

**THE STATE BANK OF
VIETNAM**

No. 09/2015/TT-NHNN

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

Hanoi, July 17, 2015

CIRCULAR

PRESCRIBING DEBT PURCHASE AND SALE BY CREDIT INSTITUTIONS AND FOREIGN BANK BRANCHES

Pursuant to June 14, 2005 Civil Code No. 33/2005/QH11;

Pursuant to June 16, 2010 Law No. 46/2010/QH12 on the State Bank of Vietnam;

Pursuant to June 16, 2010 Law No. 47/2010/QH12 on Credit Institutions;

Pursuant to the Government's Decree No. 156/2013/ND-CP of November 11, 2013, defining the functions, tasks, powers and organizational structure of the State Bank of Vietnam;

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

The Governor of the State Bank of Vietnam promulgates the Circular prescribing debt purchase and sale by credit institutions and foreign bank branches.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

1. This Circular prescribes purchase and sale of debts arising from the lending operation (including debts to be paid on a third party's behalf in the guarantee operation) of credit institutions and foreign bank branches; dossiers, order and procedures for approval of debt purchase by credit institutions and foreign bank branches.
2. This Circular does not apply to debt purchase and sale by the Vietnam Asset Management Company (VAMC); and purchase and sale of debts arising from borrowing and lending contracts between credit institutions and foreign bank branches.

Article 2. Subjects of application

1. Credit institutions and foreign bank branches established and operating in accordance with the Law on Credit Institutions (below referred to as credit institutions and foreign bank branches)

2. Other individuals and organizations involved in debt purchase and sale.

Article 3. Interpretation of terms

In this Circular, the terms below shall be construed as follows:

1. Debt purchase and sale means a written agreement on the transfer of a creditor's right to claim a debt arising from the lending operation or a debt to be paid on a third party's behalf in the guarantee operation whereby the debt seller transfers the creditor's ownership of the debt to the debt purchaser and receives a payment from the debt purchaser.

2. Purchased and sold debt means a debt arising from the lending operation or a debt to be paid on a third party's behalf in the guarantee operation under a signed credit extension contract of a credit institution or foreign bank branch, monitored for accounting on the balance sheet, off the balance sheet or left off the balance sheet of the debt seller and meeting the conditions prescribed in Article 4 of this Circular, and paid by the debtor to the credit institution or foreign bank branch.

3. Debt sellers include credit institutions and foreign bank branches that have debts sold under Clause 2 of this Article.

4. Debt purchasers include the following organizations and individuals:

a/ Organizations and individuals being residents, including:

- Credit institutions and foreign bank branches having obtained the State Bank's approval of debt purchase activity;

- Organizations providing debt purchase and sale service (other than credit institutions and foreign bank branches) fully meeting the law-prescribed conditions for provision of debt purchase and sale service;

- Other organizations and individuals not providing debt purchase and sale service.

b/ Organizations and individuals being non-residents.

5. Debtors include organizations and individuals that have the obligation to pay for purchased and sold debts under credit extension contracts.

6. Broker means an intermediary between a debt purchaser and a debt seller in a debt purchase and sale transaction enjoying a commission under a brokerage contract.

7. Book value of a purchased and sold debt is the book value of debt principal and interest and other debt-related financial obligations (if any) by the time of debt purchase and sale for the debt accounted on the balance sheet or off the balance sheet; or the monitored book value at the time

of being left off the balance sheet or at the time of debt purchase and sale for the debt having been left off the balance sheet.

8. Debt purchase and sale price means a sum of money to be paid by a debt purchaser to a debt seller under a debt purchase and sale contract.

Article 4. Conditions for debts to be purchased and sold

To be purchased and sold, a debt must meet the following conditions:

1. Dossier and related documents and records of the debt to be purchased and sold and security contract (if any) provided by the debt seller must fully and accurately show the state of the debt in accordance with law.
2. There is no written agreement on ban on debt purchase and sale.
3. The debt is not used to secure the fulfillment of a civil obligation at the time of debt purchase and sale, except the case where the secured party accepts in writing the debt sale.

Article 5. Principles of debt purchase and sale

1. Debt purchase and sale must not be contrary to the contents of credit extension contracts and guarantee contracts signed by debts sellers, clients and guarantors.
2. Debt purchase and sale shall be agreed by parties and comply with this Circular and relevant regulations.
3. A credit institution or foreign bank branch may only purchase debts when its debt purchase activity is approved by the State Bank of Vietnam (below referred to as the State Bank) in the establishment and operation license of the credit institution or the establishment license of the foreign bank branch (below referred to as license) and its non-performing loan ratio is below 3%, except cases of debt purchase under an approved restructuring plan. For debt sale, the permission of the State Bank is not required.
4. Credit institutions and foreign bank branches shall promulgate internal regulations on debt purchase and sale (clearly stating the decentralized competence based on the principle of division of responsibilities for appraisal of and decision on debt purchase and sale; debt purchase and sale modes; debt purchase and sale process; debt assessment process; debt auction process for debts auctioned by these institutions or branches themselves, and risk management of debt purchase and sale transactions) before conducting the purchase and sale of debts.
5. Credit institutions and foreign bank branches purchasing debts shall comply with regulations on assurance of safety for their operations.
6. Debt sellers may not redeem the debts they have sold.

7. A credit institution may not sell debts to its own subsidiary companies, except case of debts sold to its debt management and asset operation company under an approved restructuring plan.

8. A debt management and asset operation company being a subsidiary company of a credit institution may only purchase debts of other credit institutions or foreign bank branches when the parent credit institution have a non-performing loan ratio of below 3%, except cases of debt purchase under an approved restructuring plan.

9. In case of selling part of a debt or selling a debt to more than one purchaser, the debt seller and debt purchasers shall agree on proportion, modes, rights and obligations of each party, determination of the value of security assets (if any) for the part of purchased and sold debt and other specific contents of the debt purchase and sale contract in accordance with law.

10. Purchased and sold debts shall be monitored, accounted and statistically reported in accordance with law.

Article 6. Dossiers of request for approval of debt purchase by credit institutions and foreign bank branches

1. Principles of making a dossier

a/ A dossier shall be made in Vietnamese. Dossier translation from a foreign language into Vietnamese shall be certified by the lawful representative of the credit institution or foreign bank branch;

b/ A request for approval of debt purchase shall be signed by the lawful representative of the credit institution or foreign bank branch.

2. A dossier of request for approval of debt purchase must comprise:

a/ A request for approval of debt purchase, made according to the form provided in Appendix 1 to this Circular (*not translated*). For a bank with 100% foreign capital, the commitment on debt purchase is the activity which the owner or the foreign bank owning 50% of the charter capital of a bank with 100% foreign capital has been permitted to conduct in the country the owner or foreign bank is headquartered. For a foreign bank branch, commitment on debt purchase is the activity which the parent bank has been permitted to conduct in the country of origin;

b/ A resolution of the credit institution's Board of Directors (Members' Council) adopting the request for approval of debt purchase; a written approval of debt purchase signed by the lawful representative of the foreign bank branch's parent bank and translation thereof.

Article 7. Order and procedures for approval of debt purchase

1. A credit institution or foreign bank branch shall make 1 (one) set of dossier of request for approval of debt purchase under Article 6 of this Circular and send it by post or submit it directly to the State Bank (the Banking Supervisory Agency).

2. Within 40 (forty) days after receiving a complete and valid dossier, the State Bank shall consider and approve debt purchase by the credit institution or foreign bank branch by a decision on modification and supplementation of the latter's license. This document is an integral part of the license. In case of disapproval, the State Bank shall notify such in writing to the credit institution or foreign bank branch, clearly stating the reason.

Article 8. Currency used in transactions

1. The currency used in debt purchase and sale is Vietnam dong. Foreign currencies may only be used in debt purchase and sale transactions when credit institutions and foreign bank branches sell debts in foreign currencies to debt purchasers being non-residents.

2. Currencies in debt recovery are currencies of the debts or other currencies agreed upon by debt purchasers and debtors in accordance with regulations on restriction on foreign exchange use in the Vietnamese territory.

Article 9. Management of foreign exchange in debt purchase and sale transactions

1. Debt purchasers, debt sellers, debtors and other related parties shall comply with regulations on restriction on foreign exchange use in the Vietnamese territory when purchasing and selling debts and recovering purchased debts.

2. When purchasing or selling debts from/to credit institutions and foreign bank branches:

a/ Debt purchasers shall use Vietnam-dong accounts for payment for purchased debts and other expenses to credit institutions or foreign bank branches under debt purchase and sale contracts, for cases of using Vietnam dong in debt purchase transactions;

b/ Debt purchasers being non-residents shall use their foreign-currency accounts at credit institutions or bank branches licensed for foreign exchange transactions in the Vietnamese territory or their foreign-currency accounts overseas for payment for purchased debts and other expenses to credit institutions or foreign bank branches under debt purchase and sale contracts, for cases of using foreign currencies in debt purchase transactions.

3. When recovering purchased debts, recovered amounts shall be transferred into the debt purchaser's Vietnam-dong account or foreign-currency account (for debts recovered in a foreign currency) at commercial banks or foreign bank branches licensed for foreign exchange transactions in the Vietnamese territory.

4. Purchase and sale of debts arising from offshore lending operation or debts paid on behalf of a guaranteed party being a non-resident in the guarantee operation:

a/ The debt seller shall register the change of offshore loans, recovery of guaranteed debts under current regulations on foreign exchange management of offshore lending and recovery of guaranteed debts for non-residents;

b/ The debt purchaser being a resident shall register a debt recovery plan under current regulations on foreign exchange management of recovery of overseas debts arising from debt purchase and sale operation.

Article 10. Debt purchase and sale modes

Credit institutions and foreign bank branches may select either of the following debt purchase and sale modes:

1. Agreement: through direct negotiation between the debt seller and debt purchaser or through a broker.
2. Auction: A debt seller may hire a professional auction organization to auction debts in accordance with the law on asset auction or organize by itself the debt auction.

Article 11. Debt purchase and sale council

Credit institutions and foreign bank branches shall establish debt purchase and sale councils in accordance with their charters and internal regulations on debt purchase and sale. The composition, tasks and powers (including determination of debt purchase and sale price for case of debt purchase and sale under agreement, or reserve price in case of debt auction) shall be stipulated by credit institutions and foreign bank branches.

Article 12. Assessment of debts

The debt purchase and sale price in case of debt purchase and sale under agreement or reserve price in case of debt auction shall be determined as follows:

1. The debt purchase and sale price or reserve price shall be determined based on the book value of the debt and interest that the debtor shall pay in future, classification of debt group, recoverability of the debt and value of the security asset (if any).
2. A credit institution or foreign bank branch may hire an organization having the function of price appraisal to determine the debt purchase and sale price in case of debt purchase and sale under agreement, or reserve price in case of debt auction for being decided by the debt purchase and sale council.

Chapter II

SPECIFIC PROVISIONS

Article 13. Debt purchase and sale contracts

1. A debt purchase and sale contract shall be signed by the at-law representatives or authorized representatives of the debt purchaser and debt seller.

2. A debt purchase and sale contract must have the following principal contents:

a/ Time of signing the contract;

b/ Names and addresses of the parties to the contract;

c/ Names and titles of representatives of the parties to the contract;

d/ Names and addresses of the debtor and parties (if any) related to the purchased and sold debt;

dd/ Details of the purchased and sold debt: loan amount and term, borrowing purpose, book value of the debt by the time of purchase and sale;

e/ Measures (if any) to secure the fulfillment of the payment obligation of the debtor regarding the purchased and sold debt;

g/ Price of debt sale, payment mode and time;

h/ Time, modes and procedures for the transfer of documents on debts, including dossier and documents on security assets for the debt (if any); the time when the debt purchaser takes up the debt seller's rights and obligations to the debt;

i/ Rights and obligations of the debt seller and debt purchaser;

k/ Liability of the parties for breaching the contract;

l/ Settlement of arising disputes.

3. In addition to the contents specified in Clause 2 of this Article, the parties may reach other agreements in the debt purchase and sale contract that are not contrary to this Circular and relevant regulations.

4. The modification, supplementation or cancellation of the contents of the debt purchase and sale contract shall be agreed and decided by related parties in accordance with law.

Article 14. Transfer of rights and obligations related to debts

1. The debt purchaser takes up the debt seller's rights and obligations over the debt at the time stated in the purchase and sale contract.

2. The debt seller shall transfer to the debt purchaser the rights and obligations related to the debt including rights and obligations over debt security measures (if any). The transfer of rights and obligations over debt security measures must comply with the law on secured transactions and relevant regulations. The registration of change of the secured party must comply with the law on secured transactions.

3. The debt purchaser, debtor and securing party may reach agreement on change of security measures for the purchased and sold debt in accordance with the law.

Article 15. Purchase and sale of debts arising from syndicated credit extension

1. If a member providing syndicated credit sells part or the whole of its debt, members being the debt seller and debt purchaser shall agree on a debt purchase and sale plan; at the same time, the debt seller shall notify in writing the debt purchase and sale to the other members. In case of selling the debt of the focal member (acting-as a focal point to arrange the syndicated credit extension, provide syndicated credit, pay or receive security asset), the debt seller, debt purchaser and other members shall agree on changed contents of the syndication contract.

The debt purchase and sale contract in this case constitutes an integral part of the syndication contract or original syndicated credit extension contract. The contents of the debt purchase and sale contract must not be contrary to the provisions on the debt in the syndication contract or syndicated credit extension contract.

2. In case of selling the whole debt, the members providing syndicated credit shall agree on a debt sale plan in accordance with this Circular and relevant regulations.

Article 16. Rights and obligations of debt purchasers

1. A debt purchaser has the following rights:

a/ To request the debt seller to provide information on the purchased and sold debt (including information related to the arising and management of the debt);

b/ To fully take up the debt seller's rights to the debt as agreed upon in accordance with the law;

c/ To request the debt seller to transfer all documents and complete procedures for the transfer of the debt seller's rights and obligations as agreed upon by the parties in the debt purchase and sale contract in accordance with law;

d/ To request the debt seller to properly and fully fulfill the committed obligations under the agreement;

dd/ Other rights as agreed and provided by law.

2. A debt purchaser has the following obligations:

a/ To make full and timely payment to the debt seller under the debt purchase and sale contract;

b/ To pay expenses (including brokerage commission, if any) arising in the course of debt purchase and sale as agreed;

c/ To take up all obligations of the debt seller to the debt as agreed in accordance with law;

d/ To properly and fully fulfill other obligations as agreed and prescribed by law.

Article 17. Rights and obligations of debt sellers

1. A debt seller has the following rights:

a/ To request the debt purchaser to make payment as agreed;

b/ To request the debt purchaser to properly fulfill the committed obligations;

c/ Other rights as agreed and provided by law.

2. A debt seller has the following obligations:

a/ To notify in writing to the debtor and related parties the contents of the debt sale within 5 working days after they sign or modify and supplement the debt purchase and sale contract. In case the law otherwise provides or the debt purchaser and debt seller agree or in the case of necessity, the debt seller shall notify in writing the debt sale to the debtor before the debt purchase and sale contract is signed;

b/ To provide information related to the sold debt at the request of the debt purchaser in accordance with law and not in contravention of the agreements in the credit extension contract and security contract;

c/ To promptly transfer to the debt purchaser the intact debt dossier as agreed;

d/ To transfer to the debt purchaser all rights and obligations to the sold debt, including rights and obligations to security measures and insurance of the debt (if any) under the debt purchase and sale contract and in accordance with law.

dd/ To pay expenses (including brokerage commission, if any) arising in the course of debt purchase and sale as agreed;

e/ To properly and fully fulfill other obligations as agreed and prescribed by law;

Article 18. Rights and obligations of brokers

1. A broker has the following rights:

a/ To arrange the debt purchase and sale for the debt purchaser and seller;

b/ To receive a brokerage commission and have related reasonable expenses paid as agreed by the parties in the brokerage contract;

c/ Other rights as agreed and provided by law.

2. A broker has the following obligations:

a/ To truthfully report information related to the debt purchase and sale transaction provided by the parties;

b/ To take the legal responsibility for information it/he/she has provided;

c/ To refrain from disclosing or providing information detrimental to interests of the debt purchaser and seller and parties related to the debt;

d/ To preserve documents provided for performing the brokerage and return all these documents to the debt purchaser and seller after the brokerage is completed;

dd/ To properly and fully fulfill other obligations as agreed and prescribed by law.

Article 19. Settlement of disputes

1. A dispute arising in the course of debt purchase and sale transaction shall be settled under agreement between related parties in the debt purchase and sale contract but must not be in contravention of law.

2. In case of debt purchase and sale involving foreign elements, the parties may reach an agreement on the applicable law, a court or an international commercial arbitration to settle disputes arising from the debt purchase and sale transaction provided such agreement is not contrary to the Vietnamese law.

Article 20. Management of purchased and sold debts

1. Credit institutions and foreign bank branches:

a/ Credit institutions and foreign bank branches purchasing debts shall separately account purchased and sold debts at their real purchasing prices, ensuring separation of purchased debts from debts arising from their credit extension operation, and shall account amounts paid to purchase these debts into the total outstanding loans to the debtors;

b/ Debt classification, setting aside and use of provisions to offset credit risks for purchased debts must comply with current regulations.

2. Organizations and individuals other than the subjects specified in Clause 1 of this Article shall manage debts not in contravention of law;

Article 21. Financial settlement and accounting in debt purchase and sale operation

1. Settlement of the difference between the debt purchase and sale price and the book value of the seller's debt:

a/ For debts accounted on the balance sheet:

- If the debt sale price is higher than the book value of the debt, the difference shall be accounted as the fiscal year's income of the credit institution or foreign bank branch;

- If the debt purchase and sale price is lower than the value of the debt, the difference shall be offset with the compensation paid by an individual or a collective (in case such individual or collective is identified to have caused the damage and must pay compensation under regulations), the insurance sum paid by the insurer or the risk provision already set aside from expenses; the deficit shall be accounted as a business cost of the credit institution or foreign bank branch in the period.

b/ For debts accounted off the balance sheet or debts left off the balance sheet, the debt sale proceeds shall be accounted as another income of the credit institution or foreign bank branch.

2. The accounting in debt purchase and sale transactions must comply with the current accounting regime.

Chapter III

REPORTING AND RESPONSIBILITIES OF RELATED UNITS

Article 22. Information and reporting regime

Credit institutions and foreign bank branches shall report on their debt purchase and sale transactions (including debt purchase and sale through subsidiary companies or affiliate companies) in accordance with the State Bank's regulations on statistical reports of units of the State Bank, credit institutions and foreign bank branches.

Article 23. Responsibilities of credit institutions and foreign bank branches

To issue their internal regulations under Clause 4, Article 5 of this Circular and send them to the State Bank (the Credit Department for Economic Sectors and the Banking Supervisory Agency) within 5 working days after the issuance or amendment and supplementation thereof.

Article 24. Responsibilities of related units of the State Bank

1. Responsibilities of the Credit Department for Economic Sectors

a/ To monitor and summarize debt purchase and sale transactions of credit institutions and foreign bank branches;

b/ To give opinions on the approval of debt purchase by credit institutions and foreign bank branches at the request of the Banking Supervisory Agency;

c/ To act as focal points to solve problems arising in the implementation of this Circular.

2. Responsibilities of the Banking Supervisory Agency

a/ To act as a focal point to receive, appraise and submit to the State Bank Governor dossiers of request for approval of debt purchase by credit institutions and foreign bank branches; to act as a focal point to solve problems related to the approval of debt purchase under this Circular;

b/ To regularly or irregularly inspect and supervise, and handle violations of credit institutions and foreign bank branches in implementing this Circular; to provide the Credit Department for Economic Sectors with information on violations in debt purchase and sale transactions by credit institutions and foreign bank branches.

3. Responsibilities of the Finance and Accounting Department

To guide the accounting in debt purchase and sale transactions of credit institutions and foreign bank branches.

4. Responsibilities of related units of the State Bank

Based on their functions and assigned tasks, to give opinions on the approval of debt purchase by credit institutions and foreign bank branches at the request of the Banking Supervisory Agency.

5. Responsibilities of provincial-level branches of the State Bank

To inspect and supervise credit institutions and foreign bank branches in implementing this Circular and handle violations according to their competence.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 25. Transitional provisions

1. Debt purchase and sale contracts signed before the effective date of this Circular may continue to be performed under agreements therein. The modification and supplementation of debt purchase and sale contracts must comply with this Circular.

2. Credit institutions and foreign bank branches that have obtained approval of their debt purchase activities are not required to request approval of debt purchase under this Circular.

Article 26. Organization of implementation

1. This Circular takes effect on September 1, 2015, and replaces the State Bank's Decision No. 59/2006/QĐ-NHNN of December 21, 2006, promulgating the Regulation on debt purchase and sale by credit institutions.

2. The Chief of the Office, the Director of the Credit Department for Economic Sectors and heads of related units of the State Bank, directors of provincial-level branches of the State Bank, chairpersons of Boards of Directors or Members' Councils, and General Directors (Directors) of credit institutions and foreign bank branches shall implement this Circular.-

**FOR THE STATE BANK GOVERNOR
DEPUTY GOVERNOR**

Nguyen Dong Tien