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Management of Foreign Exchange in Corporate External Borrowing in Vietnam: Rethinking the Legal Framework in a New Context

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Abstract

This article examines Vietnam's legal framework for state management of foreign exchange in relation to enterprises' external borrowing and repayment of foreign debt in a rapidly changing economic and financial environment. It begins from the proposition that the traditional regulatory model—centred on *ex ante* administrative control, documentary verification, transaction registration, and restrictions designed primarily to contain foreign-exchange risk—has become increasingly misaligned with the speed, complexity, and diversity of contemporary cross-border capital flows. The article argues that the reform orientation expressed in Resolution No. 66-NQ/TW requires a more fundamental change in regulatory thinking: from administrative control toward development-oriented governance; from file-based supervision toward data- and risk-based supervision; and from relatively uniform *ex ante* screening toward differentiated *ex post* monitoring combined with flexible macroprudential intervention. The analysis identifies four major groups of shortcomings in the present framework: limited legal coherence and predictability; substantial administrative and compliance burdens associated with registration

and amendment procedures; legal and supervisory gaps concerning short-term borrowing, innovative financing, and the use of foreign-currency debt; and practical inequalities in access to international capital among state-owned, foreign-invested, and domestic private enterprises. On that basis, the article proposes a reform agenda comprising risk-based classification of foreign loans and borrowers, end-to-end digitalisation and interoperable databases, near-real-time reporting through commercial banks, enhanced monitoring of short-term external debt, proportionate foreign-exchange hedging obligations, a transparent macroprudential and capital-flow-management toolkit, improved recognition of intangible and contractual assets as collateral, and appropriately designed support mechanisms for private enterprises. The ultimate objective is to develop a transparent and predictable legal corridor that simultaneously protects national monetary and financial security, reduces unnecessary compliance costs, and unlocks international capital for sustainable private-sector development.

Keywords: Resolution No. 66-NQ/TW, state management, foreign exchange, corporate external borrowing, foreign debt, risk-based supervision, Vietnam

1. INTRODUCTION

Since the Doi Moi reforms initiated in 1986, Vietnam's economy has become progressively more integrated into regional and global markets. In parallel, the financing strategies of Vietnamese enterprises have changed significantly. External borrowing is no longer limited to a conventional relationship in which a domestic enterprise borrows a fixed amount from a foreign bank and repays principal and interest according to a relatively simple schedule. It increasingly takes the form of multilayered cross-border capital flows involving intra-group lending, syndicated credit, trade-related finance, bond financing, structured arrangements, digital transactions and other financing techniques operating in a volatile international environment. This transformation changes not only the commercial characteristics of foreign borrowing but also the nature of the risks that the legal system is expected to manage.

Four developments are particularly relevant to the redesign of foreign-exchange regulation. First, the structure of capital markets has become more diverse, with enterprises able to combine bank credit, securities, intra-group finance and technologically enabled forms of funding. Second, capital can move across borders at a much greater speed than under traditional paper-based systems. Third, geopolitical, monetary and sanctions-related risks have become more important determinants of exchange rates, interest rates and access to foreign-currency funding. Fourth, public administration itself is being transformed by digitalisation and data-driven governance. A regulatory model created for slower, document-based financial relationships may therefore become both burdensome for legitimate transactions and insufficiently responsive to systemic risks.

Against this background, a legal philosophy based predominantly on 'ex ante inspection – documentary control – transaction restriction' increasingly reveals structural limitations. Excessive reliance on prior administrative procedures can create high compliance costs, delay borrowing decisions and reduce firms' ability to secure financing on favourable terms. At the same time, a system that devotes substantial administrative capacity to checking documents may have less capacity to analyse aggregate exposures, maturity mismatches, currency risks or recurrent short-term borrowing. The result is a paradox: a framework may be procedurally strict while still being weak in macro-financial risk detection.

Resolution No. 66-NQ/TW of 30 April 2025 provides an important political and institutional foundation for reconsidering this regulatory model [1]. Its reform orientation emphasises the renewal of legal thinking, the reduction of compliance costs, the mobilisation of development resources and the construction of a legal environment that is transparent, safe and conducive to innovation. In the field of foreign-exchange regulation, this orientation suggests that law should evolve from a predominantly defensive instrument into an adaptive regulatory system: one that protects monetary and financial stability without unnecessarily suppressing the private sector's capacity to mobilise international capital.

The central argument of this article is therefore not that Vietnam should deregulate corporate external borrowing. Foreign debt can create material risks for enterprises, banks, the foreign-exchange market and the balance of payments, particularly when borrowing is short-term, unhedged or concentrated in vulnerable sectors. The appropriate reform is instead a reallocation of regulatory intensity. Lower-risk transactions and compliant borrowers should face simpler, faster and more predictable procedures, while regulatory resources should be concentrated on higher-risk exposures through data-based monitoring, ex post supervision and macroprudential tools.

Methodologically, the article adopts a doctrinal and policy-oriented approach. It examines the principal Vietnamese legal instruments governing foreign-exchange management of enterprises' foreign borrowing and debt repayment, evaluates the difficulties emerging from their implementation, and situates these difficulties within broader debates on systemic risk, risk-based supervision, capital-flow management and digital governance. The analysis also draws on policy materials and selected international literature, including work by the IMF, OECD, the World Bank, and other authorities cited in this study. Current Vietnamese instruments were checked against the legal framework in force during 2026, including the amendments to the foreign-borrowing foreign-exchange regime and the current administrative-penalty framework [2–4]. The purpose is to identify a reform pathway consistent with Vietnam's own institutional context rather than to transplant a foreign model mechanically.

2. REQUIREMENTS OF THE NEW CONTEXT FOR FOREIGN-EXCHANGE REGULATION OF CORPORATE EXTERNAL BORROWING

2.1. GEO-ECONOMIC VOLATILITY AND THE FINANCIALISATION OF RISK

The first challenge comes from the growing interaction between geopolitical developments and financial markets. Supply-chain disruptions, trade and technology disputes, changes in major-country monetary policy and the expanded use of financial sanctions can cause sudden movements in exchange rates, international interest rates and the availability of foreign-currency credit. For enterprises that borrow abroad, these variables directly affect debt-service costs, refinancing conditions and the value of foreign-currency liabilities. For the State, however, the concern extends beyond individual borrowers because similar exposures can accumulate across the corporate sector and transmit stress to the foreign-exchange

market and the balance of payments.

Foreign-currency debt is particularly sensitive to balance-sheet effects. When a borrower earns primarily in domestic currency but carries liabilities in foreign currency, depreciation can increase the domestic-currency value of debt even where the underlying business has not deteriorated. Historical research has shown that foreign-currency debt can amplify financial crises when exchange-rate shocks interact with maturity and balance-sheet mismatches [5]. The IMF has likewise treated corporate leverage in emerging markets as a potential macro-financial concern when debt accumulation outpaces the ability of firms and financial systems to absorb external shocks [6].

These conditions require foreign-exchange law to move beyond the narrow question of whether a loan-registration dossier is formally valid. Regulation must be able to identify systemic risk, support a rapid policy response and reduce policy lag. This implies a legal basis for calibrated instruments such as differentiated maturity limits, enhanced supervision of short-term borrowing, graduated hedging requirements, concentration indicators and warning thresholds. The design challenge is to make such tools transparent and predictable so that enterprises can anticipate the circumstances in which regulatory intensity may increase.

In other words, the new environment no longer permits foreign-exchange management to function primarily as an administrative procedure. It must become a component of macro-financial risk governance. The quality of supervision should be measured not only by the number of files processed or approvals issued but by the ability of the regulatory system to detect, price and contain risks before they become systemic.

2.2. THE DIGITAL ECONOMY AND NON-TRADITIONAL CROSS-BORDER TRANSACTIONS

The digital economy has created forms of cross-border capital movement that do not always pass through the traditional channels contemplated by older foreign-exchange rules. Platform-integrated cross-border payments, digital services involving advances and reimbursements, intra-group treasury arrangements between parent and subsidiary companies, and financing involving software, licences, data-related rights or other intangible assets can blur the legal boundaries among borrowing, investment and payment for services. Digital trade also separates contractual performance, data flows and monetary settlement across multiple jurisdictions, making formal labels less reliable as indicators of economic substance [7].

This development poses a classification problem. The same economic function may be achieved through instruments with different legal forms, while a novel financial structure may combine elements of debt, equity, service payment and internal transfer pricing. A regulatory system based on closed lists risks either excluding transactions that should be monitored or subjecting economically similar transactions to inconsistent treatment. Overlap among foreign-exchange, investment, enterprise, tax, securities and anti-money-laundering rules can add further uncertainty.

The intuitive administrative response is often to tighten procedures whenever classification is uncertain. Yet excessive procedural tightening can produce the opposite of the intended result. If transparent channels become too slow or unpredictable, enterprises may seek financing structures that fall outside the clearest regulatory perimeter and are therefore more difficult to supervise. The preferable direction is functional and data-based classification: identify the transaction by its economic substance, source and destination of funds, maturity, currency, related-party characteristics and risk profile rather than merely by the contractual title selected by the parties.

Accordingly, digital transformation should not be understood simply as converting paper forms into electronic forms. It should change the regulatory logic itself. A genuinely digital model uses interoperable data, automatic cross-checking and risk indicators to determine which transactions require closer scrutiny.

2.3. BALANCING FREEDOM OF ENTERPRISE WITH MONETARY AND FINANCIAL SECURITY

A core problem of foreign-exchange law is balancing two legitimate objectives. On one side are freedom of enterprise, contractual autonomy and access to capital, particularly for domestic private enterprises that may need external borrowing to expand production, finance technology or restructure existing debt. On the other side are national financial security, monetary stability, foreign-exchange reserves and the State's capacity to manage volatile or speculative capital flows. Neither objective can simply displace the other.

If the regulatory system relies too heavily on ex ante control, the consequences may include a higher cost of capital, missed opportunities to borrow under favourable market conditions and reduced competitiveness relative to firms operating in jurisdictions with more responsive legal frameworks. Financing markets can change within days, while administrative procedures may require repeated submissions whenever drawdown schedules, repayment dates or other contractual details change. This temporal mismatch is especially significant for private firms that do not have large in-house legal and treasury teams.

Conversely, liberalisation without effective monitoring can generate other vulnerabilities. Repeated short-term bor-

rowing may create refinancing risk; foreign-currency debt without matching foreign-currency revenue may increase exchange-rate exposure; and large inflows can create pressure on domestic liquidity, the exchange rate and official reserves. Weak monitoring can also make it more difficult to distinguish productive financing from transactions motivated principally by interest-rate or exchange-rate arbitrage.

The new context therefore requires a regulatory logic of 'risk management plus facilitation'. The choice should not be framed as 'approval versus freedom', but as the design of proportionate controls. Low-risk, transparent transactions should be facilitated, while higher-risk borrowing should trigger more intensive reporting, hedging or prudential requirements.

2.4. LEGAL COHERENCE AND CONVERGENCE WITH INTERNATIONAL PRACTICE

Corporate external borrowing lies at the intersection of several branches of law: foreign-exchange regulation, enterprise law, investment law, banking law, securities regulation, taxation, public-debt rules and anti-money-laundering obligations. Where these legal regimes use different terminology, classification criteria or databases, the same transaction can be interpreted differently by enterprises, commercial banks and administrative authorities. Vietnamese business-law assessments have documented recurring concerns about overlapping rules, unclear business conditions, procedural burdens, and the need for greater transparency in the legal environment [8]. International evidence similarly indicates that regulatory transparency, predictability, protection, and access to effective recourse are material determinants of investor confidence [9].

For internationally active enterprises, predictability is a central component of legal quality. A company considering an external loan needs to know in advance whether the transaction is registrable, what documentation is required, what changes must be reported, how quickly the authority will respond and how the rules interact with tax, investment and corporate law. A transparent and level playing field is therefore not merely an investment-policy aspiration; it is part of the legal infrastructure of capital mobilisation.

Convergence with international practice does not require Vietnam to abandon capital-flow controls or macroprudential safeguards. It does require that such safeguards be articulated in a coherent, accessible and risk-based manner. Open-ended administrative discretion and fragmented procedures reduce predictability, whereas published criteria, digital workflows and clearly defined intervention thresholds improve both regulatory legitimacy and compliance.

2.5. IMPLEMENTATION CAPACITY IN THE CONTEXT OF DIGITAL GOVERNANCE

Even well-designed substantive rules will not produce effective governance if implementation capacity remains fragmented. End-to-end electronic procedures, interoperable databases and risk-based supervision require technical standards, institutional responsibilities and data-sharing mechanisms. At present, one of the persistent difficulties identified in the original study is the dispersion of data among banks, enterprises and public agencies, together with inconsistent data standards and limited mechanisms for automated sharing.

This creates the risk of 'formal digitalisation': paper documents are converted into electronic files, but officials and enterprises continue to reproduce the same manual logic. A genuine transition requires the system to record transactions automatically where possible, cross-check relevant data and generate risk signals. It also requires clear legal rules governing access, confidentiality, evidentiary value and institutional accountability.

Resolution No. 66-NQ/TW points toward a broader vision of legal modernisation by 2045: a high-quality, modern legal system increasingly aligned with advanced international standards while remaining suited to Vietnam's circumstances. In the foreign-exchange field, this vision supports a shift from dossier-based administration to data- and risk-based governance.

3. CURRENT SHORTCOMINGS IN FOREIGN-EXCHANGE MANAGEMENT OF CORPORATE EXTERNAL BORROWING

3.1. FRAGMENTATION AND LIMITED PREDICTABILITY OF THE LEGAL FRAMEWORK

Despite successive reforms, the legal framework governing foreign-exchange management of enterprises' external borrowing continues to display areas of fragmentation and limited predictability. Rules on borrowing conditions, investment activities, enterprise autonomy, related-party financing and taxation do not always operate according to the same regulatory logic. When implementing instruments are amended more slowly than financial practice evolves, enterprises may experience the law as reactive rather than anticipatory. Low predictability raises compliance costs and can weaken confidence among international lenders and investors. This concern is consistent with World Bank evidence showing that transparent and predictable regulatory environments materially affect investment decisions and investor confidence [9].

One recurrent difficulty arises from the interaction between specialised foreign-exchange regulation and the broader principles of enterprise and investment law. The Law on Enterprises 2020 emphasises business autonomy and the ability of enterprises to mobilise capital, while the foreign-exchange framework subjects external borrowing to specific registration,

reporting, account and repayment requirements. In practice, questions concerning borrower status, investment registration, changes to foreign-invested enterprises and the purposes for which foreign borrowing may be used can require coordination among different authorities and financial institutions. Where interpretations diverge, transaction processing can be delayed.

A second area of tension concerns the interaction between foreign borrowing and tax rules on deductible interest expenses in related-party transactions. Decree No. 132/2020/ND-CP, as amended by Decree No. 20/2025/ND-CP, regulates tax administration for enterprises with related-party transactions and includes an earnings-based limitation on deductible net interest expense [10, 11]. A foreign loan may therefore be legally permissible under the foreign-exchange regime while part of the associated interest expense is not deductible for tax purposes. These rules serve different policy objectives, but where enterprises do not clearly understand the distinction they may perceive the overall legal framework as inconsistent. International-quality regulation should therefore improve coordination and explanatory guidance rather than assume that compliance in one field automatically determines treatment in another.

The framework also tends to be more comfortable with conventional credit arrangements than with newer financing forms. International green bonds, cross-border fintech lending and digitally mediated finance raise classification and monitoring questions that are not always addressed expressly. The result is a tendency toward static management—controlling a defined set of transactions—rather than dynamic management that can respond to changing market conditions.

Market volatility further exposes this limitation. Rapid movements in major-country interest rates or the USD/VND exchange rate can change corporate borrowing incentives very quickly. A regulatory system whose principal tools are transaction registration and annual or periodic limits may be insufficiently flexible to respond to a sudden increase in short-term foreign debt or concentrated currency exposure. The argument of this article is not that authorities should intervene constantly, but that the law should provide calibrated instruments that can be activated transparently when risk indicators deteriorate.

3.2. ADMINISTRATIVE BURDENS AND THE LIMITATIONS OF EX ANTE CONTROL

The second group of shortcomings concerns administrative procedure. In major economic centres such as Hanoi, where foreign-invested enterprises and cross-border capital transactions are concentrated, registration and amendment procedures for external loans can become time-sensitive bottlenecks. The original study characterises the prevailing model as overly dependent on ex ante documentary control, with weaker ex post supervision. This is particularly problematic when the same level of documentary scrutiny is applied to borrowers and transactions with very different risk profiles.

First, administrative resources may be absorbed by checking the formal validity of supporting documents rather than analysing the quality and risk of the borrowing. Enterprises seeking to respond to a commercial opportunity may need to provide explanations concerning the loan purpose, drawdown, repayment schedule and related corporate documentation. A system that treats the confirmation of loan registration as a quasi-licensing process can make the procedure appear permission-based even when the broader policy objective is to facilitate lawful capital mobilisation.

Second, the allocation of responsibilities between central and local levels of the State Bank can be difficult in complex cases. Decentralisation can improve accessibility, but only if branches have sufficiently clear competence, shared guidance and access to the same data. Where the information infrastructure does not connect directly with commercial banks and other public databases, authorities may continue to depend on periodic reports instead of near-real-time information. This creates a lag between the occurrence of a potentially problematic capital movement and the regulator's ability to detect it.

Third, compliance burdens are not distributed evenly. Large foreign-invested enterprises often have professional legal, finance and treasury departments and established banking relationships. Domestic private enterprises, particularly SMEs, may have to rely on external advisers for registration, translation, contractual documentation and communication with banks and regulators. The original article argues that the time and opportunity costs of completing external-borrowing procedures can be significant for smaller transactions. That proposition is retained as a legal-policy argument grounded in the structure of fixed compliance costs and the documented concerns of the Vietnamese business community [8]. It is not presented as a quantified nationwide estimate because the materials available for this study do not provide a sufficiently robust Vietnam-specific dataset from which a precise percentage compliance cost can be inferred.

Frequent amendment requirements can add to the burden. Commercial loan agreements may change because of revised drawdown timing, refinancing conditions, prepayment, interest-reset dates or other operational matters. If every minor adjustment triggers a formal amendment procedure, enterprises face a risk of inadvertent administrative non-compliance even when the economic substance and risk profile of the loan have not materially changed. A proportionate system should distinguish between changes that meaningfully affect risk and changes that can be recorded automatically or notified without substantive review.

3.3. LEGAL GAPS IN MONITORING CAPITAL FLOWS AND MODERN RISK MANAGEMENT

A third problem concerns legal and supervisory 'grey areas'. The regulatory framework must manage transactions whose economic characteristics evolve faster than the categories used in legislation. Short-term external borrowing is a particularly important example because it combines legitimate working-capital needs with potentially significant refinancing and liquidity risks.

Under the foreign-exchange framework established by Circular No. 12/2022/TT-NHNN and amended by Circular No. 80/2025/TT-NHNN, which took effect during 2026, short-term foreign loans are generally treated differently from medium- and long-term loans in relation to registration and reporting [2, 3]. The policy rationale is understandable: requiring full prior registration for every short-duration commercial loan could impose excessive costs. However, the absence of an equivalent registration process does not eliminate the macro-financial significance of repeated short-term borrowing. A firm can refinance one short-term obligation with another, creating an economically persistent exposure that remains formally short-term in each individual contract.

This creates a monitoring challenge. If short-term loans are repeatedly rolled over, the State needs sufficient data to determine the borrower's cumulative exposure, maturity concentration and use of funds. Otherwise, the official picture may capture individual transactions without fully reflecting the persistence of the underlying debt position. The legal response should not necessarily be to subject every short-term loan to conventional *ex ante* approval. A more efficient solution is automated reporting through commercial banks, aggregation at borrower level and risk alerts for recurrent rollover patterns.

The use of foreign borrowing also raises questions about the purpose and destination of funds. The original study is concerned that, in some circumstances, firms may have incentives to obtain relatively low-cost foreign funding and place the proceeds in domestic deposits or short-term financial instruments in order to exploit interest-rate differentials. The materials supplied for the article do not provide a sufficiently robust empirical dataset to quantify the prevalence of such arbitrage in Hanoi or Vietnam as a whole. The concern is therefore better framed as a regulatory risk: weak post-disbursement monitoring may make it difficult to verify whether funds are being used consistently with the declared borrowing purpose.

A data-based system could address this concern more effectively than additional paper documentation. Where legally authorised and subject to confidentiality safeguards, information on loan disbursement could be cross-checked with bank-account movements, electronic invoices, tax data and customs declarations. This would make supervision more capable of distinguishing productive borrowing from patterns warranting closer review.

Foreign-exchange risk management is another gap. The existing framework does not establish a universal mandatory hedging requirement for all enterprises with significant external debt. When the exchange rate moves sharply, an unhedged borrower whose revenues are predominantly in Vietnamese dong can face a sudden increase in debt-service costs. In a sufficiently large number of firms, this can indirectly affect banks that provide transaction services or domestic credit. Dornbusch's work on exchange-rate economics provides a general theoretical basis for recognising exchange-rate transmission, although it should not be treated as evidence of specific insolvency events among enterprises in Hanoi [12].

The final issue in this group concerns enforcement. The original manuscript referred to Decree No. 88/2019/ND-CP; however, the current enforcement framework must be analysed in light of Decree No. 340/2025/ND-CP on administrative penalties in the monetary and banking sector, which took effect on 9 February 2026 [4]. The broader policy point remains valid: sanctions should be proportionate to the economic benefit of non-compliance and sufficiently predictable to deter deliberate circumvention, while inadvertent or immaterial reporting errors should not be treated in the same manner as intentional concealment of capital flows.

3.4. UNEQUAL PRACTICAL ACCESS TO INTERNATIONAL CAPITAL

A fourth shortcoming concerns unequal practical access to international finance among different types of enterprise. Formal equality before the law does not necessarily produce equivalent financing opportunities. State-owned enterprises and foreign-invested enterprises may enjoy stronger credit profiles, parent-company support, established banking relationships or other advantages that reduce the cost and complexity of external borrowing. Domestic private enterprises, especially SMEs, may face greater difficulties in demonstrating creditworthiness, preparing compliance documentation and providing collateral acceptable to international lenders.

The private sector is a central focus of Vietnam's current development policy, including the orientation reflected in Resolution No. 68-NQ/TW of 4 May 2025 [13]. If foreign-exchange regulation imposes high fixed compliance costs, those costs affect smaller enterprises more heavily. The issue is therefore not necessarily explicit legal discrimination; it is the possibility that formally uniform requirements create unequal practical burdens because firms differ significantly in administrative capacity, legal resources and access to guarantees.

Collateral is a further constraint. Modern enterprises may possess valuable intellectual property, receivables, contractual

rights and other intangible assets rather than large portfolios of land or fixed assets. The original study notes that the use of intellectual property as collateral remains difficult in practice because lenders require reliable valuation methods, clear evidence of ownership and workable enforcement and transfer mechanisms if the debtor defaults. This concern is reinforced by Resolution No. 68-NQ/TW, which specifically encourages credit assessment based on data, cash flow, and value chains and calls for broader consideration of movable, intangible, and future-formed assets as collateral [13].

The treatment of guarantees and strategic projects also affects access. Large state-linked borrowers may benefit from higher market confidence, while private enterprises undertaking infrastructure, technology or green projects can still face high financing costs. Any expansion of public guarantees must of course be consistent with public-debt discipline and avoid the socialisation of ordinary commercial risk. Nevertheless, the legal framework can consider conditional credit-enhancement or partial risk-sharing mechanisms for clearly defined strategic projects.

For smaller private enterprises, the cost of specialised legal and financial advice is itself a barrier. A modern foreign-exchange regime should therefore treat regulatory simplicity, accessible guidance and automated low-risk processing as elements of substantive equality, not merely administrative convenience.

4. REFORMING STATE MANAGEMENT OF FOREIGN EXCHANGE: PROPOSALS AND PROSPECTS

The shortcomings identified above suggest that Vietnam's foreign-exchange regime should not continue to rely primarily on broad ex ante control and periodic reporting. In an environment of financial integration and digitalisation, effective public governance should be based on timely data, risk differentiation and flexible macroprudential instruments. The objective is not simply to reduce procedures but to redesign the regulatory model itself: from controlling files to governing capital flows; from uniform prior review to risk-based ex post supervision; and from a defensive mentality to development-oriented regulation.

This change should remain compatible with national financial security. A more facilitative framework is sustainable only if the State has stronger information, analytic capacity and legal authority to intervene when risks increase. In that sense, procedural simplification and stronger supervision are complements rather than opposites.

4.1. FROM EX ANTE CONTROL TO RISK-BASED EX POST SUPERVISION

The first reform is to replace the presumption that every registrable transaction requires broadly similar administrative scrutiny with a risk-based model. Resolution No. 66-NQ/TW emphasises a legal environment favourable to citizens and enterprises, with lower compliance costs, stronger predictability, and greater mobilisation of development resources [1]. In foreign-exchange management, this orientation can be operationalised through borrower and transaction risk classification.

A risk-based framework could consider several criteria: the maturity of the loan; the amount relative to the borrower's equity or revenue; whether the borrower has natural foreign-currency income; the borrowing purpose; the sector in which the borrower operates; related-party characteristics; the frequency of refinancing; and the enterprise's compliance history. These factors would not necessarily determine whether borrowing is permitted. Rather, they would determine the intensity of reporting, review and monitoring.

For low-risk borrowers with a strong compliance record, certain changes to registered loans could be processed automatically or through online notification. For higher-risk exposures, the regulator could require more detailed information, hedging plans, liquidity analysis or enhanced reporting. This approach is consistent with the broader concept of risk-based supervision described in international regulatory practice [14], while recognising that pension supervision—the subject of that study—is not identical to foreign-exchange regulation. The relevant transferable principle is proportional allocation of supervisory resources according to risk.

The original manuscript proposes considering the removal of confirmation requirements for medium- and long-term loans below a specified threshold, for example USD 10 million, or for borrowers with high credit quality. Such a numerical threshold should not be adopted without empirical calibration because risk is not determined by nominal value alone. A more robust approach would combine amount, leverage, maturity, foreign-currency revenue and compliance history. The USD 10 million figure is therefore best treated as an illustrative policy option rather than a scientifically established optimal threshold. More generally, threshold-based regulation is defensible only when the variables, units, assumptions, and calibration procedure are explicit. As a cross-domain methodological analogy rather than a financial-law authority, recent threshold-model research in *Trends in Clinical and Medical Sciences* likewise stresses transparent parameterisation, reproducibility, and local calibration before a threshold model is used for context-specific prediction [15]. A related evidence principle is that the strength of a claim should remain proportionate to the evidence actually available; although developed in an educational research context, that principle is articulated explicitly by Mislevy and is useful here as a methodological caution against presenting an illustrative regulatory threshold as empirically validated [16].

The legal framework should also create incentives for compliance. Enterprises with a sustained record of accurate

and timely reporting could qualify for simplified amendment procedures and faster processing. Conversely, repeated non-compliance, recurrent short-term rollover or unexplained changes in capital flows could move a borrower into a higher-risk category. Such a system would allow the State Bank to focus scarce supervisory capacity on the transactions most likely to affect financial stability.

4.2. COMPREHENSIVE DIGITALISATION AND AN INTEROPERABLE NATIONAL DATA ARCHITECTURE

The second reform is to build a genuinely digital infrastructure for foreign-exchange governance. This should include a centralised national database of corporate external loans, differentiated access rights for competent authorities, and automated connections among the State Bank of Vietnam, commercial banks, enterprise and investment registration systems, tax authorities and customs. The goal is to move from 'enterprise-declared compliance' toward 'system-recorded compliance' wherever reliable digital records already exist.

Monitoring the purpose of borrowing illustrates the potential benefits. Instead of repeatedly requiring enterprises to submit paper evidence, authorised systems could cross-check relevant disbursement information against electronic invoices, tax records and customs declarations for imported machinery and equipment. Such mechanisms would need a clear legal basis, purpose limitation, security safeguards and rules on correction where databases contain inaccurate information. Digitalisation should strengthen due process rather than create opaque automated decision-making.

Short-term debt monitoring should be a priority. Commercial banks serving foreign-loan transactions are natural data points because cross-border disbursement and repayment generally pass through the banking system. Requiring standardised real-time or near-real-time reporting of specified capital transactions could provide the State Bank with a more accurate picture of short-term external debt than periodic enterprise reports alone. Automated aggregation could identify recurrent rollover, concentration by sector, unusual maturity patterns and sudden changes in foreign-currency exposure.

To support such a system, legislation should address data standards, API connectivity, reporting responsibility, correction procedures, cybersecurity and the legal status of electronic records. Data should be usable as a basis for ex post supervision and, where appropriate, enforcement, but enterprises must have the ability to inspect and challenge materially inaccurate information used against them.

Several groups of legal instruments are relevant. First, the rules directly governing foreign borrowing—including Circular No. 12/2022/TT-NHNN as amended by Circular No. 80/2025/TT-NHNN—should increasingly support digital reporting and data-based supervision [2, 3]. The specific content of provisions should be reviewed against the current consolidated text rather than assuming that earlier article numbering remains unchanged after amendments. Second, the Law on the State Bank of Vietnam should provide a sufficiently clear legal basis for inter-agency data access where such access is necessary, proportionate, and legally safeguarded for monetary and macroprudential purposes [17].

Third, tax, customs and data-sharing rules should support lawful interoperability. The original manuscript proposes API-based connections allowing electronic invoices and customs declarations to be cross-checked with foreign borrowing flows, within the framework established by relevant legislation on state data sharing and digital governance. The exact legislative vehicle requires further technical assessment, but the policy objective is clear: automated institutional cooperation should replace case-by-case requests wherever this can be done lawfully and securely.

Fourth, enforcement law must recognise reliable electronic data while preserving evidentiary safeguards. Decree No. 340/2025/ND-CP forms part of the current sanctions framework in the monetary and banking sector and expressly addresses violations connected with foreign-exchange and foreign-borrowing activities [4]. Future refinement should ensure that failures to report electronically, deliberate submission of false data and minor technical errors are distinguished according to seriousness, culpability and actual regulatory harm.

Implemented coherently, these reforms would reduce the 'dark zone' surrounding recurrent short-term debt, lower compliance costs for enterprises and improve the State's ability to react to international financial shocks. Most importantly, they would make ex post supervision operational rather than rhetorical.

4.3. FLEXIBLE MACROPRUDENTIAL REGULATION INSTEAD OF RIGID ADMINISTRATIVE COMMANDS

The third reform is to expand the use of transparent economic and prudential instruments in place of rigid administrative prohibitions. Development-oriented regulation does not mean that the State should become passive. When external borrowing contributes to systemic vulnerability, the State Bank needs a legally defined toolkit capable of influencing the composition and risk of capital flows.

One component is foreign-exchange hedging. Rather than focusing exclusively on whether an enterprise may borrow, the legal system can require borrowers above a material risk threshold to manage their own exchange-rate exposure.

Appropriate instruments may include forwards, swaps and other lawful derivatives. The threshold should take into account the ratio of foreign-currency debt to equity or cash flow, the maturity of the liability and whether the enterprise has natural hedging through foreign-currency revenue. The objective is to internalise risk at firm level and reduce the pressure placed on national reserves and the banking system during periods of exchange-rate stress.

A second component is capital-flow management (CFM). The international literature recognises that, in certain circumstances, temporary and targeted capital-flow management measures can complement macroeconomic adjustment and macroprudential policy. The IMF-related source cited in the original manuscript on the incidence of CFM measures illustrates the continuing relevance and diversity of these instruments across countries and asset classes [18]. Vietnam's legal framework could define conditions under which the State Bank may activate temporary measures in response to speculative inflows, excessive short-term external borrowing or other material financial-stability risks.

Possible tools include ceilings on the growth of particular categories of external debt, reserve or deposit requirements for recurrent short-term borrowing, limits on the ratio of short-term foreign-currency debt to foreign-currency revenue, and enhanced reporting or provisioning requirements. These measures should be transparent, proportionate, time-limited where appropriate and subject to periodic review. Clear activation criteria are essential to prevent a risk-based system from degenerating into unpredictable administrative discretion.

The Law on the State Bank of Vietnam 2010 is therefore a potential legislative locus for clarifying the authority to deploy capital-flow-management and macroprudential instruments [17]. The purpose would be to establish the State Bank not simply as an administrative gatekeeper but as an institution capable of development-oriented, risk-sensitive regulation. Emergency powers should be accompanied by procedural safeguards, publication duties and accountability mechanisms.

Decree No. 219/2013/ND-CP, which governs enterprises' foreign borrowing and repayment of foreign debts without a government guarantee and remains partly in force, could likewise be reviewed from the perspective of 'internalising risk' [19]. Instead of focusing only on formal borrowing conditions, the framework could link specified levels of leverage or currency mismatch to mandatory risk-management obligations. The regulatory question would shift from 'is borrowing permitted?' to 'what safeguards are necessary given the risk created by this borrowing?'.

Finally, the implementing circular framework should provide the technical rules needed to classify loans according to systemic risk and borrowing purpose. Any authority to vary hedging ratios or other prudential parameters across market cycles should be constrained by published criteria. This would create a more automatic and predictable 'regulatory valve' while reducing the need for case-by-case administrative intervention.

4.4. ENSURING EQUALITY AND CREATING OPPORTUNITIES FOR THE PRIVATE SECTOR

The fourth reform is to make equality in access to international capital a substantive principle of foreign-exchange governance. Resolution No. 68-NQ/TW places private-sector development at the centre of Vietnam's economic strategy and expressly promotes diversification of financing sources, digitalisation, and improved access to credit for private enterprises [13]. Foreign-exchange law should therefore avoid rules whose fixed procedural costs disproportionately burden domestic private enterprises without generating commensurate supervisory benefits.

One priority is the legal recognition of property rights that can serve as collateral in international financing. Intellectual property rights, receivables and contractual rights may represent a substantial share of the value of technology-oriented firms. To make such assets practically bankable, the legal system needs reliable valuation standards, clear documentation of title, rules on priority and registration, and enforceable mechanisms for transfer or realisation after default. The practical difficulty of using intellectual property and other intangible assets as collateral demonstrates that formal recognition alone is insufficient. Resolution No. 68-NQ/TW itself supports consideration of intangible and future-formed assets in credit assessment, reinforcing the need for valuation, priority, registration, and enforcement rules that make such collateral genuinely bankable [13].

A second priority is proportionate risk sharing for strategically important private projects. Possible mechanisms include credit-guarantee funds, partial guarantees or accelerated procedures for clearly defined categories such as infrastructure, innovation and green projects. Such support should be conditional, transparent and subject to fiscal-risk controls. It should not recreate unequal treatment by giving discretionary benefits to selected firms without objective criteria.

Third, borrowing conditions for SMEs should be simplified where the risks justify it. Standardised electronic documentation, clear templates, published interpretation guidance and automatic processing of low-risk changes would reduce the need for expensive specialised advice. Requirements concerning collateral and business plans should reflect the scale and business model of SMEs, particularly firms in high-technology and circular-economy sectors whose assets may be largely intangible.

Fourth, the legal framework for government guarantees and other public support should be reviewed to determine whether strategically important private-sector infrastructure projects can access international financing without undermining public-debt discipline. The objective is not to replicate the implicit advantages associated with state ownership, but to create transparent and competitively neutral instruments for projects that produce demonstrable public value.

Finally, regulatory sandboxes may be appropriate for financing mechanisms that do not fit comfortably within existing categories, including cross-border fintech lending and innovative international green-finance instruments. A sandbox should be limited in time and scope, impose reporting and risk-control obligations, define entry and exit criteria, and produce evidence for future rule-making. Equality of access to capital should thereby become a legal principle of foreign-exchange governance rather than merely an economic-policy aspiration.

5. CONCLUSION

Improving Vietnam's legal framework for foreign-exchange management of corporate external borrowing is not merely a technical task of amending individual provisions. It is a strategic institutional reform connected with the broader development-oriented legal philosophy expressed in Resolution No. 66-NQ/TW. The traditional approach—one that is convenient for administrative control but costly and inflexible for enterprises—should give way to a regulatory architecture that protects public interests while mobilising legitimate financial resources.

The analysis has identified four main weaknesses: fragmentation and limited predictability of the regulatory framework; excessive reliance on ex ante procedures; insufficient monitoring of short-term, innovative and potentially risky capital flows; and unequal practical burdens affecting domestic private enterprises. These weaknesses cannot be solved by deregulation alone. Nor can they be solved by simply adding more documents and approvals. The central reform is to redesign the allocation of regulatory attention.

Risk-based supervision should allow routine and transparent transactions to move through simpler procedures while concentrating scrutiny on leverage, maturity, currency mismatch, recurrent refinancing and other observable indicators of systemic concern. Digital transformation is indispensable to this model. Interoperable data among the State Bank, commercial banks, tax authorities, customs and other competent bodies can make near-real-time monitoring possible, support ex post verification of borrowing purposes and reduce unnecessary duplication of information supplied by enterprises.

At the macro level, the State Bank should have a transparent and accountable toolkit combining capital-flow management, macroprudential regulation and proportionate hedging requirements. Such tools would allow Vietnam to respond to exchange-rate pressure, short-term debt surges or speculative flows without returning automatically to rigid transaction-by-transaction restrictions. At the micro level, stronger recognition of intangible collateral, simpler procedures for SMEs and carefully designed risk-sharing mechanisms can improve the private sector's access to international capital.

The ultimate objective is a legal framework that is transparent, predictable and development-oriented. When foreign-exchange law becomes capable of governing risks rather than merely controlling files, it can protect national monetary security while also serving as an institutional lever for sustainable growth. This is the core transformation required by the new context: from ex ante administrative gatekeeping to adaptive governance; from fragmented reporting to interoperable data; and from defensive restriction to a legal system that combines financial stability with the mobilisation of productive international capital.

AUTHOR CONTRIBUTIONS

Both authors contributed equally to the conceptualisation, legal analysis, development of the argument, preparation of the manuscript, critical revision, and approval of the final version.

CONFLICTS OF INTEREST

The authors declare no conflicts of interest.

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DATA AVAILABILITY

No empirical dataset or codebook was generated for this doctrinal and policy-oriented legal study. The principal legal instruments and policy materials analysed are publicly available from the competent Vietnamese authorities and the institutional sources identified in the references.

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