

No. 32/2016/TT-NHNN

Hanoi, December 26, 2016

CIRCULAR

ON AMENDMENTS TO CIRCULAR NO. 23/2014/TT-NHNN DATED AUGUST 19, 2014 OF STATE BANK OF VIETNAM ON GUIDELINES FOR OPENING AND MAINTENANCE OF CURRENT ACCOUNTS AT PAYMENT SERVICES PROVIDERS

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

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

Pursuant to the Decree No. 101/2012/ND-CP dated 22 November 2012 of the Government on non-cash payment;

Pursuant to the Government's Decree No. 80/2016/ND-CP dated July 1, 2016 on amendments to the Government's Decree No. 101/2012/ND-CP dated November 22, 2012 on non-cash payments;

Pursuant to the Decree No. 156/2013/ND-CP dated 11 November 2013 of the Government providing for the functions, duties, authorities and organizational structure of the State Bank of Vietnam;

At the request of Director of Payment Department;

The Governor of the State Bank promulgates a Circular on amendments to Circular No. 23/2014/TT-NHNN dated August 19, 2014 of State Bank of Vietnam on guidelines for opening and maintenance of current accounts at payment services providers.

Article 1. Amendments to a number of articles and Appendix of Circular No. 23/2014/TT-NHNN dated August 19, 2014 of State Bank of Vietnam on guidelines for opening and maintenance of current accounts at payment service providers

1. Clause 3 Article 3 shall be amended as follows:

"3. Corporate current account means an account that is opened by a corporate at a payment service provider. Holder of the corporate current account is the corporate which opens the current account. The legal representative or authorized representative (hereinafter referred to as legal representative) of the corporate that opens the account (hereinafter referred to as applicant) who shall perform transactions relating to the current account on behalf of the corporate."

2. Clause 1 and Clause 2 Article 4 shall be amended as follows:

"1. The payment account holder is entitled to authorize another person to use its current account.

2. Such authorization in the use of current account shall be made in writing in accordance with laws and regulations on authorization.”

3. Point dd Clause 2 Article 5 shall be amended as follows:

“dd) To supply full, clear and accurate information relating to the opening and maintenance of current account. To timely notify and send related documents to the payment service provider, where his account is opened, upon arising any change in the information of the current account opening documents. The change of information about the current account opened at the State Bank shall be carried out in accordance with Appendix No. 03 issued herewith;”

4. Point b, Point d Clause 2 Article 6 shall be amended as follows:

“b) To store and update specimens of signatures and seals (if any) of customers for the purposes of verification and collation during the use of current account;”

“d) To timely and fully inform of the balance and executed transactions on the current account and freezing of current account in writing or by the method as specified in the agreement on opening and maintenance of current account with the account holder and take responsibility for the correctness of the supplied information;”

5. Point c, Point d Clause 1 Article 8 shall be amended as follows:

“c) Documentations establishing legal representative capacity of legal representative of the corporate opening the current account and ID card or valid passport of such person;

d) A document or decision on appointment and ID card or valid passport of the chief accountant or person in charge of accounting, person who controls the documents of transactions with the State Bank.”

6. Article 11 shall be amended as follows:

“Article 11. Entities entitled to open current accounts

1. Natural persons who are entitled to open current accounts at banks, foreign bank branches shall include:

a) Persons from the age of 18 or older with full legal capacity in accordance with Vietnam laws and regulations;

b) Persons from the age of 15 to less than 18 without lack of legal capacity or limited legal capacity;

c) Persons under the age of 15, persons with limited legal capacity, legally incapacitated persons in accordance with Vietnam laws and regulations who may open current accounts through their guardians or legal representatives;

d) Persons with limited cognition or behavior control in accordance with Vietnam laws and regulations that may open current accounts through their guardians.

2. Juridical persons who are entitled to open current accounts at banks, foreign bank branches.”

7. Clause 1 Clause 2 and Clause 4 Article 12 shall be amended as follows:

“1. For a personal current account:

a) An application form for opening a current account using the form provided by the bank or the foreign bank branch where the account is opened and in conformity with provisions in Clause 1 Article 13 of this Circular;

b) ID card or valid passport, birth certificate (for individual who is a Vietnamese citizen under the age of 14), entry visa or document proving visa-free entry (for individual who is a foreigner) of the account holder;

c) In a case where the individual opens a current account through his guardian or legal representative, in addition to documents stated in Items a and b Clause 1 of this Article, the application for opening account must contain the ID card or valid passport of the guardian, legal representative and documentations establishing the legal representative capacity of such person to the account holder.

2. For a corporate current account:

a) An application form for opening a current account using the form provided by the bank or the foreign bank branch where the account is opened and in conformity with provisions in Clause 2 Article 13 of this Circular;

b) Documents proving that the applicant is legally established and operate: establishment decision, operation license, corporate registration certificate or other documents as stipulated by laws;

c) Documentations establishing legal representative capacity of legal representative and decision on appointment of chief accountant or person in charge accounting (if any) of the applicant and ID card or valid passport of such persons.”

“4. Documents in the application for opening current account prescribed in Clause 1 and Clause 2 of this Article (except for the application form for opening current account using the form provided by the bank) are originals or copies. If documents in an application for opening current account are made in foreign language, the bank or foreign bank branch may agree with the customer about the translation of those documents into Vietnamese provided that the following principles are met:

a) Documents establishing the legal establishment and operation of the applicant (establishment decision, operation license, or enterprise registration certificate); documents establishing the legal representative capacity of the account holder in opening and maintenance of current account (appointment decision, letter of authorization) shall be translated fully into Vietnamese;

b) Passport(s) and other documents in the application for opening current account shall be translated into Vietnamese only at request of a competent authority;

c) The Vietnamese translation must be enclosed with its original in foreign language for inspection and collation;

d) The payment service provider shall control and ensure the truthfulness, accuracy and completeness of the contents being translated into Vietnamese in comparison with foreign documents.”

8. Clause 1 and Clause 2 Article 13 shall be amended as follows:

“1. An application form for opening a current account shall at least:

a) Information of the account holder, including:

- For an individual who is a Vietnamese: full name, date of birth, nationality; occupation, position; phone number; number of ID card or valid passport, date of issue, place of issue; permanent residence address and current address; being a resident or non-resident;

- For an individual who is a foreigner: full name, date of birth, nationality; occupation, position; phone number; number of ID card or valid passport, date of issue, place of issue, entry visa; registered residence address in the foreign country and registered residence address in Vietnam; being a resident or non-resident.

b) For an individual whose current account is opened by his/her guardian or legal representative: Information about the guardian or legal representative of the account holder, including:

- If the guardian, legal representative of the account holder is a person, information of the guardian, legal representative shall be consistent with Point a Clause 1 of this Article;

- If the guardian, legal representative of the account holder is an organization, the information shall consist of: full and abbreviated trading name; address of head office, trading address, phone number, fax number (if any); business areas; legal representative of such entity.

c) Signature specimen of the account holder or guardian, legal representative of the account holder and other related persons (if any) on the documents of transactions with the bank, foreign bank branch.

2. The application for opening a corporate current account shall contain at least:

a) Full and abbreviated trading name; address of head office, trading address, phone number; business areas; legal representative of such entity;

b) Information of the legal representative of the applicant in accordance with Point a Clause 1 of this Article;

c) Information of the chief accountant or person in charge of accounting (if any) of the applicant in accordance with provisions in Item a Clause 1 of this Article;

d) Signature specimen of legal representative of the applicant, seal specimen (if any), signature specimen of chief accountant or person in charge of accounting (if any) of the applicant.”

9. Clause 3, Clause 1, Clause 5 shall be amended and Clause 6 shall be added to Article 14 as follows:

“3. After finishing the checking, collation, making sure that documents of the application are sufficient, legal and valid, the bank or foreign bank branch shall proceed with entering into a contract of opening and maintenance of current account with the customer as follows:

a) For a personal current account: the bank or foreign bank branch shall meet personally the account holder, or the guardian, legal representative of the account holder (in case of opening current account through guardian or legal representative) upon entering into the contract of opening and maintenance of current account. If the overseas individual, foreign bank branch is unable to meet personally the account holder, or the guardian, or the legal representative of the account holder, the verification of customer identity may be conducted through a bank agent or an intermediary provided that such bank agent or intermediary shall ensure the accurate information about the account holder and take full responsibility for the identity of current account holder. The intermediary in charge of verification of customer identity shall be selected in accordance with Article 10 the Government's Decree No. 116/2013/ND-CP dated October 4, 2013 on guidelines for the Law on prevention and combating of money laundering and their guiding and replace documents (if any);

b) For a corporate current account: the bank, foreign bank branch shall not be required to meet personally the account holder upon entering into the contract of opening and maintenance of current account, but a collation is required to make sure the matching between the seal (if any), signature of the legal representative of the account holder on the contract against the seal specimen, signature specimen of the account holder in the application for opening current account;

c) For a shared current account:

- If the share current account is in an individual's name, the bank or foreign bank branch shall enter into an agreement on opening and maintenance of current account in accordance with Point a hereof;

- If the share current account is in organizations names, the bank or foreign bank branch shall enter into an agreement on opening and maintenance of current account in accordance with Point b hereof;

4. An agreement on opening and maintenance of current account:

a) An agreement on opening and maintenance of current account shall at least contain:

- Number of agreement, date of conclusion;

- Name of bank or foreign bank branch; name of account holder and full name of legal representative of account holder (in case of an organization), full name of guardian, legal representative of account holder (in case of an individual prescribed in Point c, d Clause 1 Article 11 of this Circular);

- Number of account, start date of account;

- Rights and obligations of parties;

- Regulations on fees (types of fees and changes of fees);

- Provision and method of notifications to account holder in terms of: remaining balance and transactions conducted in the current account, or its freezing, and other necessary information during the use of current account;

- Cases of temporary lock or unlock of current account;

- Scope of using current account and cases of refusing payment orders of account holder;

- Using current account to make current or regular payments at the request of account holder or the bank or foreign bank branch to collect due debts, overdue debts, interests and expenses associated with the management and provision of payment services;

- Adoption of measures for ensuring safety and security in using current account;

- Methods of receiving trace requests or complaints; time limit for processing trace requests or complaints and processing results thereof as prescribed in Article 15a of this Circular;

- Cases of closing current account and settlement of balance after the closure.

b) Apart from contents prescribed in Point a of this Clause, the parties may agree other contents in accordance with this Circular and relevant law provisions;

c) In case of using a template of agreement or general transaction conditions in concluding agreement on opening and maintenance of current account, the bank or foreign bank branch shall:

- Publicly post the template of agreement or general transaction conditions in concluding agreement on opening and maintenance of current account at its headquarters and post them on its website;

- Provide sufficient information about the template of agreement or general transaction conditions for customers before the agreement on opening and maintenance of current account is concluded with certification of customer in relation to such sufficient provision;

d) The customer shall be provided with a copy of the agreement on opening and maintenance of current account.

5. The bank or foreign bank branch shall provide each customer with guidance on procedures for receiving and processing application for opening current account, method and location of agreement signing in conformity with its conditions and capacity, provided that it complies with regulations of law on prevention and combating of money laundering and other relevant law provisions and take responsibility for the accuracy, closeness, and sufficiency of documents and the agreement on opening and maintenance of current account.

6. Procedures for receiving and processing an application for opening an additional current account submitted by a customer at the same bank or foreign bank branch shall be under decision of such bank or foreign bank branch, provided that the collection and verification of customer identity shall be consistent with law on prevention and combating of money laundering.”

10. Clause 2 Article 15 shall be amended as follows:

“2. The use of current account by a person under the age of 15, a person with limited legal capacity or a legally incapacitated person, a person with limited cognition or behavior control shall be executed through his/her guardian or legal representative. Such guardian, legal representative shall execute transactions via the current account of the guarded person or the person for whom he is a legal representative in accordance with laws and regulations on guardian and representation.”

11. Article 15a shall be added as follows:

“Article 15a. Processing trace requests or complaints in using current accounts

1. Each bank or foreign bank branch shall receive trace requests and complaints from customers during their use of current accounts in compliance with the following rules:

a) At least two methods of receipt of trace requests and complaints are applied, including via telephone exchange (with recording) and through the offices of the bank or foreign bank branch that ensures the basic information that the customer has provided for the bank or foreign bank branch;

b) Make the form of trace request or complaint to be used by customers upon their demand. In case of receiving information via telephone exchange, the bank or foreign bank branch shall require the customer to provide a trace request or complaint using the above-mentioned form within a given time specified by the bank or foreign bank branch that serves as the official basis or the trace request or complaint. In the case where another person is authorized to make the trace request or complaint, the customer shall comply with law on authorization;

c) The bank or foreign bank branch may reach an agreement and provide specific regulations on the time limit for a trace request provided that it is at least 60 days from the date on which the transaction for which the trace request is made proceeds.

2. Time limit for processing a trace request or complaint:

a) Within 30 working days from the date on which the initial trace request or complaint according to one of the methods of receipt prescribed in Point a Clause 1 of this Article, the bank or foreign bank branch shall initiate the processing of such trace request or complaint;

b) Within 05 working days from the notification of results of trace requests and complaints, the bank or foreign bank branch shall reimburse, upon agreement or in accordance with applicable law provisions, damage incurring through no fault of the customer and/or not due to force majeure events agreed upon in the agreement on terms and conditions of opening and maintenance of current account;

c) If it fails to determine reasons or which party at fault while the deadline for trace requests or complaints prescribed in Point 4 of this Clause expires, the provider shall, within succeeding 15 working days, agree with the customer about the solution for processing such request or complaint.

3. If the case shows any sign of crime, the bank or foreign bank branch shall notify the competent authority in accordance with law on criminal procedures and send a report to the State Bank (via Department of Payment, branches of the State Bank of provinces or cities); and notify the customer in writing of progressing actions against trace request or complaint. The processing of results of trace request or complaint shall be responsible by the competent authority. If the competent authority notifies that the results do not show any sign of crime, the bank or foreign bank branch shall, within

15 working days from the conclusion of the competent authority, agreed with the customer about the solutions for results of trace request or complaint.

4. In the case where the bank or foreign bank branch, customer and relevant parties fail to reach an agreement and/or disagree with the processing of trace request or complaint, the dispute shall be settled in accordance with regulations of law.

12. Point Clause 1 and Clause 2 Article 17 shall be amended as follows:

“1. The payment service provider shall freeze a part or entire of the amount on the customer’s current account in following cases:

b) The payment service supplier finds out that there is some mistakes or errors in Crediting to the customer’s current account or a request for refunding an amount of money is sent from the payment service provider that has remitted such amount due to mistakes or errors in comparison with the payment order of the remitter; the amount being frozen on the current account may not exceed the mistaken amount;”

“2. Immediately after freezing the current account, the payment service provider shall send a notice (in writing or by another method agreed upon in the agreement on opening and maintenance of current account between the payment service provider and the applicant) to the account holder (or his guardian, legal representative) of the reason and scope of freezing the current account, frozen amount on the current account must be kept intact and closely monitored as per the details of blockage. In case where the account is partially frozen, the other part of the account may still be used as usual.”

13. Point a Clause 1 and Point a Clause 4 Article 18 shall be amended as follows:

“1. The payment service provider shall close the customer’s current account in following cases:

a) A written request for close of the current account is submitted by the account holder, who has fulfilled obligations relating to the current account. In case where the account holder is a person under 15 years of age, a person with limited legal capacity, a legally incapacitated person, or a person with limited cognition or behavior control, the account closure shall be handled upon the request of the guardian, legal representative of the account holder;”

“4. The remaining balance after the current account is closed shall be treated as follows:

a) Making payment as requested by the account holder, guardian, legal representative of the account holder (if the account holder is under 15 years of age, a person with limited legal capacity, a legally incapacitated person, or a person with limited cognition or behavior control) or the inheritor, inheritor’s representative in case that the holder of the personal current account is deceased, declared as dead, missing;”

14. Appendix 01 issued together with Circular No. 23/2014/TT-NHNN shall be replaced with Appendix 01 issued herewith.

15. Appendix 02 issued together with Circular No. 23/2014/TT-NHNN shall be replaced with Appendix 02 issued herewith.

16. Appendix 03 shall be enclosed with this Circular.

Article 2.

Clause 2 Article 1, Clause 3 Article 15; Point c Clause 1, Clause 3 and Point d Clause 4 Article 17 shall be annulled.

Article 3. Effectiveness

This Circular shall come into effect from March 1, 2017.

Article 4. Transitional regulations

1. Each payment service provider shall review documents and applications for opening and maintenance of current accounts submitted by customers being juridical persons that are opened before the effective date of this Circular and change the account holders' names without re-concluding the agreements, unless otherwise requested in writing by the current account holder.

2. Each bank or foreign bank branch shall review documents and applications for opening and maintenance of current accounts submitted by customers being households, co-operative groups, or other organizations without legal status that are opened before the effective date of this Circular and follow the procedures below:

a) Within 03 months from the effective date of this Circular, it shall notify its customers of the changes to personal current accounts or shared current accounts, time limit for the changes and processing after expiration of the time limit as prescribed in Point b, c of this Clause;

b) Within 10 months from the effective date of this Circular, it shall cooperate with its customers in re-concluding their agreements on opening and maintenance of current accounts for the purpose of changing to personal current account or shared current accounts or closing accounts (upon customers' requests);

c) After 12 months from the effective date of this Circular, it shall close current accounts of households, co-operative groups, and other organizations without legal status that fail to complete the change of account forms as prescribed in Point b of this Clause.

3. With regard to any current account opened before the effective date of this Circular, the bank or foreign bank branch shall notify the account holder of content of the agreement on opening and maintenance of current account as prescribed in Clause 4 Article 14 of this Circular. The notification shall be made on the website of the bank or foreign bank branch and by another method agreed upon in the agreement. The bank or foreign bank branch shall re-conclude agreements on opening and maintenance of current accounts (or agreements' amendments) upon requests of customers. The agreement's amendments shall be consistent with this Circular.

Article 5. Implementation

Chief of office, Director of payment department, Head of units of the State Bank; Director of the Central Banking Department; General Manager of State Bank branches in provinces or central-affiliated cities; Chairman of Board of Directors, Chairman of Board of Members, General Director

(Director) of banks, foreign bank branches shall be responsible for the implementation of this Circular.

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**P.P GOVERNOR OF THE STATE BANK
DEPUTY GOVERNOR**

Nguyen Kim Anh