

# Special Alert

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## Vietnam's Circular 23: Streamlining Offshore Employee Stock Ownership Plans

On 28 June 2024, the State Bank of Vietnam (“**SBV**”) issued Circular No. 23/2024/TT-NHNN (“**Circular 23**”), amending Circular No. 10/2016/TT-NHNN (“**Circular 10**”), to provide updated and detailed guidance on the provisions in Decree No. 135/2015/ND-CP (“**Decree 135**”) related to offshore indirect investment. Circular 23, which will take effect on 12 August 2024, introduces significant changes, particularly concerning offshore indirect investment activities of Vietnamese employees participating in the offshore employee’s stock ownership plans (the “**ESOP**”).

The goal of Circular 23 is to streamline administrative procedures in line with the Government’s strategy, making it easier and faster for organizations to implement the ESOP with less expense. This facilitates the attraction of foreign capital flows from around the world into Vietnam through its ESOP and diversifies foreign currency revenues into Vietnam.

### Expanded Entities for ESOP Implementation

Circular 23 expands the definition of "Organization implementing offshore issued bonus share plans". Previously, this definition only included foreign organizations with a commercial presence in Vietnam, such as foreign-invested economic organizations, branches, representative offices, or operating offices of foreign parties to a business cooperation contract. The new adjustment now also applies to economic organizations that have relationships with foreign organizations through ownership of shares, capital contributions, or other forms as specified by Vietnamese law.

This change recognizes that the ESOP of foreign organizations is implemented not only by their commercial presence in Vietnam but also by their subsidiaries and associates owned by foreign organizations, even if their entities do not have a commercial presence in Vietnam. This adjustment

aligns with global integration trends, allowing Vietnamese employees to participate in the ESOP offered by foreign enterprises and organizations.

## Abolishing SBV Approval Requirement

Circular 23 eliminates the requirement for obtaining approval for the ESOP from the SBV (the “**Approval**”) before implementing the ESOP. Previously, organizations implementing the ESOPs had to follow steps including (i) registering and submitting related documents to the SBV to receive the Approval, and (ii) after receiving the Approval, the organization implementing the ESOP would open a transaction account at a commercial licensed bank in Vietnam to conduct transactions as per regulations. Under the new regulations, the obtaining the Approval is no longer necessary. Consequently, the organization implementing the ESOP needs to open a transaction account at a commercial license bank to carry out the transactions as per regulations.

Although there are doubts regarding the SBV’s ability to oversee and supervise the ESOP, the SBV can still exert control over them since all ESOP transactions are conducted through a transaction account opened at a commercial licensed bank.

## Modified Forms of Stock Bonuses

Circular 10 stipulated two forms of stock bonuses: (1) direct stock bonuses and (2) bonuses in the form of the right to buy shares on preferential terms. However, regulations on the "Right to buy shares with preferential conditions" form remain ambiguous, creating potential risks and complications in offshore investment activities. Furthermore, some programs involve stocks that are not listed on the stock market, and foreign organizations self-determine the market price of these stocks at a high level, and they also self-determine or modify the preferential conditions for purchasing bonus stocks. This practice leads to individuals having to transfer money abroad to purchase bonus stocks, effectively engaging in an offshore indirect investment.

Therefore, to ensure strict compliance with the management orientation of offshore indirect investment activities according to Decree 135, Circular 23 adjusts the forms of stock bonuses to include: (i) Direct stock bonuses; and (ii) Other forms of stock bonuses abroad do not generate cash flows abroad.

This adjustment aims to prevent individuals and foreign organizations from abusing stock bonuses to transfer money abroad, thereby ensuring transparency and efficiency in ESOP activities. In practice, when individuals transfer money abroad to purchase bonus stocks, it constitutes an offshore indirect investment activity. Therefore, to maintain consistency with the strict management orientation of offshore indirect investment activities under Decree 135, the "Right to purchase stocks with preferential conditions" form has been modified to prevent the transfer of any funds offshore, to be more stringent and effective in keeping the strict management orientation of offshore indirect investment activities.

## Monthly Reporting Regime

Circular 23 changes the reporting regime from quarterly to monthly. Consequently, on a monthly basis, no later than the 12th of the following month, organizations implementing the ESOP must report to the SBV on the implementation of the ESOPs issued abroad for Vietnamese employees. Additionally, the new regulation specifies the reporting method, mandating that the reports must be submitted both electronically to [baocaocophieu@sbv.gov.vn](mailto:baocaocophieu@sbv.gov.vn), and in written form to the SBV.

## Responsibilities of Credit Institutions

Consequently, Circular 23 amends the regulation that credit institutions are allowed to provide foreign exchange services to organizations implementing ESOPs (with the exception of cases where the initial ESOP is implemented in Vietnam) only if the organization implementing the ESOP provides electronic proof of compliance with reporting requirements to the SBV, as outlined in Section 4 above (a screenshot of the report submitted to the SBV's email box for the latest reporting period).

Circular 23 marks a significant update to Vietnam's regulatory framework for offshore indirect investment activities through the ESOPs. Scheduled to take effect on 12 August 2024, Circular 23 introduces substantial revisions aimed at implementing the government's strategy of reducing administrative procedures associated with the ESOP. By expanding the definition of eligible organizations and eliminating the SBV's Approval, Circular 23 streamlines operations and reduces costs for implementing entities.

Addressing concerns related to the forms of the ESOP, Circular 23 ensures clarity and compliance with Decree 135. Amendments to reporting requirements and the responsibilities of credit institutions further enhance transparency and oversight. These measures are designed to foster foreign capital inflows, diversify foreign currency revenues, and mitigate risks associated with offshore indirect investment activities. To ensure seamless compliance and operational readiness, it is recommended that organizations participating in the ESOP become acquainted with these updates prior to the effective date of Circular 23.

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