

ORDINANCE ON FOREIGN EXCHANGE

Pursuant to the Constitution of the Socialist Republic of Vietnam issued in 1992, which was amended, supplemented in accordance with the Resolution No.51/2001/QH10 dated 25 December 2001 of the National Assembly, legislature X, the 10th session;

Pursuant to the Resolution No. 42/2005/QH11 dated 14 June 2005 of the National Assembly, legislature XI, the 7th session on the adjustment of the Program on the construction of laws, ordinances issued in 2005;

This Ordinance provides for foreign exchange activity.

Chapter I

GENERAL PROVISIONS

Article 1. Governing scope

This Ordinance shall govern the foreign exchange activities in the Socialist Republic of Vietnam.

Article 2. Subjects of application

1. Organizations, which, individuals, who are residents, non-residents engaging in foreign exchange activities in Vietnam.
2. Other subjects relating to the foreign exchange activities.

Article 3. Policy on foreign exchange control of Vietnam

The State of the Socialist Republic of Vietnam implements the policy on foreign exchange control to facilitate and ensure lawful benefit of the organizations, individuals engaging in foreign exchange activities, making contribution to the economic development; performs the target of the national monetary policy to improve the convertibility of Vietnamese dong; attain the target that only Vietnamese dong is used in the territory of Vietnam; implements commitments made by the Socialist Republic of Vietnam in the route of international economic integration, to intensify the effectiveness of the state control for foreign exchange activities and perfect the system of foreign exchange control of Vietnam.

Article 4. Interpretation

In this Ordinance, following terms shall be construed as follows:

1. *Foreign exchange* consists of:

a) Currency of another country or the European common currency or other common currencies which are used in international and regional payment (hereinafter referred to as foreign currency);

b) Means of payment in foreign currency including cheque, payment card, Bills of exchange, promissory notes and other means of payment;

c) Valuable papers denominated in foreign currency including Government's bonds, corporate bonds, term bonds, shares and other valuable papers;

d) Gold in the state foreign exchange reserves, in the oversea accounts of the residents; gold in form of block, bar, grain, piece in case of being carried out of and into the territory of Vietnam;

dd) Currency of the Socialist Republic of Vietnam in case of being remitted into and out of the territory of Vietnam or being used in the international payment.

2. *Residents* are organizations, which, individuals, who are of following subjects:

a) Credit institutions, which are established and doing business in Vietnam (hereinafter referred to as credit institution);

b) Economic organizations which are established, doing business in Vietnam, except for subjects provided for in point a of this paragraph (hereinafter referred to as economic organization);

c) State agencies, armed force units, politic organizations, socio-political organizations, vocational-socio political organizations, social organizations, vocational-social organizations, social funds, charity funds of Vietnam which are operating in Vietnam.

d) Oversea diplomatic representative agencies, oversea consulates of Vietnam;

dd) Oversea representative offices of organizations provided for in points a, b and c of this paragraph;

e) Vietnamese citizen residing in Vietnam; Vietnamese citizen who has been residing overseas for less than 12 months; Vietnamese citizen working for organizations as provided for in points d and dd of this paragraph and individuals accompanying them;

g) Vietnamese citizen traveling, studying, being treated for disease and visiting relatives overseas;

h) Foreigners who have been residing in Vietnam for 12 months upwards, except for the cases where the foreigners study, are treated for disease, travel or work for the diplomatic representative agencies, consul agencies, representative offices of foreign organizations in Vietnam.

3. *Non-residents* shall be the subjects who are not provided for in paragraph 2 of this Article.

4. Capital *transaction* shall be a transaction of capital transfer between the resident and non-resident in following areas:

a) Direct investment;

b) Investment in valuable papers

- c) Foreign borrowing and debt payment
 - d) Foreign lending and debt collection;
 - dd) Other forms of investment in accordance with provisions of applicable laws of Vietnam.
5. *Current transaction* shall be the transaction between the resident and the non-resident not for the purpose of capital transfer.
6. *Payment and money transfer for current transactions* shall include:
- a) Payments and money transfer relating to import, export of goods, services;
 - b) Short-term banking and commercial credit loans;
 - c) Incomes from direct and indirect investment;
 - d) Money transfer when the reduction of direct investment capital is permitted;
 - dd) Payment of the interests and installment payment of the principals of foreign loans;
 - e) Unilateral money transfer for the consumption purpose;
 - g) Other similar transactions.
7. *Unilateral money transfer* shall be transactions of oversea money transfer into Vietnam or from Vietnam to overseas through banks, post office with the nature of financing, aiding or helping family relatives, personal spending without any relation to the payment of goods and service import, export;
8. Foreign exchange activity shall be an activity of the resident, non-resident in current transaction, capital transaction, using foreign currency in the territory of Vietnam, activity of foreign exchange services supply and other transactions relating to the foreign exchange activity.
9. Exchange rate of Vietnamese dong shall be the price of a unit of foreign currency which is calculated by Vietnamese currency unit.
10. Cash in foreign currency shall include paper notes and coins
11. Authorized credit institutions shall be banks and non-banking credit institutions which are authorized to engage in foreign exchange activity and provision of foreign exchange services in accordance with provisions in this Ordinance.
12. Foreign direct investment in Vietnam shall be an act where a non-resident transfers his capital into Vietnam to perform activities of business investment on the basis of establishment and participation in the management to an enterprise or other forms in accordance with provisions of applicable laws of Vietnam.
13. Foreign indirect investment in Vietnam shall be an act where a non-resident engages in the purchase, sale of securities, other valuable papers and capital contribution, share purchase under any form in accordance with provisions of applicable laws of Vietnam and does not participate in the direct management.

14. Oversea investment shall be an act where a resident remits his capital to abroad for investment under the forms in accordance with provisions of applicable laws;
15. Foreign borrowing and debt payment shall be an act where a resident borrows and pays debt to a non-resident under the forms in accordance with provisions of applicable laws.
16. Foreign lending and debt collection shall be an act where a resident lends and collects debt from the non-resident under the forms in accordance with provisions of applicable laws.
17. International balance of payment shall be a consolidated balance sheet which systematically lists the entire economic transactions between Vietnam and other countries in a certain period of time.
18. Foreign currency market shall be the place where the sale and purchase of foreign currencies takes place. Foreign currency market of Vietnam includes inter-bank foreign currency market and the foreign currency market between banks and customers.
19. State international reserve shall be the assets denominated in foreign currency which is stated in the monetary survey of the State Bank of Vietnam.

Article 5. Application of laws on foreign exchange, international treaty, foreign laws, international custom

1. Foreign exchange activities must comply with the provisions in this Ordinance and other provisions of related laws.
2. In the event where an international treaty to which the Socialist Republic of Vietnam has acceded contains provision, which are different from the provisions in this Ordinance, the provisions of that international treaty shall prevail.
3. In case where Vietnamese laws have not yet issued provisions on foreign exchange activities, concerned parties may come to an agreement on the application of foreign laws, international customs, provided that the application of foreign laws, international customs shall not be contrary to the basic principles of Vietnamese laws.

Chapter II
CURRENT TRANSACTIONS

Article 6. Liberalization for current transactions

All the transactions of payment and money transfer for current transactions between the resident and non-resident shall be freely performed.

Article 7. Payment and money transfer relating to export, import of goods, services

1. Residents shall be entitled to purchase foreign currency from authorized credit institutions to pay for the import of goods, services.
2. Residents must transfer their entire foreign currency earned from the export of goods, services to the foreign currency account which is opened at an authorized credit institution in Vietnam; in case where they have a demand for maintaining their foreign currency abroad, they must be permitted by the State Bank of Vietnam.

3. All transactions of payment and money transfer relating to the export, import of goods, services shall be carried out through an authorized credit institution.

Article 8. Unilateral money transfer

1. Foreign currency of residents being Vietnamese organizations, which is collected from amounts of one-way money transfer, shall be transferred to the foreign currency account opened at the authorized credit institutions or sold to the authorized credit institutions.
2. Foreign currency of residents being Vietnamese individuals, which is collected from amounts of one-way money transfer, shall be used for the purpose of storing, carrying with them, depositing into the foreign currency account opened at authorized credit institutions or selling to authorized credit institutions; for the case of Vietnamese citizen, they shall be entitled to deposit foreign currency savings at the authorized credit institutions.
3. Residents shall be entitled to purchase, transfer and carry foreign currency abroad to serve legal demands.
4. Non-residents, residents who are foreigners with foreign currencies on account shall be entitled to remit them abroad; in case where they have legal income source in Vietnamese dong, they shall be entitled to purchase foreign currency for oversea remittance.

Article 9. Carrying cash in foreign currency, cash in VND and gold upon exit from, entry into the country

Residents, non-residents, who carry cash in foreign currency, cash in VND and gold upon exit from, entry into the country exceeding the level stipulated by the State Bank of Vietnam must comply with the followings:

1. In case of carrying an amount, which exceeds the provided level, upon entry into the country, it shall be obliged for them to declare at the border customs;
2. In case of carrying an amount, which exceeds the provided level, upon exit from the country, it shall be obliged for them to declare at the border customs and present documents in accordance with provisions of the State Bank of Vietnam.

Article 10. Currency being used in current transaction

Residents shall be entitled to choose Vietnamese dong, freely convertible foreign currency and other currencies which are accepted by the authorized credit institutions as payment currency in current transaction.

Chapter III

CAPITAL TRANSACTIONS

Section 1

FOREIGN INVESTMENT INTO VIETNAM

Article 11. Direct investment

1. The transfer of investment capital in foreign currency into Vietnam, the transfer of the principal of investment capital, profit, payment of borrowing interests and other legal receipts to abroad must be performed through a foreign currency account which is opened at an authorized credit institution.
2. Legal income sources in Vietnamese dong shall be converted into foreign currency for remittance to abroad through the authorized credit institutions.

Article 12. Indirect investment

1. Investment capital in foreign currency must be converted into Vietnamese dong for carrying out the investment;
2. Investment capital, profit and legal income sources in Vietnamese dong shall be converted into foreign currency for remittance to abroad through the authorized credit institutions.

Section 2 OVERSEA INVESTMENT BY VIETNAM

Article 13. Capital source for overseas investment

Residents who are entitled to invest overseas shall be permitted to use following capital sources for the investment:

1. Foreign currency in the foreign currency account at the authorized credit institutions;
2. Foreign currency purchased from authorized credit institutions;
3. Foreign currency from the borrowing capital source.

Article 14. Transfer of investment capital to abroad

1. Residents who are credit institutions shall be entitled to transfer investment capital to abroad in accordance with provisions of the State Bank of Vietnam.
2. Residents who are economic organizations, individuals and other subjects authorized to invest overseas must open a foreign currency account at an authorized credit institution and register with the State Bank of Vietnam. The transfer of foreign currency to abroad for investment must be performed through that account.

Article 15. Repatriation of capital, profit into Vietnam

Capital, profit and other incomes from the overseas investment must be repatriated into Vietnam in conformity with the law on investment and other provisions of related laws; the repatriation of capital, profit and other incomes from the overseas investment into Vietnam must be performed through the foreign currency account opened at the authorized credit institution.

Section 3 FOREIGN BORROWING, DEBT PAYMENT

Article 16. Foreign borrowing, debt payment by the Government

Government and organizations which are authorized by the Government, State shall perform the foreign borrowing, debt payment on the basis of National Strategy on foreign loan and the total limit of foreign loan funds approved by the Prime Minister on the annual basis.

Article 17. Foreign borrowing, debt payment by the resident who is an economic organization, credit institution and individual

1. Residents being an economic organization, a credit institution and an individual shall be entitled to borrow, pay foreign debt on the principle of self borrowing, self responsibility for debt payment in line with provisions of applicable laws.
2. Residents being an economic organization, a credit institution and an individual must comply with conditions of foreign borrowing, debt payment, loan registration, opening and use of account, capital withdrawal and money transfer for debt payment, reporting of the performance of loans in accordance with provisions of the State Bank of Vietnam. The State Bank of Vietnam shall confirm the loan registration within the total limit of foreign loan funds approved by the Prime Minister on the annual basis.
3. Residents shall be entitled to purchase foreign currency from authorized credit institutions on the basis of presenting the valid vouchers to pay the principals, interest and related fees of the foreign loan and using forms of guarantee, re-guarantee and other forms of loan security.

Section 4 FOREIGN LENDING, DEBT COLLECTION

Article 18. Foreign lending, debt collection by the Government

The Government shall decide on the foreign lending, foreign debt collection of the State, Government and organizations authorized by the State, Government.

Article 19. Foreign lending, debt collection by the resident who is a credit institution, an economic organization

1. Credit institutions shall be entitled to perform foreign lending, debt collection in accordance with provisions of the State Bank of Vietnam.
2. Economic organizations shall be entitled to perform foreign lending, debt collection if the following conditions are satisfied:
 - a) Being permitted by the Government;
 - b) Carrying out the opening and use of account, transfer and collection of capital, reporting on the performance of foreign lending and debt collection in accordance with provisions of the State Bank of Vietnam;
 - c) Income sources of principals, interests and related fees must be transferred to the foreign currency account opened at the authorized credit institutions.

Section 5
DOMESTIC AND ABROAD ISSUANCE OF SECURITIES

Article 20. Residents being an organization which issues securities outside the territory of Vietnam

Residents being an organization must open an account at an authorized credit institution when they are permitted to issue securities outside the territory of Vietnam; any transaction relating to the issuance of securities outside the territory of Vietnam shall be performed through that account

Article 21. Non-residents being an organization which issues securities within the territory of Vietnam

Non-residents being an organization must open an account at an authorized credit institution when they are permitted to issue securities within the territory of Vietnam; any transaction relating to the issuance of securities within the territory of Vietnam shall be performed through that account

Chapter IV
USE OF FOREIGN CURRENCY WITHIN THE TERRITORY OF VIETNAM

Article 22. Provision on the restraint of foreign currency use

Within the territory of Vietnam, any transaction, payment, listing, advertisement of the residents, non-residents shall not be performed in foreign currency, except for transactions with credit institutions, cases of payment through intermediary unit including collection under the authorization, entrustment, agency and other necessary cases which are permitted by the Prime Minister.

Article 23. Opening and use of an account

1. Residents, non-residents shall be entitled to open a foreign currency account at an authorized credit institution. The State Bank of Vietnam shall provide for the collection, payment on the foreign currency account of subjects provided for in this paragraph.
2. Residents being an authorized credit institution shall be entitled to open and use a foreign currency account overseas for the performance of foreign exchange activities there.
3. Residents being an economic organization which has oversea branch, representative office or has a demand for opening a foreign currency account overseas to receive loan funds, to perform commitment, contract with the foreign party shall be considered for issuance of a license by the State Bank of Vietnam to open a foreign currency account overseas.
4. Residents being diplomatic agencies, consular agencies, armed force unit, representative of politic organizations, socio-politic organizations, vocational-social politic organization, vocational-social organization, social fund, charity fund of Vietnam in foreign country shall be

entitled to open and use an overseas foreign currency account in accordance with provisions of applicable laws of the local country.

5. Residents being Vietnamese citizen, within the time of residing overseas, shall be entitled to open and use an overseas foreign currency account in accordance with provisions of applicable laws of the local country.

Article 24. Use of cash in foreign currency by individual

1. Residents, non-residents being individuals who have cash in foreign currency shall be entitled to store, carry with them, sell to authorized credit institutions and use for other lawful purposes.
2. Residents being Vietnamese citizen shall be entitled to use cash in foreign currency for making savings deposit at an authorized credit institution, be entitled to withdraw the principals and receive the interests in foreign currency cash.

Article 25. Use of Vietnamese dong by a non-resident

Non-residents being organizations which, individuals who have Vietnamese dong from lawful income sources shall be entitled to open an account at an authorized credit institution for using in Vietnam or purchase foreign currency for remittance to abroad.

Article 26. Use of currency of the country having the common frontier with Vietnam

Residents being organizations which, individuals who have lawful income sources in the currency of the country having the common frontier with Vietnam from the activities of goods, services export and other activities shall be entitled to open an account in that currency at an authorized credit institution

Article 27. Issuance and use of payment card

1. Within the territory of Vietnam, residents, non-residents being individuals who have international card shall be entitled to use for the payment at authorized credit institutions and card accepting units.
2. Card accepting units shall be only permitted to accept the payment in Vietnamese dong from banks that make card payment.
3. Based on the real situation, the State Bank of Vietnam shall provide for the issuance, use of cards in line with the target of the foreign exchange control.

Chapter V

FOREIGN CURRENCY MARKET, REGIME ON EXCHANGE RATE AND GOLD IMPORT, EXPORT CONTROL

Article 28. Foreign currency market of Vietnam

1. Participants to the inter-bank foreign currency market shall include the State Bank of Vietnam and authorized credit institutions.

2. Participants to the foreign currency market between authorized credit institutions and customers shall include authorized credit institutions, foreign currency exchange counters and customers who are residents, non-residents in Vietnam.
3. Subjects participating in the foreign currency market of Vietnam shall be entitled to carry out types of transaction in accordance with international rules when satisfying conditions provided for by the State Bank of Vietnam.

Article 29. Activities of the State Bank of Vietnam in the foreign currency market.

The State Bank of Vietnam shall perform the sale, purchase of foreign currency in the domestic foreign currency market for the implementation of the targets of the national monetary policy.

Article 30. The regime on the exchange rate of Vietnamese dong

1. The exchange rate of Vietnamese dong shall be determined on the basis of the supply of and demand for foreign currency in the market under the State regulation.
2. The State Bank of Vietnam shall define the regime on the exchange rate of Vietnamese dong in line with specific macroeconomic targets from time to time.

Article 31. Gold import, export control

The State Bank of Vietnam shall control the import, export of gold in forms of block, bar, grain, piece by credit institutions and organizations which are authorized to trade in gold.

Chapter VI
MANAGEMENT TO THE STATE FOREIGN EXCHANGE RESERVE

Article 32. Components of State foreign exchange reserve

1. Cash in foreign currency, overseas deposits in foreign currency;
2. Securities and other valuable papers in foreign currency issued by Government, foreign organizations, international organizations.
3. Special drawing right, reserve at the International Monetary Fund
4. Gold.
5. Foreign exchange from other sources.

Article 33. Sources to form the State foreign exchange reserve

1. Foreign exchange purchased from the State Budget and foreign currency market;
2. Foreign exchange from loans extended by banks and international financial institutions;

3. Foreign exchange from deposits of the State Treasury and credit institutions.
4. Foreign exchange from other sources.

Article 34. Management to State foreign exchange reserve

1. The State Bank of Vietnam shall manage the State foreign exchange reserve in accordance with provisions of the Government in order to implement the national monetary policy, to ensure the international payment capacity and preserve the State foreign exchange reserve.
2. The Ministry of Finance shall inspect the management of the State foreign exchange reserve performed by the State Bank of Vietnam in accordance with provisions of the Government.
3. The Government shall report to the National Assembly's Standing Committee on the changes of the State foreign exchange reserve.

Article 35. Foreign exchange of the State Budget

The Prime Minister shall provide for the foreign currency level which the Ministry of Finance is entitled to retain from the budget income to ensure the satisfaction of the regular payment in foreign currency of the state budget.

Chapter VII FOREIGN EXCHANGE SERVICE SUPPLY BY CREDIT INSTITUTIONS AND OTHER ORGANIZATIONS

Article 36. Subjects and scope of foreign exchange service supply activity

1. Subjects, which are authorized to engage in the foreign exchange service supply, shall include banks, non-banking credit institutions and other organizations, which are authorized to engage in foreign exchange service supply.
2. The scope of foreign exchange service supply shall include:
 - a) Banks entitled to perform the foreign exchange service supply in accordance with provisions of the State Bank of Vietnam;
 - b) Non-banking credit institutions entitled to perform the supply of several foreign exchange services on the basis of making registration for these activities in conformity with the conditions provided for by the State Bank of Vietnam;
 - c) Other organizations entitled to engage in the supply of several foreign exchange services under the license issued by the State Bank of Vietnam.

Article 37. Domestic deposit mobilization and lending in foreign currency

The State Bank of Vietnam shall provide for the mobilization, lending in foreign currency within the territory of Vietnam by credit institutions.

Article 38. Foreign exchange activity in the international market

The Government shall provide for the conditions, scope of foreign exchange activity for each type of credit institution and other organizations.

Article 39. Responsibility of credit institutions and other organizations for the performance of foreign exchange service supply

1. To seriously comply with and provide guidance to customers on the serious compliance with provisions on foreign exchange control and other provisions of related laws.
2. To inspect related documents, vouchers of customers required for respective transactions in accordance with the provisions in this Ordinance and other provisions of the laws on foreign exchange control.
3. To take responsibility for satisfying the foreign currency demand in order to make payment of current transactions to abroad by the residents who are organizations and individuals.
4. To be subject to the inspection, examination and seriously comply with the information, reporting regime provided for by applicable laws.

Chapter VIII STATE MANAGEMENT TO FOREIGN EXCHANGE ACTIVITY

Article 40. State management to the foreign exchange activity

1. The Government shall unify the State management of the foreign exchange activity.
2. The State Bank of Vietnam shall be responsible to the Government for the implementation of the state management of the foreign exchange activity, development and issuance of policy on foreign exchange control, providing guidance and inspection, examination of the compliance with the voucher and information reporting regimes.
3. Ministries, Ministerial level agencies, People's Committee in provinces, cities under the Central Government's management shall be responsible for the state management of the foreign exchange activity within the scope of their assignment and authority.

Article 41. Security Measures

When it is deemed necessary to ensure the national financial, monetary security, the Government shall be entitled to take following measures:

1. Restraining the purchase, carrying, transfer, payment for the transactions on current account, capital account;
2. Applying provisions on the obligation to sell foreign currency by the residents being organizations;
3. Applying monetary, financial, economic measures;
4. Other measures.

Article 42. The reporting regime

1. The State Bank of Vietnam shall be responsible for the issuance, inspection, examination of the compliance with the reporting regime, analysis, forecast and publication of information of the foreign exchange activity.
2. The State Bank of Vietnam shall take the lead and coordinate with ministries, branches in the collection of information, data for the purpose of foreign exchange control by the State and formulating the international balance of payment.

Authorized credit institutions shall be responsible for reporting information relating to the foreign exchange activity to the State Bank of Vietnam in accordance with provisions of the State Bank of Vietnam.

Organizations, individuals engaging in foreign exchange activity shall perform the supply of information, data when requested by the State Bank of Vietnam, authorized credit institutions in accordance with provisions of applicable laws.

3. Ministries, Ministerial level agencies, People's Committee in provinces, cities under the Central Government's management, within the scope of their assignment, authority, shall be responsible for reporting information, data relating to the foreign exchange activity to the State Bank of Vietnam for the purpose of foreign exchange control by the State and formulating the international balance of payment.

Chapter IX

COMPLAINT, DENOUNCEMENT, PROCEEDING AND DEALING WITH VIOLATION

Article 43. Dealing with violation

Organizations, individuals committing any violation act to the provisions of this Ordinance shall, depending on the nature, seriousness of the violation, be subject to the discipline, administrative punishment or prosecuted for criminal liability; and shall be subject to the compensation in accordance with provisions of applicable laws for any damage caused.

Article 44. Complaint, denouncement

1. Any complaint to the administrative decision, administrative act and denouncement for violation acts to the law on foreign exchange activity shall be implemented in accordance with provisions of the law on complaint, denouncement.
2. During the time of complaining or proceeding, the organizations, individuals being subject to administrative punishment shall still have to comply with the decision on punishment; when the decision on dealing with complaint of the state competent agency, or the judgment, decision of the Court takes effect, the execution shall be made under the decision on dealing with complaint of the state competent agency, judgment, decision of the Court.

Chapter X

IMPLEMENTING PROVISIONS

Article 45. Effectiveness of implementation

This Ordinance shall be effective from 01 June 2006.

Article 46. Guidance of implementation

The Government shall provide in details for and guide the implementation of this Ordinance.

For the National Assembly's Standing Committee
Chairperson
(signed and sealed)

NGUYEN VAN AN