

OFFSHORE STOCK AWARD PLANS FOR VIETNAMESE EMPLOYEES: A BRIEF ON THE NEW REGULATION

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On 28 June 2024, the State Bank of Vietnam (“**SBV**”) has promulgated Circular No. 23/2024/TT-NHNN (“**Circular 23**”)¹ to amend and supplement several articles of Circular No. 10/2016/TT-NHNN dated 29 June 2016 (“**Circular 10**”) regulating offshore indirect investment. Circular 23 shall take effect as from 12 August 2024 and has stipulated noteworthy changes with respect to the offshore stock award plans for Vietnamese employees in Vietnam. Key highlights are captured as follows:

1. Extension of eligible organizations involved in an offshore stock award plan in Vietnam

a. A foreign organization adopting an offshore stock award plan

Under Circular 10, a foreign organization adopting the offshore stock award plan is defined as “*the organization established under the law of a foreign country and **having presence in Vietnam***”. This leads to a practical understanding that the [offshore] issuing organizations only comprise of those who **fully** owns/invests in a Vietnamese subsidiary and, to a certain extent, narrows down the scope of eligible issuing organization. The Circular 23 has clarified and extended such definition by removing the sentence “***having commercial presence in Vietnam***” to give a broader and full understanding on an eligible issuing organization. Given such, a foreign organization adopting the offshore stock award plan is defined under the Circular 23 as “*the organization established under the law of a foreign country*”.

b. An organization implementing offshore stock award plan in Vietnam

Compared to Circular 10, Circular 23 has a broader scope of definition of the organization eligible for implementing offshore stock award plan. Particularly, organization implementing offshore stock award plan is an organization established and operating in Vietnam, includes:

- (i) a presence of a foreign organization in Vietnam, comprising foreign invested economic organization; branch, representative office, operating office of foreign investor in a business cooperation contract; and

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¹ <https://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=168113&Keyword=23/2024/TT-NHNN>
<accessed on 30 July 2024>.

- (ii) an economic organization which has relationship with foreign organization in the form of share ownership, capital contribution or other forms according to the provisions of Vietnamese law, which is a new addition that Circular 10 has not mentioned before.

2. Abolishing a SBV's approval before implementing an offshore stock award plan in Vietnam

Pursuant to Circular 23, an offshore stock award plan is no longer required to be approved by SBV before being implemented in Vietnam. Instead, the organization implementing the offshore stock award plan has to (and still needs to) open a bank account specialized for implementing such award plan (the “**Account**”), such requirement is retained from the Circular 10 which aims to supervise cash flow in and out of territory of Vietnam.

The organization implementing award plan must submit the relevant documents and dossiers related to the offshore stock award plan (i.e. documents showing the relationship between the foreign organization and the organization implementing the plan in Vietnam, documents describing the plan in terms of award forms and award periods, list of Vietnamese employees participating in the plan, etc) to a licensed commercial bank in Vietnam where it opens the Account; and such bank, accordingly, must review such documents to ensure that all are in compliance with the applicable regulations before providing Account and relevant services to such organization.

3. Amendment on forms of award

With regards to the form of award, in addition to allowing direct stock award, Circular 23 has replaced the form of award being the right to purchase stock with preferential condition with other forms of awards that do not generate cash flows transferred out of Vietnam. After 01 (one) year from the effective date of Circular 23, offshore stock award plans under the form being the right to purchase stock with preferential conditions that were approved by SBV before the effective date of Circular 23, will be only permitted to be implemented in the form of other offshore stock award plan that do not generate cash flows out of Vietnam.

4. Reporting obligation of organization implementing offshore stock award plan

On the monthly basis (instead of quarterly basis as stipulated in Circular 10), no later than the 12th day of the month following the reported month, organization implementing offshore stock award plan shall report to the SBV on the status of implementation of its offshore stock award plan(s) for Vietnamese employees by submitting the form attached in Appendix 16 issued with Circular 23. The report

must be sent to the SBV's email address at baocaocophieu@sbv.gov.vn and also submitted in hard copy to the SBV.

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