

# Legal Alert

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## NEW PROVISIONS ON THE IMPLEMENTATION OF EMPLOYEE STOCK OWNERSHIP PLAN OF FOREIGN ORGANIZATIONS IN VIETNAM

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**”) dated 29 June 2016 detailing the provisions on offshore indirect investment as provided in Decree No. 135/2015/ND-CP dated 31 December 2015. Circular 23 shall take **effect from 12 August 2024** with the following noticeable points in relation to the implementation of employee stock ownership plan (“**ESOP**”) of foreign organizations in Vietnam:

### 1. Revising the forms of ESOP implementation in Vietnam

Under Circular 23, SBV re-regulates the permissible forms of ESOP to include (i) Direct bonus by stock and (ii) Other forms of bonus which do not generate outbound cashflow. While the former is kept unchanged from the prevailing regulation, the latter is a much-needed clarification compared to the previous method of “*Bonus by option with preferential terms*” under Circular 10. The ambiguity of the “*preferential terms*” under Circular 10 gave rise to inconsistent interpretation by the competent authority, resulting in the bonus by option often not registerable, if not impossible, in practice.

Despite seemingly being more open to the previous wordings, the new concept restricts any plan that requires Vietnamese participants to remit cash overseas upon vesting. This non-cash principle is further fortified in other regulations of Circular 23, particularly (i) Vietnamese employees no longer have the rights to use self-available foreign currency or purchase foreign currency to pay for the bonus shares and (ii) the permitted revenue and disbursement transactions of the specialized ESOP account have been significantly narrowed and exclude all share-purchase-related transactions by Vietnamese participants.

### 2. Abolishing the registration requirement with SBV

Under Circular 23, the implementation of ESOP in Vietnam is no longer required to be registered with SBV. This is a notable development and grants flexibility to both the issuers and the participants, as ESOP registration in Vietnam has been long known as a burdensome and unnecessary administrative procedure. The prevailing regulations only recognize two forms of bonus. Meanwhile, ESOP schemes of multinational corporations are commonly seen to encompass various types, from Restricted Stock Units and Stock Appreciation Rights to Phantom Shares. The difference in international and local standards often led to challenges from the authorities during the registration process with back-and-forth documentation and explanation.

As from the effective date of Circular 23, so long as the ESOP of foreign organizations satisfies the regulatory conditions (including, among others, permissible forms of ESOP as aforementioned), the scheme may be freely applied to the local participants in Vietnam without registration.

### 3. Revising the reporting mechanism from quarterly report to monthly report

During the effective period of the ESOP in Vietnam, the organization implementing offshore issued bonus share plans (e.g., the local presence of the foreign issuer) must conduct monthly reports to SBV, specifically:

- (a) The deadline for submitting the **monthly report** is no later than the 12<sup>th</sup> of the following month; and
- (b) The local entity shall submit a monthly report to SBV by **two methods simultaneously**:
  - (i) sending the scanned version to the email address [baocaocophieu@sbv.gov.vn](mailto:baocaocophieu@sbv.gov.vn) and
  - (ii) sending the original to SBV's address.

### 4. Providing the transitional provision applicable to ESOP, which has been registered and approved by SBV

After **one (01) year** from the effective date of Circular 23, any ESOP scheme under the form of "*Bonus by option with preferential terms*" which has been successfully registered with SBV under Circular 10 must follow the non-cash principle as prescribed in the same Circular.

## CONCLUSION

Though Circular 23 clarifies the intention of the competent authority in strictly controlling the outbound cashflow, the reduction of administrative procedure is a welcomed update as it will afford Vietnamese employees of multinational companies more chances to benefit from the global compensation programs of the group and at the same time eliminate the barriers for the foreign-invested company in Vietnam to retain its staff by offering a special package.

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