

**THE STATE BANK OF
VIETNAM**

No.: 18/2022/TT-NHNN

**THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom – Happiness**

Hanoi, December 26, 2022

CIRCULAR

**AMENDMENTS TO CIRCULAR NO. 09/2015/TT-NHNN DATED JULY 17, 2015 OF
GOVERNOR OF STATE BANK OF VIETNAM PRESCRIBING DEBT TRADING OF
CREDIT INSTITUTIONS AND FOREIGN BANK BRANCHES**

Pursuant to the Civil Code dated November 24, 2015;

Pursuant to the Law on the State Bank of Vietnam dated June 16, 2010;

*Pursuant to the Law on Credit Institutions dated June 16, 2010 and the Law providing
amendments to the Law on Credit Institutions dated November 20, 2017;*

*Pursuant to the Government's Decree No. 102/2022/ND-CP dated December 12, 2022
prescribing functions, tasks, powers and organizational structure of the State Bank of Vietnam;*

At the request of the Director of the Credit Department for Economic Sectors;

*The Governor of the State Bank of Vietnam promulgates a Circular providing amendments to the
Circular No. 09/2015/TT-NHNN dated July 17, 2015 of Governor of State Bank of Vietnam
prescribing debt trading of credit institutions and foreign bank branches.*

Article 1. Amendments to Circular No. 09/2015/TT-NHNN dated July 17, 2015 of the Governor of the State Bank of Vietnam

1. Clause 2 Article 1 is amended as follows:

“2. This Circular does not apply to trading of bad debts between credit institutions and Vietnam Asset Management Company (VAMC); trading of debts arising from loan agreements entered into between credit institutions and foreign bank branches.”

2. Clause 4 Article 3 is amended and Clause 7a is added to Article 3 as follows:

“4. *Debt buyers* include:

a) Credit institutions and foreign bank branches (FBBs) that have obtained approval for debt trading from the State Bank of Vietnam (hereinafter referred to as “SBV”);

b) Other organizations and individuals (including residents and non-residents).”

“7a. *Book value of a traded debt on balance sheet* means the sum of the book value of outstanding principal and interest of the debt and any other debt-related financial obligations recorded on the balance sheet by the time of debt trading.”

3. Clauses 3, 4, 6, 7 Article 5 are amended and Clauses 11, 12 are added to Article 5 as follows:

“3. An application for approval of debt trading submitted by a credit institution or FBB may be considered by the SBV if its nonperforming loan ratio is maintained below 3% according to the latest report on debt classification conducted according to the SBV’s regulations on classification of assets, rates and methods of setting up risk provisions and use of provisions for control and management of risks arising from operations of credit institutions and FBBs by the time of application, except credit institutions placed under special control. When selling debts, credit institutions and FBBs are not required to obtain approval from the SBV.

A credit institution or FBB shall be allowed to purchase debts only if its debt trading has been approved by the SBV according to the license for establishment and operation of a credit institution or the establishment license of a foreign bank branch (hereinafter referred to as “license”) and its nonperforming loan ratio is maintained below 3% according to the latest report on debt classification conducted according to the SBV’s regulations on classification of assets, rates and methods of setting up risk provisions and use of provisions for control and management of risks arising from operations of credit institutions and FBBs by the time of conclusion of the debt purchase agreement, except the cases specified in Clause 12 of this Article.

4. Before engaging in debt trading as prescribed in Clause 3 of this Article, each credit institution or FBB shall issue its own internal regulations on debt trading (including regulations on grant of authority which follows the principle of assignment of responsibilities in the assessment and decision-making stages; debt trading methods and payment methods; debt trading procedures; procedures and methods for debt valuation; procedures for management of risks arising from debt trading).”

“6. Repurchase of a debt sold by a credit institution:

a) The seller may not repurchase its sold debts, except the following cases:

(i) A credit institution repurchases its debts sold to a credit institution placed under special control according to Point a Clause 12 of this Article;

(ii) An assisting credit institution repurchases its debts sold to a credit institution placed under special control according to the approved recovery plan as prescribed in Clause 6 Article 146dd of the Law on Credit Institutions;

(iii) A credit institution that is the transferee under a mandatory transfer plan repurchases its debts sold to the commercial bank that is subject to the mandatory transfer as prescribed in Point c Clause 12 of this Article.

b) A credit institution shall repurchase its debts sold as prescribed in Point a(ii) or a(iii) of this Clause according to the commitment to repurchase debts specified in the restructuring plan approved by a competent authority in the following cases:

(i) The debt to be repurchased is being used by the credit institution placed under special control as the collateral for its special loan granted by the SBV but is no longer classified as a standard debt according to the SBV's regulations and must be replaced with another standard debt.

(ii) The special loan debt of a credit institution placed under special control becomes due but it does not have sufficient funding for repaying such debt to the SBV according to the special loan debt repayment plan.

7. A credit institution is not allowed to sell debts to its subsidiaries, except the following cases:

a) Debts are sold to a debt and asset management company according to a restructuring plan approved by a competent authority;

b) The credit institution that is the transferee under a mandatory transfer plan sells standard debts to the commercial bank that is subject to the mandatory transfer according to the approved mandatory transfer plan.”

“11. A credit institution or FBBs is not allowed to extend credit to clients to buy its debts.

12. A credit institution shall not be required to maintain a nonperforming loan ratio below 3% when buying debts in the following cases:

a) A credit institution placed under special control purchases standard debts according to Clause 2 Article 146a of the Law on Credit Institutions;

b) A credit institution placed under special control purchases standard debts from an assisting credit institution according to the approved recovery plan as prescribed in Clause 1 Article 148b of the Law on Credit Institutions;

c) A commercial bank that is subject to the mandatory transfer purchases standard debts from a credit institution that is the transferee under a mandatory transfer plan approved by a competent authority;

d) The cases of debt purchase prescribed in Points a(ii) and a)iii) Clause 6 of this Article.”

4. Clause 1 Article 7 is amended as follows:

“1. The credit institution or FBB that wishes to obtain approval for its debt trading shall prepare an application according to Article 6 of this Circular and submit it, either directly or by post, to the SBV's head office (single-window section).”.

5. Clause 2 Article 10 is amended as follows:

“2. Auction: The seller shall enter into an auction service contract with a qualified property auction organization in accordance with regulations of law on property auction.”.

6. Article 10a is added as follows:

“Article 10a. Debt trading with deferred payment

In case the buyer and the seller have agreed that the buyer may make payment for the purchased debt (partial or entire purchase price) after the procedures for transferring the ownership of the debt from the seller to the buyer have been completed, the following provisions shall apply:

1. The buyer must complete payment for the purchased debt within a maximum period of 60 days from the effective date of the debt purchase agreement.
2. Notwithstanding the provisions of Clause 4 of this Article, the deferred amount of the purchase price specified in the debt purchase agreement must be fully secured by highly liquid assets, including:
 - a) Deposits, deposit certificates, promissory notes, treasury bills in VND or a foreign currency issued by credit institutions or FBBs;
 - b) Gold bullions as prescribed in law on gold trading;
 - c) Government bonds or government-guaranteed bonds;
 - d) Corporate bonds which are given AA-rating or higher (by Standard & Poor’s or Fitch Ratings) or Aa3-rating or higher (by Moody’s) and listed on securities market;
 - dd) Shares listed on Ho Chi Minh City Stock Exchange and Hanoi Stock Exchange (except shares which are given warning, controlled, suspended or restricted as prescribed by Vietnam Exchange at the conclusion date of the security agreement and shares whose trading volume is less than 300.000 shares/day for 10 consecutive trading days before the conclusion date of the security agreement).
3. The value of assets provided for securing the deferred payment as prescribed in Clause 2 of this Article shall be determined according to the rules for valuation of collateral used as deduction for calculation of risk provision at conclusion date of the security agreement.
4. In case the debt which is purchased according to Point b or c Clause 12 Article 5 of this Circular is provided as the collateral for a special loan granted by the SBV, the deferred payment (if any) for the purchased debt shall be agreed upon by the parties in accordance with regulations of law.”.

7. Article 11 is amended as follows:

“Article 11. Debt trading council

Each credit institution or FBB must establish the debt trading council in accordance with regulations of law, its charter and internal regulations on debt trading. The credit institution or FBB shall decide the composition, tasks and powers of its debt trading council.”.

8. Article 12 is amended as follows:

“Article 12. Debt valuation

When a credit institution or FBB engages in debt trading, it shall be required to carry out the valuation of the debt for determining the starting price, if the debt is sold at auction, or the price for conducting negotiation, if the debt is sold adopting negotiation method. The valuation of a debt may be carried out adopting the following methods:

1. The credit institution or FBB carries out the debt valuation itself according to the following ground(s):

a) The book value of the debt, interest amount payable by the debtor at the valuation date, classification of the debt, collateral (if any), the borrower’s financial status and other factors which may influence the debt’s value (if any) at the valuation date;

b) Regulations and guidelines on debt valuation standards of the Ministry of Finance of Vietnam.

2. The credit institution or FBB is entitled to hire a qualified valuation organization to carry out valuation of the debt to be sold or purchased.”.

9. Clause 1 Article 14 is amended as follows:

“1. The debt buyer shall have the rights and obligations associated with the purchased debt from the time when procedures for transferring ownership of the debt from the seller to the buyer under the signed debt purchase agreement are completed”.

10. Article 15a is added as follows:

“Article 15a. Management of a debt partially sold or sold to multiple buyers

A debt which is partially sold or sold to multiple buyers as prescribed in Clause 9 Article 5 of this Circular shall be managed and monitored according to the following rules:

1. If the seller still owns a portion of the debt sold, it shall take charge of managing documents/records, security interests, and other issues concerning the debt. The seller shall continue managing, monitoring, classifying and setting up risk provision for its remaining portion of the debt in accordance with regulations of law.

If the seller no longer owns any portion of the debt sold and has received the full payment for the debt sold, the transfer of documents/records, security interests, and other issues concerning the

debt from the seller to buyers shall be conducted according to specific agreements made between the buyers and regulations of law.

2. Rights and obligations of the parties and settlement of issues that arise in case the seller takes charge of managing documents/records, security interests, and other issues concerning the debt prescribed in Clause 1 of this Article shall comply with specific agreements made between the parties in conformity with regulations of law.

3. Where a debt is partially sold or sold to multiple buyers, settlement of financial issues and other issues concerning the debt sold between the seller and buyer(s) shall comply with regulations applicable to normal debt trading cases and the provisions of Clauses 1 and 2 of this Article.”.

11. Point b Clause 1 Article 20 is amended and Clause 2a is added to Article 20 as follows:

“b) Debt classification, setting up and use of provisions for handling risks involving debt purchase amounts shall comply with in accordance with regulations of law.”.

“2a. If the proceeds from selling a debt have not yet collected in full, the credit institution or FBB shall carry out debt classification, setting up and use of risk provisions in accordance with regulations of law.”.

12. Article 21 is amended as follows:

“Article 21. Financial settlement and accounting for debts sold/purchased

1. Debt sellers

a) Regarding a debt whose principal is recorded on balance sheet

(i) The debt collection shall follow the rule: the debt principal must be collected before interests;

(ii) Where the selling price is greater than or equal to the book value of the traded debt on balance sheet:

The remaining difference (if any) between the selling price and the book value of the traded debt on balance sheet after deducting the amount of debt principal and interests collected shall be recorded as the seller’s income;

(iii) Where the selling price is smaller than the book value of the traded debt on balance sheet, in addition to the proceeds earned from the selling of debt, the compensation (in case the loss of assets is due to subjective reasons and compensation must be paid in accordance with regulations on financial policies of credit institutions and foreign bank branches), and the insurance payout (if any) shall be used for collecting debt. If the debt is still not yet collected in full after using the proceeds earned from the selling of debt, compensation and insurance payout as prescribed, the following provisions shall apply:

The uncollectible principal amount shall be covered by the seller's provision which is set up as its expense and then, by its financial reserve fund. If the seller's financial reserve fund is still not sufficient to do so, the deficit shall be recorded as other expenses in the same period. Upon completion of the abovementioned financial settlement steps, the uncollectible principal amount shall be removed from the balance sheet.

Regarding uncollectible interests: If the outstanding interest is recorded as income on its balance sheet, the seller shall record it as a decrease in income or as its expenses in accordance with regulations on financial policies of credit institutions and foreign bank branches. If the outstanding interest is recorded on off-balance sheet, it shall be removed from off-balance sheet;

b) Regarding debts recorded as off-balance-sheet items

The seller shall remove the debts sold from the off-balance sheet and record the proceeds from the selling of debts (at the selling price) as its incomes;

c) Regarding debts removed from off-balance sheet

The proceeds earned from the selling of debts shall be included in the seller's incomes.

2. Debt buyers

a) If the purchase price is smaller than or equal to the outstanding principal of the purchased debt:

The principal amount collected under the credit agreement of the purchased debt shall be used for making up the purchase price. Where the purchase price has been made up in full, the remaining principal amount (which is the difference between the outstanding principal of the purchased debt and the purchase price) shall be recorded as the buyer's income.

The interest amount collected under the credit agreement of the purchased debt shall be recorded as the buyer's income;

b) If the purchase price is greater than the outstanding principal of the purchased debt:

The principal and/or interest amount collected under the credit agreement of the purchased debt shall be used for making up the purchase price. When the remaining purchase price is smaller than or equal to the outstanding principal amount of the purchased debt, the principal and/or interest amount collected under the credit agreement of the purchased debt shall be treated according to the provisions of Point a Clause 2 of this Article.

If the purchase price cannot be made up in full, the deficit shall be treated in accordance with regulations on financial policies of credit institutions and foreign bank branches and relevant law provisions.

3. Accounting for debt trading operations, settlement of exchange rate differences upon debt trading, debt collection regarding purchased debts, and actions against loss of assets shall comply with regulations on financial policies and accounting of credit institutions and foreign bank branches, and relevant law provisions.

4. Debt sellers shall monitor and retain information on their debts sold as prescribed in Point a(iii) Clause 1 and Point b Clause 1 of this Article to serve inspection tasks, if requested.

5. Debt buyers that are not credit institutions and FBBs shall carry out financial settlement and accounting for their purchased debts in accordance with regulations of law.”.

Article 2. Replacement of some phrases, Clauses and Articles of Circular No. 09/2015/TT-NHNN

1. The phrase “đã xuất toán ra khỏi bảng cân đối kế toán” (“which has been removed from the balance sheet”) in Clause 2 and Clause 7 Article 3 is replaced with the phrase “đã xuất toán ra khỏi ngoại bảng” (“which has been removed from the off-balance sheet”).

2. The phrase “giao dịch bảo đảm” (“secured transaction”) in the paragraph “Việc thực hiện đăng ký thay đổi bên nhận bảo đảm theo quy định của pháp luật về giao dịch bảo đảm” (“Application for replacement of the secured party shall comply with regulations of law on secured transactions”) in Clause 2 Article 14 is replaced with the phrase “đăng ký biện pháp bảo đảm” (“registration of security interests”).

Article 3. Transition

Debt purchase agreements which have been concluded before the effective date of this Circular shall remain valid and be performed in accordance with the provisions of the Circular No. 09/2015/TT-NHNN. Any modifications to the signed debt purchase agreements must be conformable with the provisions of this Circular.

Article 4. Implementation organization

The Chief of Office, the Director of the Credit Department for Economic Sectors, heads of SBV’s affiliated units, credit institutions and FBBs shall organize the implementation of this Circular.

Article 5. Implementation

This Circular comes into force from February 09, 2023.

**PP. GOVERNOR
DEPUTY GOVERNOR**

Dao Minh Tu