an agreement between a competent Vietnamese body and a foreign lender contains different provisions then it shall be implemented in accordance with the agreement with the foreign lender.

Article 5 *Long term debt strategy, program on management of medium term loans, and annual master plan on foreign loans and loan repayments*

- 1. The long term debt strategy shall contain the following basic items:
 - (a) An assessment of the current status of outstanding foreign loans, and the status and work of control of foreign debt in the recent past;
 - (b) The objectives, direction and system of criteria for national foreign borrowings and repayment, classified according to economic sectors;
 - (c) Solutions and policies applicable to control of the national foreign debt;
 - (d) Organization of implementation of the strategy.
- 2. The program on management of medium term loans shall contain the following basic items:
 - (a) An assessment and forecast of conditions on the international and domestic capital markets, the foreign currency balance, and fluctuations of exchange rates and interest rates providing the basis for appropriate adjustments to the policy on foreign loans and loan repayments in each period;
 - (b) Balancing the requirements for foreign loans to cover the State budget deficit and for investment and development on the basis of balancing the raising of capital as between domestic and foreign sources;

- (c) Plan for raising foreign loan capital by the public sector: proposed structure of lending sources (according to conditions on preferential loans, commercial loans, lenders, markets, currencies of loans, average terms and interest rates pursuant to loan clauses and conditions), regime for utilization of loan capital (allocation of loan capital, re-lending and so forth);
 - (d) Forecast raising of foreign loans for the private sector in the medium term (in the period of from three to five years) and for each year;
 - (dd) An assessment and forecast of fluctuations in the list of debts owed by the public sector (loan currencies, average interest rates and average terms, exchange rate risks) and the status of foreign debt in the medium term (in the period of from three to five years) and for each year;
 - (e) Proposals on solutions and plans for dealing with debts or necessary re-structuring of the list of debts owed by the public sector aimed at dealing with bad debts and reducing debt obligations.
3. The annual master plan on foreign loans and loan repayments shall contain the following basic items:
- (a) Status of implementation of the national annual foreign loan borrowing and repayment, an analysis of the actual situation of foreign debt in accordance with international standards, and an assessment of the risks and level of contingent debt obligations of the State Budget;
 - (b) Plan for drawdown of loan capital and loan repayment by the public sector, comprising the Government debt, and debts of enterprises and institutions belonging to the public sector;
 - (c) Overall quota on national foreign commercial loans, comprising the limit on foreign borrowings of the public sector and the forecast level of foreign borrowings by the private sector.

Article 6 *Delegation of responsibility for State control of foreign loans and loan repayments*

1. The Ministry of Finance shall be the focal Governmental body exercising State control of national borrowing of foreign loans and of loan repayments, with responsibility:
- (a) To preside over co-ordination with the Ministry of Planning and Investment and the State Bank to formulate, for submission to the Prime Minister of the Government for approval, the program on management of medium term loans and the annual master plan on foreign loans and loan repayment on the basis of the overall master plan on foreign loans and loan repayment of the Government and of public sector institutions, and the overall quota on national foreign commercial loans;
 - (b) To preside over co-ordination with the Ministry of Planning and Investment to formulate, for submission to the Prime Minister of the Government for approval, a plan for raising foreign commercial loans and a plan for using foreign commercial loans by the Government when the Government has a need for foreign commercial loans;
 - (c) To preside over co-ordination with the Ministry of Planning and Investment and the State Bank to formulate, for submission to the Prime Minister of the Government for promulgation, a system of criteria for supervision of the national debt and procedures for collating, reporting, summarising, distributing and announcing information on foreign debt;
 - (d) To organize negotiation and signing of international treaties on loans and of Government guarantees for foreign loans pursuant to its own authority or pursuant to authority delegated by the Prime Minister of the Government;

- (dd) To act as official representative of the borrower in specific loan agreements in the case of foreign loans borrowed by the State or the Government;
- (e) To conduct financial control of foreign loans borrowed by the Government, including:
 - Organization of loan registration;
 - Formulation of a financial management regime; formulation and promulgation of a regime for domestic re-lending of foreign loan capital of the Government, guiding and organizing re-lending of foreign loan capital of the Government and its recovery; reporting to the Government on the status of this capital resource;
- (g) To manage Government guarantees in accordance with the *Regulations on Issuance and Control of Government Guarantees for Foreign Loans*, including:
 - Providing guidance on procedures for considering and issuing Government guarantees, appraising the conditions for issuance and application files from specific programs or projects for submission to the Prime Minister of the Government to make a decision on a guarantee; to directly issue Government guarantees; to organize control of Government guarantees as well as control of foreign loans of the Government;
 - To discharge the obligations of the guarantor owed to the foreign lender;
 - To inspect and supervise the business operating results of, the utilization of loan capital by, and repayment of foreign loans by principals; to apply financial instruments and other regimes as stipulated by law in order to recover sums and associated expenses paid in lieu of principals;
- (h) To preside over establishment and administration of the foreign debt database of the Government and the status of the national foreign debt; to act as the focal body for announcing and providing information on the status of foreign loans and loan repayment of the Government, and of national foreign loans and loan repayment in accordance with law;
- (i) To ensure full repayment on time, with the greatest benefit, of all foreign loans of the Government, including arranging repayment from the State Budget; establishing and organizing management of the *Accumulated Fund for Foreign Loan Repayment*; and when necessary, formulating, making proposals and submitting to the Prime Minister of the Government to approve, plans on debt restructuring and plans for dealing with debts of the Government; and to organize implementation of such plans;
- (k) To fulfil the tasks assigned to the Ministry by the Government in the Regulations of the Government on management and utilization of ODA loans;
- (l) To conduct in-depth post project assessments of programs and projects using foreign commercial loan capital of the Government and of programs and projects using foreign loans guaranteed by the Government.

2. The Ministry of Planning and Investment shall be responsible:

- (a) To preside over co-ordination with the Ministry of Finance and the State Bank to formulate, for submission to the Prime Minister of the Government for approval, the long term debt strategy within the overall strategy on raising investment capital for the economy;

- (b) To preside over co-ordination and to reach agreement with the Ministry of Finance on formulation of, for submission to the Prime Minister of the Government for approval, a list of programs and projects to which foreign loan capital of the Government will be allocated or to which foreign loan capital of the Government will be re-lent pursuant to the regime on total re-lending or pursuant to the regime on partial re-lending;
- (c) To co-ordinate with the Ministry of Finance on formulation of a system of criteria for supervision of debts, the program on management of medium term loans, and the annual national master plan on foreign loans and loan repayment; to supervise macro-economic criteria of the national foreign debt;
- (d) To co-ordinate with the Ministry of Finance on formulation of, for submission to the Prime Minister of the Government for promulgation, procedures for collating, reporting, summarising, distributing and announcing information on foreign debt;
- (dd) To fulfil the tasks assigned to the Ministry by the Government in the Regulations of the Government on management and utilization of ODA loans.

3. The State Bank of Vietnam shall be responsible:

- (a) To exercise State control of borrowing of foreign loans and of loan repayment by enterprises and institutions in the public sector; to supervise and monitor borrowing of foreign loans and of loan repayment by the private sector; to guide and inspect issuance of guarantees for foreign loans by commercial banks and other institutions permitted by the current law to issue guarantees for foreign loans;
- (b) To preside over co-ordination with the relevant bodies on formulation of the quota on annual foreign commercial loans of enterprises and institutions in the public sector, and the forecast level of annual foreign loans by the private sector and to send them to the Ministry of Finance for inclusion in the overall quota on annual foreign commercial loans of the public sector and of the whole country, for submission to the Prime Minister of the Government for approval;
- (c) To preside over co-ordination with the Ministry of Finance to manage the quota on annual foreign commercial loans of enterprises and institutions in the public sector, as approved by the Prime Minister of the Government;
- (d) To prepare an overall report on the annual status of borrowing of foreign loans and loan repayment by enterprises and institutions in the public and private sectors, and send it to the Prime Minister of the Government, and also to send it to the Ministry of Finance to prepare an overall report on the annual status of all foreign loans and loan repayment throughout the whole country;
- (dd) To guide and organize foreign loan registration by enterprises and institutions in the public and private sectors, including loans guaranteed by the Government;
- (e) To supervise currency flows relating to borrowing of foreign loans and loan repayment in order to service the international balance of payments, operation of the monetary policy and foreign exchange control;
- (g) To establish an early warning system on risks associated with debts in the enterprise sector²;

² Phillips Fox Note: Decree 134 does not define "enterprise sector". See article 2 for definitions of "public sector foreign debt", "private sector foreign debt" and "foreign loans of enterprises".

- (h) To co-ordinate with the Ministry of Finance on formulation of a system of criteria for supervision of debts, the program on management of medium term loans, and the annual national master plan on foreign loans and loan repayments;
- (i) To co-ordinate with the Ministry of Finance on formulation of, for submission to the Prime Minister of the Government for promulgation, procedures for collating, reporting, summarising, distributing and announcing information on foreign debt;
- (k) To fulfil the tasks assigned to the State Bank by the Government in the Regulations of the Government on management and utilization of ODA loans.

4. The Ministry of Justice shall be responsible:

- (a) To participate with its opinion on legal issues in agreements to borrow and repay foreign loans by the Government, and in agreements for Government guarantees prior to submission of the agreements to the Prime Minister of the Government for approval; and to participate with its opinion on other relevant legal issues regarding borrowing of foreign loans and loan repayment by enterprises and institutions in Vietnam in necessary cases on request by borrowers and guarantor bodies;
- (b) To evaluate any differences between clauses in agreements to borrow and repay foreign loans by the Government, and domestic laws; to monitor how these issues are dealt with during the process of fulfilling undertakings on foreign loans and loan repayments;
- (c) In necessary cases, to issue legal opinions on agreements to borrow and repay foreign loans by the Government, and agreements for Government guarantees, and to issue legal opinions on the legal entity status of borrowers and guarantor bodies on request by such bodies.

5. Other relevant bodies shall be responsible to co-ordinate with the Ministry of Finance and the State Bank of Vietnam to exercise State control of foreign loans and loan repayment in conformity with their respective functions and these Regulations.

Article 7 *Inter-ministerial mechanism for control of foreign debts*

Based on the actual requirements for control of foreign debts and on the proposal of the Minister of Finance, the Prime Minister of the Government may establish an inter-ministerial body for control of foreign debts or use the current inter-ministerial mechanism in conformity with the functions and duties of the Government as stipulated by law.

CHAPTER III

Control of Foreign Loans and Loan Repayments of the Public Sector

Article 8 *Objectives*

To ensure capital is raised efficiently for investment and development, reducing costs and risks associated with transactions raising capital and utilizing capital; to ensure that loans (comprising both direct debt and contingent debt) borrowed by the public sector are repaid on the basis of close supervision of debts, reducing risks to the State Budget and maintaining the security of the national foreign debt.

Control of Foreign Loans and Loan Repayments of the Government

Article 9 *Fundamental requirements*

1. The borrowing of foreign loans and loan repayment by the Government must be uniformly implemented in accordance with the principles for control of the national foreign debt stipulated in article 4 of these Regulations.
2. To set aside loan capital funds appropriate for use objectives, ensuring high efficiency in the utilization of loan capital, creating foreign currency resources and accumulating them within Vietnam to satisfy developmental objectives and at the same time ensuring loans are repaid.
3. To maximize preferential loan resources on the basis of balancing efficiency and costs, and giving priority to the use of preferential loan resources for developing social and economic infrastructure.
4. To carefully control the borrowing of foreign commercial loans by the Government; not to utilize such loan capital for programs and projects which are unable to directly recover capital, and not to utilize short-term commercial loan capital for long-term objectives except in special cases permitted by the Prime Minister of the Government.
5. To take measures for debt restructuring, debt reversal, borrowing new loans to repay old ones, and so forth; to take modern measures for debt control on the basis of analysing lists of debts and fully understanding market conditions aimed at reducing credit risks, exchange rate risks, and the costs to the State Budget of the work of controlling foreign loans and loan repayment.

Article 10 *Principles of control*

1. The Minister of Finance shall be responsible before the Government for exercising unified control of the borrowing and repayment of foreign loans of the Government on the basis of the long term debt strategy and the program on management of medium term loans, and shall monitor and supervise the borrowing and repayment of foreign loans on the basis of quotas and the annual loan master plan, and shall implement appropriate policies and financial instruments in order to ensure appropriate structures, terms and total amounts of loans, and shall apply sanctions in accordance with law to ensure financial discipline in the work of controlling the borrowing and repayment of foreign loans.
2. Local administrative authorities shall not be permitted to obtain foreign loans directly. In cases where the law or the Prime Minister of the Government delegates authority and permits application of special regimes, then administrative authorities in provinces and cities under central authority shall be permitted to obtain foreign loans for investment in development of infrastructure within the power of provincial State Budgets to allocate capital in accordance with these principles: localities should prepare their own plans and take the initiative in seeking lending sources, and negotiate foreign loans in co-ordination with the relevant bodies by obtaining opinions from the Ministry of Finance, Ministry of Planning and Investment and the State Bank on the contents and conditions in loan agreements prior to submitting them to the Prime Minister of the Government for his consideration and approval pursuant to the re-lending regime of the Government. Localities shall be responsible to arrange sufficient funds from provincial State Budgets to fully repay loans in accordance with law.
3. All bodies and organizations which receive and utilize foreign loan capital of the Government or foreign loan capital guaranteed by the Government must utilize it effectively, for the correct purpose, and in accordance with the contents of the program or project as approved by the competent body.

Article 11 *Foreign commercial loans of the Government*

1. Depending on the requirements for capital for investment and development, the Government may raise foreign commercial loan funds in the form of direct borrowing such as financial loans, export credits and issuance of Government bonds on the international capital market and other appropriate forms, within the framework of the annual quota on commercial loans of the Government as approved by the Prime Minister of the Government.
2. Foreign commercial loan funds of the Government shall only be permitted to be utilized for the following purposes:
 - For re-lending to programs and projects for investment and development being of a high importance to the State which have a need to import technology and equipment, and which are able to directly recover capital and repay the loan, or
 - For debt reversal of foreign loans of the Government, on the principle of ensuring benefit to, and the lowest fees for the State Budget.
3. Whenever the Government has a requirement to borrow a foreign commercial loan, the Ministry of Finance shall preside over co-ordination with the Ministry of Planning and Investment to prepare a plan for raising and utilizing loan capital and submit it to the Prime Minister of the Government for his consideration and approval on a case by case basis. Any case of issuance of bonds in the name of the State or the Government to borrow on the international capital market shall be implemented in accordance with the current regulations of the Government on issuance of international bonds.

Article 12 *Financial regime on utilization of foreign commercial loan funds of the Government*

1. The following objects shall be permitted to be allotted foreign loan funds pursuant to the mechanism for allocation of State Budget capital, namely programs and projects for infrastructure investment, for social welfare purposes and for other spheres which are not capable of direct loan recovery but which are applicable objects for allocation of State Budget capital, including cases where the central State Budget re-lends to local State Budgets to allot funds to programs and projects.
2. The regime on total re-lending or the regime on partial re-lending plus partial allocation from State Budget capital shall apply to programs and projects which are capable of directly recovering the entire loan or part of the loan (including infrastructure projects), depending on their ability to repay.
3. In respect of foreign currency loans or commodity loans not directly attached to projects:
 - (a) Foreign currency loans:
 - Loans supporting the State Budget³ and [loan capital obtained by] issuance of international bonds shall be accounted for as State Budget revenue and transferred to the consolidated foreign currency fund controlled by the Ministry of Finance;
 - Foreign currency loans supporting international balance of payments⁴ shall be sold by the Ministry of Finance to the State Bank of Vietnam for transfer into the foreign currency reserve fund controlled by the State Bank of Vietnam, and the equivalent Vietnamese dong value shall be transferred into the State Budget.

3 Phillips Fox Note: Alternative translation is "Loans which are raised to make up the State budget deficit".

4 Phillips Fox Note: Alternative translation is "Foreign currency loans which are raised to make up the deficit in the international balance of payments".

Loans supporting balance of payments pursuant to foreign currency swap contracts (swaps of foreign currency from central banks of other countries) shall be controlled by the State Bank of Vietnam which shall also be responsible for repaying the foreign currency and for recovering it domestically when [the loans] mature.

- All foreign currency borrowed from foreign countries shall be used in accordance with the particular decision of the Prime Minister of the Government and shall comply with the criteria of the lender.

(b) Foreign commodity loans:

- In the case of commodity loans for which domestic commodity users have been specified, the Ministry of Finance shall convert such loans into Vietnamese dong for the purpose of calculating revenue of the State Budget and shall allocate or re-lend to commodity users.
- In the case of commodity loans for which domestic loan users have been specified, the Ministry of Finance shall preside over arranging the import and sale of commodities by auction and payment of the proceeds to the State Budget for utilization in accordance with the terms of the loan agreement.
- In the case of commodity loans for which domestic loan users have not yet been specified, the Ministry of Finance shall preside over arranging the import and sale of commodities by auction and payment of the proceeds to the State Budget for utilization in accordance with the terms of the decision of the Prime Minister of the Government.

Article 13 *Re-lending foreign loan capital of the Government*

1. The Ministry of Finance shall organize the re-lending of foreign loan capital of the Government via authorized institutions being the Fund for Development Aid, State owned commercial banks and social policy banks (re-lending bodies).
2. Re-lending bodies shall be responsible to manage and recover loan capital from sub-borrowers for payment into the Accumulated Fund for Foreign Loan Repayment, and shall be entitled to a re-lending fee in accordance with regulations.
3. The re-lending of foreign loan capital of the Government shall be implemented in accordance with the following main conditions:

(a) Currency of sub-loans:

- In the case of re-lending of ODA loan capital of the Government, the borrower shall have the right to choose whether the currency of the sub-loan is domestic or a foreign currency depending on the ability to repay;
- In the case of foreign commercial loan capital of the Government, the borrower must borrow the same original foreign currency borrowed by the Government, except in special cases as decided by the Prime Minister of the Government.

(b) Terms of sub-loans:

- The term of a sub-loan shall be consistent with the term for loan repayment stipulated in the feasibility study report, report on investment and construction of project works, or eco-technical report on construction works as approved by the competent body in accordance with law.

(c) Interest rates and re-lending fees:

- In the case of re-lending of foreign commercial loan capital of the Government, the interest rate of the sub-loan shall be calculated in accordance with market interest rates and must be at least equal to the interest rate of the foreign loan plus fees for the foreign loan plus fees for domestic re-lending services.
- In the case of re-lending of ODA loan capital, the interest rate in VND shall be calculated in accordance with the eco-technical industry, based on the loan currency, term and ability to recover capital of the program or project, ensuring an equal level of preference to programs and projects of the same nature within any one industry. The amount of this interest rate shall include the domestic re-lending fee and shall not exceed the preferential credit interest rate stipulated by the State in any one period.

Where the borrower requests the currency of the sub-loan in a foreign currency, the interest rate shall be the interest rate for the sub-loan in VND stipulated as applicable to the relevant eco-technical industry, with a deduction for exchange rate risks depending on the particular foreign currency, but in no case shall it be less than the interest rate of the foreign loan.

The Ministry of Finance shall formulate, for submission to the Prime Minister of the Government for approval, a framework of re-lending interest rates in VND for uniform application to all eco-technical industries. Each year, on the basis of the approved framework, and depending on fluctuations in financial markets and currencies, the Ministry of Finance shall amend the framework and re-announce it.

- (d) The Ministry of Finance shall verify the particular conditions for a sub-loan and sign a contract delegating authority to make the sub-loan (or sign a sub-loan agreement and a contract delegating authority to make the sub-loan) in each specific case in accordance with the framework conditions set out above. The Ministry of Finance shall report any special case requiring conditions other than the framework conditions to the Prime Minister of the Government for his decision.

The Government shall not consider allocating funds to programs or projects within the category of eligible borrowers via re-lending of foreign loan capital of the Government, if such programs or projects do not have the ability to repay in accordance with the conditions announced by the Ministry of Finance.

(dd) Entities eligible to be sub-borrowers:

Enterprises and economic institutions from all economic sectors which have a feasible investment project consistent with the State's list and master plan for investment and development as approved by the competent body in accordance with the current regulations, with a requirement to utilize foreign loan capital of the Government, which have the ability to repay and have a healthy financial status, shall be considered for a sub-loan of foreign loan capital of the Government.

(e) Mortgaged assets:

Depending on each specific borrower, the re-lending body may require a mortgage of assets as security for the loan, including assets formed from the loan capital and other assets stipulated by law.

Article 14 *Re-lending of foreign loan capital of the Government to local administrative authorities*

Local administrative authorities in provinces and cities under central authority which ensure the balancing of their local budget in order to repay a loan, shall be permitted, in a number of special cases where the law or the Prime Minister of the Government permits, to re-borrow foreign loan capital of the Government (via the Ministry of Finance) to implement local works and projects. The chairman of the people's committee of the province or city under central authority shall act as representative of the local administrative authority in signing a sub-loan agreement which shall be recorded as a debt to the Ministry of Finance. Funds for repayment of a loan shall be sourced from the local budget.

Article 15 *Responsibilities of sub-borrowers of foreign loan capital of the Government*

Sub-borrowers shall, in all cases, be responsible before the law for complete performance of all the obligations and undertakings in the signed sub-loan agreement; and for preparation of a report on the status of the loan, the ability to repay it and on all other relevant issues which arise, and to submit such report to their line body, re-lending body, and the Ministry of Finance; and to facilitate auditing bodies and inspectorates to conduct loan supervisory activities.

Article 16 *Responsibilities and powers of re-lending bodies*

1. A re-lending body shall be responsible to appraise the financial plan of the program or project wishing to borrow a sub-loan (including when such program or project already has an investment decision) and the financial capacity of the borrower, and report the results of the appraisal to the Ministry of Finance prior to signing a re-lending agreement. The re-lending body shall not be required to conduct an appraisal in a case of re-lending at the direction of the Prime Minister of the Government, in which case the re-lending body shall not be liable for credit risks.
2. Re-lending bodies shall be responsible to recover sub-loan repayments in full and on time and pay them into the Accumulated Fund for Foreign Loan Repayment in accordance with guidelines of the Ministry of Finance.
3. Re-lending bodies shall have the right to take necessary measures consistent with the current regulations on credit and other laws to secure loan repayments in full and on time and recovery in turn by the State Budget. If a loan is non-recoverable despite application of all the above-mentioned measures, the re-lending body shall report to the Ministry of Finance to deal with the matter.

Article 17 *Arrangement of domestic contributed capital*

Domestic contributed capital must be arranged in full and on time for every program or project which utilizes foreign loan capital of the Government.

In the case of a program or project within the category of eligibility for allocation [of State Budget funds], the Budget of the level which has such program shall arrange the domestic contributed capital. Investors and line bodies must calculate fully their domestic contributed capital requirements, prepare an annual master plan and forward it to the master planning body and financial body in order to balance the annual State Budget.

In the case of a program or project for which the re-lending of foreign loan capital of the Government is implemented pursuant to the re-lending regime (total re-lending or partial re-lending), investors must make their own arrangements for providing domestic contributed capital and shall be granted preference for credit loans of the State or for ODA loans.

Article 18 *Repayment of foreign loans of the Government*

Based on the annual master plan for repayment of foreign loans from the State Budget as approved by the Prime Minister of the Government, the Ministry of Finance shall make repayments of loans strictly in accordance with the undertakings made to foreign lenders in loan agreements or in Government guarantees. Where necessary, the Ministry of Finance shall, together with relevant ministries and branches, negotiate with foreign creditors in respect of the appropriate levels, terms and forms of repayment of loans (such as, in cash or commodities, export services, conversion of loans, debt restructuring and so forth).

Disbursements made from the State budget in repayment of foreign loans raised for re-lending and in the case of repayment in lieu of principals of guarantees shall be refunded from the Accumulated Fund for Foreign Loan Repayment.

Article 19 *Responsibility to provide implementing guidelines*

The Ministry of Finance shall preside over co-ordination with the relevant bodies to formulate *Regulations on Re-lending Foreign Loan Capital of the Government* in accordance with the provisions in section 1 of Chapter III of these Regulations, for submission to the Prime Minister of the Government for promulgation.

Section 2

Control of Government Guarantees for Foreign Loans

Article 20 *General provision*

A Government guarantee is the highest form of guarantee of the Socialist Republic of Vietnam for a foreign loan.

Article 21 *Conditions for issuance of a Government guarantee for a foreign loan*

1. Entities eligible for consideration for issuance of a Government guarantee (principals) shall be domestic enterprises, economic institutions and credit institutions from all economic sectors which directly sign a loan agreement with a foreign lender in the form of independent borrowing and self responsibility for repayment in order to implement an investment or credit program or project, and with the operational status stipulated in article 22.6 of these Regulations.
2. The following types of programs and projects shall be eligible for consideration for issuance of a Government guarantee:
 - (a) Investment programs or projects of a high importance for which the National Assembly or the Prime Minister of the Government has approved the investment policy; or
 - (b) Programs or projects importing high technology equipment or producing goods or providing services for export and programs or projects in sectors to which the State gives investment priority and which have the ability to repay; or
 - (c) Programs and projects eligible for aid in the form of commercial loans accompanied by ODA to create a source of aid financing in the form of mixed credit; or
 - (d) Loan programs and projects of credit institutions which the State Bank of Vietnam appraises and recommends the issuance of a Government guarantee.
3. The capital of the owner being the investor of the project or project must be no less than twenty (20) per cent of the total invested capital of such program or project.

4. Any foreign commercial loan guaranteed by the Government for a program or project must be within the annual overall quota on foreign commercial loans of the Government approved by the Prime Minister of the Government.

Article 22 *Application files for issuance of a Government guarantee shall comprise:*

1. Official proposal from the foreign lender requesting a Government guarantee.
2. Official proposal from the principal to the Prime Minister of the Government for a guarantee for the foreign loan.
3. Investment decision, feasibility study report or report on investment and construction of works of the program or project as approved by the competent body in accordance with current regulations, with security for such program or project which satisfies the conditions for issuance of a Government guarantee for a foreign loan stipulated in article 21 of these Regulations.
4. Financial plan ensuring the ability to repay, appraised and approved by the guarantee-issuing body. In the case of a program or project of a credit institution, the State Bank of Vietnam shall appraise the financial plan and recommend to the Government that it issue a guarantee.
5. Signed loan agreement [and/or] commercial contract approved by the competent body in accordance with the current regulations (in a case where the foreign loan is used to assist a commercial contract).
6. Financial statements which have been audited, or certified by the competent body in the case of the principal of a guarantee, showing that business operations and financial status are normal, that there were no losses in the most recent three consecutive years, and that there are no overdue domestic or foreign loans. If the principal of a guarantee has not been operating for three years, there must be a written undertaking from the higher level line body ensuring the principal's ability to repay, or a financial plan ensuring the ability to repay which has been appraised and approved by the guarantee-issuing body.

Article 23 *Amount [of loans] subject to Government guarantees*

Loans guaranteed by the Government must have a value of at least the equivalent of ten (10) million US dollars (except for commercial loans pursuant to ODA providing aid financing in the form of mixed credit).

Article 24 *Fees for Government guarantees*

1. The Ministry of Finance shall stipulate the specific fees for each program and project, based on the term of the guarantee and an assessment of the risks, but not to exceed one and half of one (1.5) per cent per annum of the amount of the loan balance which is guaranteed.
2. The collected fees shall be transferred to the *Accumulated Fund for Foreign Loan Repayment* in accordance with guidelines of the Ministry of Finance, as a reserve for repayments in the event that principals of guarantees fail to repay.

Article 25 *Mortgages of assets to secure loans guaranteed by the Government*

The entire assets formed from foreign loan capital guaranteed by the Government shall be used to provide a mortgage for the Government guarantee and shall not be permitted to be used to provide a mortgage in order to borrow other funds.

Article 26 *Responsibilities of principals of guarantees*

1. To supply to the Ministry of Finance an application file for issuance of a Government guarantee and other necessary relevant data so that the Ministry of Finance may make an appraisal and recommend to the Prime Minister of the Government that he make a decision on issuance of a guarantee.
2. To discharge the obligations of a borrower pursuant to the signed loan agreement and the obligations of a guarantor owed to the Ministry of Finance pursuant to the *Regulations on Issuance and Control of Government Guarantees for Foreign Loans* promulgated pursuant to article 27 these Regulations.
3. To supply to the Ministry of Finance, periodically and when necessary, financial statements which have been audited or certified by the higher level State administrative finance body; reports on plans, drawdowns, loan repayments and outstanding loan balances; and reports on the implementation of programs or projects including any special circumstances affecting implementation of the program or project and ability to discharge obligations pursuant to the loan agreement.
4. To facilitate inspections by the Ministry of Finance of the status of implementation of the program or project, when necessary.
5. To fully and promptly pay fees to the Ministry of Finance in accordance with article 24 of these Regulations.

Article 27 *Responsibility to provide implementing guidelines*

The Ministry of Finance shall preside over co-ordination with the relevant bodies to formulate *Regulations on Issuance and Control of Government Guarantees for Foreign Loans* in accordance with the principles stipulated in section 2 of Chapter III of these Regulations, for submission to the Prime Minister of the Government for promulgation.

Section 3

Control of Foreign Loans and Loan Repayment of Enterprises and Economic Institutions Belonging to the Public Sector (Referred to as State Owned Enterprises)

Article 28 *Principles of control*

1. State owned enterprises shall be permitted to obtain foreign loans directly in the form of independent borrowing and self responsibility for repayment to the foreign lender in accordance with the conditions and undertakings in the loan agreement.
2. The Government shall not be liable for debts arising from foreign loans directly obtained by State owned enterprises, except for loans guaranteed by the Government as mentioned in section 2 of Chapter III of these Regulations.
3. All medium and long term foreign commercial loans obtained by State owned enterprises must be within the annual overall quota on foreign commercial loans approved by the Prime Minister of the Government; they must satisfy the conditions on medium and long term loans stipulated by the State Bank of Vietnam from time to time; they must be registered with the State Bank of Vietnam and confirmed by it; and there must be periodical reports made to the State Bank of Vietnam on the status of drawdown, capital utilization and loan repayment in accordance with the reporting regime stipulated by the Governor of the State Bank of Vietnam.

4. In a case where a State owned enterprise borrows foreign loan capital by the form of issuance of international bonds, it must prepare a plan on the issuance and obtain appraisal opinions from the Ministry of Finance and the State Bank of Vietnam prior to submission to the competent body for approval.
5. All short term foreign commercial loans obtained by State owned enterprises must be within the annual overall quota on foreign commercial loans approved by the Prime Minister of the Government, and must satisfy the conditions on short term loans stipulated by the Governor of the State Bank of Vietnam from time to time.
6. Drawdowns and transfers of money for repayment of foreign loans by State owned enterprises shall be made through banks operating in the territory of Vietnam which are authorized to conduct foreign exchange transactions, except for drawdowns to make direct payments to foreign suppliers. In cases where any drawdown or loan repayment in the form of goods or assets (whether such assets are tangible or intangible) is not made through a bank, the enterprise shall submit a report thereon in accordance with the regulations of the State Bank of Vietnam and, where necessary, the opinion of the State administrative body for the relevant industry or sector shall be required.
7. State owned enterprises obtaining foreign loans shall be responsible for using loans for proper purposes, shall not be permitted to use short term loans for investment in long or medium term projects, shall make repayments (of both principal and interest) in accordance with the undertakings in loan agreements signed with foreign lenders, and shall themselves bear all risks and responsibilities before the law of the State during the course of loan drawdown and repayment.
8. In the case of long and medium term loans of State owned enterprises, banks shall only be permitted to make disbursements and transfers of money for loan repayment to foreign lenders where such loans have been registered in accordance with regulations.
9. The State Bank of Vietnam shall co-ordinate with the Ministry of Finance to provide detailed guidelines on procedures for control of foreign loans and loan repayment of State owned enterprises, in order to implement the provisions in this article.

Article 29 Forms of loan security

1. Where a foreign lender requests a bank guarantee for a loan to a State owned enterprise, the guarantee shall be provided in accordance with the provisions in section 2 of Chapter III of these Regulations and in accordance with the provisions in the *Regulations on Issuance and Control of Government Guarantees for Foreign Loans*.
2. Where a foreign lender requests a guarantee from a commercial bank or other financial or credit institution, the guarantee shall be provided in accordance with the *Regulations on Guarantees and Cross-Guarantees for Foreign Loans* issued by the Governor of the State Bank.
3. State owned enterprises obtaining foreign loans may seek a guarantee from non-residents (namely, foreign banks, financial or credit institutions, companies, and so forth) provided that the conditions of the guarantee are not contrary to the current law of Vietnam.
4. Any bank or institution which is authorized by the current law to issue a guarantee shall be the entity to make the final decision and shall be responsible for such guarantee of the foreign loan to the State owned enterprise. Where a guaranteed enterprise fails to make repayments to the foreign lender when the loan becomes due, the guarantor body shall be responsible for repayment of such loan on behalf of the enterprise and, at the same time, shall have the right to take all necessary measures in accordance with the credit regulations and other laws of Vietnam in order to recover the amount paid on behalf of the enterprise.

5. State owned enterprises may use assets formed from loans or other forms of security in accordance with the laws of Vietnam to secure foreign loans.
6. In the case of unsecured or unguaranteed foreign loans, the parties to the loan agreement shall agree between themselves on the responsibilities for all risks.

CHAPTER IV

Control of Foreign Loans and Loan Repayment of Enterprises and Economic Institutions Belonging to the Private Sector (Referred to as Private Enterprises)

Article 30 *Principles of control*

1. All foreign loans obtained by private enterprises shall be subject to supervision and monitoring by the Government. The State Bank of Vietnam shall be the body representing the Government in the exercise of supervision and monitoring.
2. Private enterprises must register loans with the State Bank of Vietnam after signing loan agreements with the foreign lender and must implement the reporting regime stipulated by the Governor of the State Bank of Vietnam.
3. Private enterprises utilizing foreign loan capital shall themselves be totally liable to make repayments in accordance with the undertakings in loan agreements, the laws of Vietnam and international legal practice.
4. In the case of long and medium term loans of private enterprises, domestic banks shall only be permitted to make disbursements and transfers of money for loan repayment to foreign lenders where such loans have been registered in accordance with regulations.

Article 31 *Application of the principles applicable to control of public debt*

Where a loan obtained by a private enterprise is guaranteed by the Government or where the guarantor is some other public sector institution authorized to issue guarantees (such as a State owned financial or credit institution), then control and supervision of the loan shall be implemented in accordance with the provisions in sections 2 and 3 of Chapter III of these Regulations.

CHAPTER V

Inspection and Supervision of, and Status Reports on Foreign Loans and Loan Repayment

Article 33 *Inspection and supervision*

1. Ministers, heads of ministerial equivalent bodies and Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible to the Prime Minister of the Government for inspecting and supervising the receipt and utilization of foreign loans within the scope of their management.
2. The Ministry of Finance, the State Bank of Vietnam, the Ministry of Planning and Investment and the Office of Government shall be responsible for providing guidelines and assistance to ministries, branches and local authorities for the purpose of inspection and supervision and, at the same time

shall, depending on their respective functions, directly inspect and supervise the management of utilization of foreign loans of the Government and the performance of obligations by entities using foreign loan capital as provided for in foreign loan agreements or re-lending agreements.

3. The Ministry of Planning and Investment, and line bodies shall be responsible for conducting inspection and supervision of investment projects or construction works for which foreign loans are used in accordance with the current regulations on management of investment and construction.

Article 34 *Reporting regime*

1. Every quarter and year, or when necessary, all entities which obtain and use foreign loan capital shall implement the reporting and assessment regime regarding the status of drawdowns, utilization of loans and loan repayment by reporting to the line body, to the body managing the loan (the Ministry of Finance or the State Bank of Vietnam), the guarantor body and the re-lending body in accordance with the guidelines of such bodies.
2. Ministers, ministerial equivalent bodies and provinces and cities under central authority shall implement the following regime on general reports:
 - (a) Six monthly and annual general reports on the status of borrowing and use of foreign loans and loan repayment by their branches and localities;
 - (b) Reports on the forecast annual budgets of their branches and localities, specifying estimated drawdowns of foreign loan capital for, and sums required for domestic contributed capital in programs and projects in accordance with the general schedule for compiling the annual State Budget forecast of the Government;
 - (c) Finalization reports on commissioned projects which used foreign loan capital of the Government in accordance with the schedule stipulated by current State regulations.
3. The Ministry of Finance and the State Bank of Vietnam shall be responsible for submitting general reports on the status of borrowing and repayment of foreign loans to the Prime Minister of the Government in accordance with the provisions on delegation of responsibility stipulated in these Regulations.

CHAPTER VI

Rewards, Dealing with Breaches

Article 35

Organizations and individuals making notable achievements in the work of control of loans shall be rewarded in accordance with law.

Article 36

Heads of bodies directly responsible for management of State owned enterprises and credit institutions obtaining foreign loans shall be responsible to the Government for the efficiency of the loan projects approved by them or recommended by them to another authority to approve.

In a case where incorrect implementation of the current regulations on approval or appraisal of a proposal for an investment loan or an improper decision on investment policy results in economic loss, the person

who prepared and the person who approved the proposal shall, depending on the seriousness of the loss, be liable before the law.

Article 37

Investors using foreign loan capital which become unable to repay due to subjective reasons such as inefficient utilization of capital, waste or loss of capital which adversely affects the standing of the Government and causes losses to the State Budget, shall be liable before the law.

Article 38

Any organization or individual breaching these Regulations and other relevant legal instruments shall, depending on the nature and seriousness of the breach, be subject to administrative penalties or shall have to pay compensation for damage in accordance with law. Serious breaches shall be subject to prosecution for criminal liability.

For the Government
Prime Minister

PHAN VAN KHAI