

**THE STATE BANK OF
VIETNAM**

No.: 17/2017/TT-NHNN

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

Hanoi, November 20, 2017

CIRCULAR

AMENDMENTS TO THE CIRCULAR NO. 40/2011/TT-NHNN DATED DECEMBER 15, 2011 PROVIDING FOR ISSUANCE OF LICENSE AND ORGANIZATION AND OPERATION OF COMMERCIAL BANKS, BRANCHES OF FOREIGN BANKS, REPRESENTATIVE OFFICES OF FOREIGN CREDIT INSTITUTIONS AND OTHER FOREIGN ORGANIZATIONS PERFORMING BANKING ACTIVITIES IN VIETNAM

Pursuant to the Law on State Bank of Vietnam dated June 16, 2010;

Pursuant to the Law on Credits Institutions dated June 16, 2010;

Pursuant to the Government’s Decree No. 16/2017/ND-CP dated February 17, 2017 defining the functions, tasks, powers and organizational structure of the State Bank of Vietnam;

At the request of the Chief of the Bank Supervision and Inspection Agency;

The Governor of the State bank of Vietnam promulgates the Circular providing amendments to the Circular No. 40/2011/TT-NHNN dated December 15, 2011 providing for issuance of license and organization and operation of commercial banks, branches of foreign banks, representative offices of foreign credit institutions and other foreign organizations performing banking activities in Vietnam (hereinafter referred to as the Circular No. 40/2011/TT-NHNN).

Article 1. Amendments to the Circular No. 40/2011/TT-NHNN dated December 15, 2011 providing for issuance of license and organization and operation of commercial banks, branches of foreign banks, representative offices of foreign credit institutions and other foreign organizations performing banking activities in Vietnam (hereinafter referred to as the Circular No. 40/2011/TT-NHNN)

1. Amendments to Clause 4 Article 13:

“4. If any of the documents mentioned above is not a certified true copy or a copy made from its master register, the original copy must be presented when presenting the application for comparison. The official in charge of comparison shall make certification that the copy corresponds with its original on the copy and assume responsibility for his/her certification.”

2. Amendments to Point b Clause 4 Article 14:

“b) The copies of qualifications proving professional competence.”

3. Addition of Section 4 into Chapter II:

“Section 4: REGULATIONS ON REPLACEMENT OF LICENSE AND ADDITION OF ACTIVITIES TO THE LICENSE

Article 18a. Principles for replacement of license and addition of activities to the license

The replacement of the license and addition of activities to the license shall comply with the following principles:

1. The State Bank shall not grant the replacement of the activities that the commercial bank/branch of foreign bank is not allowed to perform as prescribed in the laws effect at the time of application for replacement; concurrently, names of allowable activities shall be adjusted according to the regulations of the Law on credit institutions and Appendixes 01a, 01b enclosed herewith. The new license replaces all the licenses and approvals (which are integral parts of the license) that the State Bank has granted to such commercial bank/branch of foreign bank before the time of replacement.
2. With regard to trading and provision of foreign exchange service; trading of gold bullion; the trading and provision of derivative products regarding foreign exchange, currency and other financial products in domestic market and international market, the addition of activities to the License shall comply with specific regulations of the State bank and other relevant law provisions.
3. The commercial bank and the branch of foreign bank may perform the activities specified in Clause 24 Article 4 of the form in Appendix 01a and Clause 23 Article 4 of the form in Appendix 01b after obtaining the approval from the State Bank; procedures for application for addition of such activities to the License shall be carried out in accordance with specific regulations of the State Bank and other relevant law provisions.
4. If a commercial bank or a branch of foreign bank applies for addition of activities to the License concurrently with replacement of the License, the State Bank will consider granting approval for replacement of the License that contains additional activities according to the application provided that the applicant satisfies application requirements specified in Article 18c of this Circular.

Article 18b. Procedures for application for replacement of license and addition of activities to the license

1. Any commercial bank or branch of foreign bank wishing to have the License replaced or activities added to the License shall make an application in accordance with the regulations in Article 18c of this Circular and submit it by post or by hand to the State Bank (via the Bank Supervision and Inspection Agency).
2. Within 40 days from the receipt of a sufficient and valid application, the State Bank shall grant a new License or grant approval for addition of activities to the License or grant a new License

that contains additional activities according to the application submitted by that commercial bank or branch of foreign bank. If the application is refused, the State Bank shall give a written response specifying reasons for refusal to the applicant.

3. When the replacement of License or the addition of activities to the license is granted approval by the State Bank, the commercial bank or the branch of foreign bank shall:

a) Follow the procedures regulated by the business registration agency for making changes in the License according to the law provisions;

b) Publish the changes in the License on means of communication of the State Bank and a daily newspaper on 03 consecutive issues or a Vietnamese online newspaper for 07 working days from the day on which the replacement of the License or the addition of activities to the License is granted approval by the State Bank;

c) The commercial bank shall make amendments to its Charter in conformity with the contents of the new License or the license containing activities added, and shall apply for registration of such amendments to its Charter with the State Bank according to the provisions of Clause 3 Article 27 of this Circular.

Article 18c. Application for replacement of license and addition of activities to the license

1. Application for replacement of the license shall include:

a) An application form for replacement of the license which must be signed by the legal representative of the commercial bank or the branch of foreign bank and specify bank activities. Regarding a wholly foreign-owned bank, the application shall include a commitment that these are activities which the owner or the foreign bank holding 50% of the charter capital of that wholly foreign-owned bank is permitted to carry out in the country where the owner resides or the head office of that foreign bank is located. Regarding a branch of foreign bank, the application shall include a commitment that these are activities which the parent bank is permitted to carry out in the country of origin;

b) The list of activities as specified in the existing License, other written approvals granted by the State Bank enclosed with the copies of the existing License and such written approvals.

2. Application for addition of activities to the License shall include:

a) An application form for addition of activities to the license which must be signed by the legal representative of the commercial bank or the branch of foreign bank and specify additional activities. Regarding a wholly foreign-owned bank, the application shall include a commitment that these are activities which the owner or the foreign bank holding 50% of the charter capital of that wholly foreign-owned bank is permitted to carry out in the country where the owner resides or the head office of that foreign bank is located. Regarding a branch of foreign bank, the application shall include a commitment that these are activities which the parent bank is permitted to carry out in the country of origin. The application for addition of investment in

Government bond futures must also include statements that the Bank has been permitted to trade in Government bonds.

b) The resolution of the Management Board (or the Member Board) of the commercial bank, which specifies the unanimous agreement on the application for addition of activities to the License; A document which issued by the parent bank and signed by its legal representative to give approval for the application for addition of activities to the License (if the applicant is the branch of a foreign bank);

c) With regard to an application for addition of interest-rate derivatives, provision of commodities derivatives and/or securities depository to the license, in addition to the documents prescribed in Point a and Point b of this Clause, the commercial bank or the branch of foreign bank must also submit its internal control procedures including measures for risk management in corresponding with each activity to be added to the license.

3. Application for addition of activities to the License concurrently with replacement of the license shall include:

a) An application form for addition of activities to the License concurrently with replacement of the license which must be signed by the legal representative of the commercial bank or the branch of foreign bank and include contents in Point a Clause 1 and Point a Clause 2 of this Article;

b) The documents prescribed in Point b Clause 1 and Points b, c Clause 2 of this Article.”

4. Amendments to Article 36:

a) Amendments to Point a Clause 1:

“a) The Appraisal Board shall be established under the decision of the State Bank and comprised of: the Governor or a Deputy Governor, who is authorized by the Governor, acting as the Chairman of the Board, and members being heads of agencies mentioned in Clauses 2, 3, 4, 5, 6, 7, 8 and 10 of this Article;”

b) Addition of Point g and Point h to Clause 2:

“g) Receive, appraise and submit to the Governor of the State Bank applications for replacement of the License or addition of activities to the License submitted by commercial banks and branches of foreign banks;

h) Enclose applications with written records of opinions given by relevant agencies of the State Bank about applications for addition of activities to the License if activities to be added are interest-rate derivatives, provision of commodities derivatives and securities depository.”

c) Addition of Clause 10 and Clause 11 into Article 36:

“10. Foreign Exchange Management Department:

- a) Within 30 days from the receipt of the written request of the Bank Supervision and Inspection Agency, the Foreign Exchange Management Department shall appraise the application for issuance of license and give a written response to the Bank Supervision and Inspection Agency;
- b) Give opinions about matters concerning foreign exchange transactions of commercial banks or branches of foreign banks.

11. Within 10 days from the receipt of the written report of the Bank Supervision and Inspection Agency on applications for addition of activities to the license regarding interest-rate derivatives, provision of commodities derivatives and securities depository, relevant agencies affiliated to the State Bank must give written opinions and viewpoint (agree or disagree) on such applications submitted by commercial banks or branches of foreign banks”.

Article 2. The Appendix 01 enclosed with the Circular No. 40/2011/TT-NHNN shall be replaced by the Appendix 01 enclosed with this Circular, including the following contents: Appendix 01a (Form of the License for establishment and operation of a commercial bank), Appendix 01b (Form of the License for establishment of branch of a foreign bank), and Appendix 01c (Form of the License for establishment of representative office).

Article 3. Implementation responsibility

Chief of Ministry’s Office, Chief of the Bank Supervision and Inspection Agency, heads of relevant units affiliated to the State Bank of Vietnam, Directors of branches of the State Bank in provinces or central-affiliated cities, Chairpersons of the Management Boards, Chairpersons of the Member Boards, General Directors (Directors) of commercial banks, and General Directors (Directors) of branches of foreign banks shall be responsible for organizing the implementation of this Circular.

Article 4. Entry into force

1. This Circular shall come into force as from January 05, 2018.
2. The Circular No. 08/2015/TT-NHNN dated June 30, 2015 on amendments to the Circular No. 40/2011/TT-NHNN is abrogated.

**PP. THE GOVERNOR
DEPUTY GOVERNOR**

Nguyen Dong Tien