

STANDING COMMITTEE
NATIONAL ASSEMBLY
No: 28/2005/PL-UBTVQH11

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

ORDINANCE ON FOREIGN EXCHANGE

Pursuant to the 1992 Constitutions of the Socialist Republic of Vietnam amended and supplemented following the Resolution No. 51/2001/QH10 dated December 25, 2001 of the National Assembly Legislation X, session 10th.

Pursuant to the Resolution No 42/2005/QH11 dated June 14, 2005 of the National Assembly Legislation XI, Session 7th on adjusting the 2005 Law-making agenda.

This ordinance makes provisions in relation to foreign exchange activities;

Chapter 1 GENERAL PROVISIONS

Article 1. *Scope of application*

This Ordinance regulates the foreign exchange activities in the territory of Socialist Republic of Vietnam.

Article 2. *Subjects of application*

1. Resident and non-resident being individuals, organizations having foreign exchange activities in Vietnam.

2. Other subjects related to the foreign exchange activities.

Article 3: *Foreign Exchange Management Policies of Vietnam*

The State of Socialist Republic of Vietnam shall exercise foreign exchange management policies, aiming at facilitating and ensuring the legitimate interests of the organizations and individuals participating in foreign exchange activities, contributing to enhance the economic growth; implementing objectives of national monetary policies, improving the convertibility of the Vietnamese Dong; achieving the objective of having only Vietnamese currency traded within the territory of Vietnam; implementing Vietnam's commitments of international integration roadmap, and strengthening the state management on foreign exchange and perfecting foreign exchange management system of Vietnam.

Article 4. Definition of terms

In this Ordinance, the following terms shall have the meanings ascribed to them hereunder:

1. *Foreign exchange* comprises:

a. Currencies of other countries or Euro and other common currencies used for international and regional payments (hereinafter referred to as foreign currency);

b. Payment instruments denominated in foreign currencies, such as cheques, credit cards, bills of exchange, promissory notes and other payment instrument.

c. Valuable papers denominated in foreign currencies, such as Government bonds, corporate bonds, promissory notes, shares and other valuable papers;

d. International standard gold held under the State's foreign exchange reserves, gold deposited in offshore accounts of residents; gold in bars, ingots, pieces, foil in case of carrying personally upon entering or leaving Vietnam's territory;

e. The currency of the Socialist Republic of Vietnam where it is remitted into and out of the territory of Vietnam or used for international payments.

2. *Residents* being organizations, individuals comprise:

a/ Credit institutions established and operating in Vietnam (hereinafter referred to as "credit institutions");

b/ Economic entities established and doing business in Vietnam excluding those stipulated in point (a) of this clause (hereinafter referred to as "economic entities");

c/ The State bodies, units of the armed forces, political organizations, socio-political organizations, socio-political, professional organizations, social organizations, socio-professional organizations, social funds and charitable funds of Vietnam operating in Vietnam;

d/ Diplomatic representative offices, consulates of Vietnam in abroad;

đ/ Representative offices in abroad of organizations stipulated in point (a) (b), and (c) of this clause;

e/ Vietnamese citizens residing in Vietnam; Vietnamese citizens residing in foreign countries for a duration of less than 12 months; Vietnamese citizens working for organizations stipulated in point (d) and (đ) of this clause and accompanied dependants;

g/ Vietnamese citizens going abroad for the purposes of tourism, study, medical treatment and visit;

h/ Foreigners residing in Vietnam for a during of 12 months or more, excluding those for the purpose of tourism, study and medical treatment or working for diplomatic representative offices, consulates, representative offices of foreign organizations operating in Vietnam;

3. *Non-residents* include all other organizations and individuals that are not covered in clause 2 of this Article;
4. *Capital account transaction* means foreign exchange transaction between a resident and a non-resident for the following purposes:
 - a/ Direct Investment;
 - b/ Investment in valuable papers;
 - c/ Foreign borrowings and repayments;
 - d/ Provision and collection of foreign loans;
 - d/ Investments in other forms in accordance to the laws of Vietnam;
5. *Current account transaction* means transactions between residents and non-residents not for the purpose of capital transferring;
6. *Payment and transfer for current account transactions* consist of:
 - a/ Payment and transfer relating to exports and imports of goods and services;
 - b/ Short-term commercial banking and credit facilities;
 - c/ Income earned from direct and indirect investment;
 - d/ Depreciation of foreign direct investment capital if permitted;
 - d/ Interest payment and moderate amortization of foreign principal loans;
 - e/ One-way money (current) transfers for the consumption purpose;
 - g/ Other similar transactions.
7. *One-way money (current) transfer* means transfer from abroad into Vietnam or from Vietnam to abroad through the banking, post system with the nature of grants and aids or helps to family, personal expenses not relating to the payments for imports, exports of goods and services;
8. *Foreign exchange activities* include current account transactions, capital account transactions, use of foreign currency in the territory of Vietnam, provision of foreign exchange services, and other transactions relating to foreign exchange by residents and non-residents.

9. *Exchange rate of Vietnamese Dong* means the price of one unit of foreign currency calculated in Vietnamese Dong;
10. *Foreign currency in cash* includes bank notes, and coins;
11. *Authorized credit institutions* mean banks and non-bank credit institutions that are authorized to conduct foreign exchange activities and provide foreign exchange services in accordance with this Ordinance;
12. *Foreign direct investment in Vietnam* means the transfer of capital by non-residents into Vietnam in order to carry out investment activities on the basis of establishing and managing enterprises or in other forms in accordance with the laws of Vietnam;
13. *Indirect investment into Vietnam* means the purchase and selling of securities and other valuable papers, and share holdings in all forms stipulated by the laws without directly involving in management by non-resident;
14. *Investment abroad* means the outward transfer of capital by residents to conduct investment activities in all forms stipulated by the laws;
15. *Foreign borrowing and repayment* means the borrowing and repayment of a loan in all forms stipulated by the laws by residents from and to non-residents;
16. *Provision and collection of loan abroad* means the provision and collection of a loan in all forms stipulated by the laws by resident to and from non-residents;
17. *International balance of payments of Vietnam* means the systematically consolidated sheet of all economic transactions between Vietnam and other countries in a certain period of time;
18. *Foreign currency market* is where foreign currencies being purchased, sold. Foreign currency market of Vietnam includes the inter-bank foreign currency market and foreign currency market between banks and their customers;
19. *The State foreign exchange reserve* means the assets in foreign exchange shown in the balance sheet of the State Bank of Vietnam.

Article 5: Application of Foreign Exchange Ordinance, International treaties, practices, foreign laws.

1. Foreign exchange activities must observe the provisions of this Ordinance and other related laws.
2. Where the provisions of an international treaty to which the Socialist Republic of Vietnam is a member are different from the provisions of this Ordinance, the provisions of such international treaty shall prevail.

3. Residents and Non – Residents engaged in foreign exchange activities, which are not covered in Vietnam's laws, may negotiate to apply foreign laws, international practices provided that such application is not against the main principles of the laws of Vietnam.

Chapter II CURRENT ACCOUNT TRANSACTIONS

Article 6. *Liberalization of the current transactions*

Payment and transfer of all kinds for current transactions between a resident and a non-resident are freely carried out.

Article 7. *Payments and transfers related to exports and imports of goods and services.*

1. Residents are entitled to purchase foreign currency at authorized credit institutions to make payments for imports of goods and services.

2. Residents who have income earned from exporting goods and services shall be required to deposit all proceeds in foreign currency accounts opened at authorized credit institutions operating in Vietnam; if having demand of retaining foreign currency in abroad, the State Bank of Vietnam's permission is required.

3. All payments and transfers related to exports and imports of goods and services must be made through authorized credit institutions.

Article 8. *One way money transfers*

1. Foreign currency income from current transfers of residents being organizations shall be required to deposit at foreign currency accounts opened at authorized credit institutions or sell to authorized credit institutions;

2. Foreign currency income from current transfers of residents being individuals can be used for personal store, carrying, and depositing in foreign currency accounts opened at authorized credit institutions or selling to authorized credit institutions; where residents being Vietnamese citizen, their foreign currency income from current transfers can be deposited in saving foreign currency accounts opened at authorized credit institutions.

3. Residents are entitled to purchase foreign currency at authorized credit institutions, remit overseas and carry to abroad for satisfying their legitimate needs;

4. Non-residents, and residents being foreigners having foreign currency in their accounts have the right to remit that foreign currency abroad; where having the legitimate income in Vietnamese Dong, they have the right to convert that Dong into foreign currency to remit overseas.

Article 9. Carrying foreign currency in cash, Vietnamese Dong in cash and gold upon entering in and departing from Vietnam

Residents and non-residents personally carrying foreign currency in cash, Vietnamese Dong in cash and gold upon entering in and departing from Vietnam shall follow the below provision:

1. When entering with personal carrying of foreign exchange exceed the specified limit, declaration at the border gate customs shall be required;
2. When departing with personal carrying of foreign exchange exceed the specified limit, declaration formalities at the border gate customs and presentation of supporting documents as specified by the State Bank of Vietnam shall be required.

Article 10. Currency used in current transactions

Residents are allowed to choose Vietnamese Dong, freely-convertible currencies and other currencies accepted by authorized credit institutions for payments for current transactions.

**Chapter III
CAPITAL ACCOUNT TRANSACTIONS**

Section 1

FOREIGN INVESTMENT INTO VIETNAM

Article 11. Direct investment

1. Transfer of investment capital in foreign currency invested into Vietnam, transfer of invested principal capital, profits, interest payment and legitimate incomes to abroad must be conducted through foreign currency accounts opened at an authorized credit institution.

2. Legitimate income in VND shall be converted into foreign currencies for transferring abroad through authorized credit institutions .

Article 12. Indirect investment

1. Foreign currency capital invested into Vietnam must be converted into VND for conducting investment.

2. Invested capital, profits and legitimate income in VND shall be converted into foreign currencies for transferring abroad through authorized credit institutions

Section 2

VIETNAM INVESTMENT ABROAD

Article 13. *Capital sources to be invested abroad*

Residents which are permitted to invest abroad can use following sources of capital to invest abroad:

1. Foreign currency deposited in foreign currency accounts opened at authorized credit institutions.
2. Foreign currency converted by VND at authorized credit institutions.
3. Borrowed foreign currency.

Article 14. *Outward Investment capital transfer*

1. Residents being credit institutions shall be permitted to transfer capital outward in accordance with regulations issued by the State Bank of Vietnam.

2. Residents being economic entities, individuals and other subjects which are permitted to invest abroad must open a foreign currency account at an authorized credit institutions and register with the State Bank of Vietnam. All outward transfers of foreign currency related to investment must be conducted through this account.

Article 15. *Remit invested capital and profits to Vietnam*

Invested capital, profit and other incomes earned from the outward investment must be remitted to Vietnam in accordance with the provisions of the laws on investment and other related laws; Invested capital, profit, and other incomes earned from the outward investment when remitting to Vietnam must be conducted through the foreign currency account opened at authorized credit institutions.

Section 3

BORROWING AND REPAYMENT OF FOREIGN LOANS

Article 16. *Foreign borrowing and repayment by the Government*

The Government and organizations authorized by the State and Government shall borrow from abroad and repay on the basis of National External Borrowing Strategy and annual total external borrowing limit approved by the Prime Minister.

Article 17. *Foreign borrowing and repayment by residents being economic entities, credit institutions and individuals*

1. Residents being economic entities, credit institutions and individuals shall borrow and repay foreign loans with the principle of self-borrowing and self-responsibility of repayment in line with the provisions of laws.

2. Resident being economic entities, credit institutions and individuals must comply with external borrowing and repayment conditions, register the borrowings with the State Bank of Vietnam, open and use accounts, withdraw and transfer for making repayment, and report the status of loans in accordance with regulations of the State Bank of Vietnam. The State Bank of Vietnam certifies registered foreign loans within the total annual external borrowing limit approved by the Prime Minister.

3. Residents shall be permitted to buy foreign exchange at authorized credit institutions upon the submission of eligible documents to make payments in respect of principal, interest and other fees related to foreign loans and use of guarantees, re-guarantees and other forms of providing security for loans.

Section 4

PROVISION AND COLLECTION OF LOANS ABROAD

Article 18. Provision and collection of loans abroad by the Government

The Government shall decide on the provision and collection of loans abroad of the State, the Government and organizations authorized by the State or the Government.

Article 19. Provision and collection of loans abroad by resident being economic and credit institutions.

1. Credit institutions shall be permitted to provide and collect loans in accordance with regulations issued by the State Bank of Vietnam.

2. Economic institutions are entitled to provide and collect loans abroad if meeting the following conditions:

a. As permitted by the Government;

b. Shall open and use accounts, transfer capital abroad and collect loans abroad, report status of the loans in accordance with regulations issued by the State Bank of Vietnam;

c. Principal, interests and all other fees related to the loans must be repatriated to foreign currency accounts opened at authorized credit institutions.

Section 5

DOMESTIC AND INTERNATIONAL ISSUANCE OF SECURITIES

Article 20. *Securities issuance outside Vietnam by resident being institutions*

Resident being institutions which are permitted to issue securities outside Vietnam must open an account at an authorized credit institution; All transactions related to the issuance of securities abroad shall be conducted through this account.

Article 21 *Securities issuance in Vietnam by non-resident being institutions*

Non- resident being institutions which are permitted to issue securities in Vietnam must open an account at an authorized credit institution; All transactions related to the issuance of securities in Vietnam shall be conducted through this account.

Chapter IV

USE OF FOREIGN EXCHANGE IN THE TERRITORY OF VIETNAM

Article 22. *Regulation to restrict use of foreign exchange in Vietnam*

Within the territory of Vietnam, all transactions, payments, quotations, pricing, advertisements by resident and non-residents shall not be conducted in foreign exchange except for transactions with authorized credit institutions, payments made through intermediary including on-behalf collection, by agent and other exceptional cases permitted by the Prime Minister.

Article 23. *Opening and using accounts*

1. Residents and non-residents shall be permitted to open foreign currency accounts at authorized credit institutions. The State Bank of Vietnam shall regulate the receipts and payments made in these accounts by subjects stipulated in this Article.

2. Resident being authorized credit institution shall be permitted to open and use foreign currency account in abroad to conduct foreign exchange activities held in abroad.

3. Resident being economic institution, having its branch and representative office in abroad or having demand to open foreign currency account in abroad for receiving borrowing capital, fulfilling contract, commitment with foreign partners, shall be considered by State Bank of Vietnam to grant license to open foreign currency account in abroad.

4. Resident being Vietnamese diplomatic representative offices, consulates, armed forces and representatives of political organizations, socio-political organizations, social political-professional organizations, social-professional organizations, social funds, charitable funds of Vietnam in abroad shall be permitted to open and use foreign currency accounts in abroad in accordance with the laws of these foreign countries.

5. Residents being Vietnamese citizens, during the time staying in abroad, shall be permitted to open foreign currency accounts abroad in accordance with the laws of these foreign countries.

Article 24. *Use of foreign currency cash by individuals*

1. Residents and non-residents being individuals having foreign currency in cash shall have the right to store, carry, and sell their foreign currency to authorized credit institutions and use their foreign currency for other legitimate purposes.

2. Residents being Vietnamese citizens shall be permitted to use foreign currency in cash to deposit at authorized credit institutions, and to withdraw principal and interest in foreign currency in cash.

Article 25. *Use of Vietnamese Dong by Non-residents*

Non-residents being institutions or individuals having Vietnamese Dong from legitimate sources shall be permitted to open accounts at authorized credit institutions for their use in Vietnam or sell their Vietnamese Dong for foreign currency to remit abroad.

Article 26. *Use of currencies of Vietnam border-sharing countries*

Residents being organizations or individuals having legitimate incomes in currencies of Vietnam border-sharing countries earned from exports and imports of goods and services, and other activities shall be permitted to open account in respective currencies of border –sharing countries at authorized credit institutions.

Article 27. *Issuance and use of payment cards*

1. Within the territory of Vietnam, residents and non-residents being individuals having international payment cards shall be permitted to use for payment purpose at authorized credit institutions and agencies accepted payment cards.

2. Agencies accepting payment cards shall receive only payments in Vietnamese Dong from banks for card payments.

3. Upon actual circumstances, the State Bank of Vietnam shall regulate the issuance and use of cards in line with objectives of foreign exchange management.

Chapter V

**FOREIGN CURRENCY MARKET AND EXCHANGE RATE REGIME
AND GOLD EXPORT AND IMPORT MANAGEMENT**

Article 28. *Vietnam's foreign currency market*

1. Participants in inter-bank foreign currency market comprise the State Bank of Vietnam and the authorized credit institutions.

2. Participants in foreign currency market between authorized credit institutions and customers comprise the authorized credit institutions, foreign exchange bureaus, resident and non-resident customers in Vietnam.

3. Participants in Vietnam's foreign currency market shall be permitted to conduct transactions in foreign exchange market in accordance with international practices upon meeting all conditions regulated by the State Bank of Vietnam.

Article 29. The State Bank of Vietnam's operation in inter-bank foreign currency market

The State Bank shall conduct the purchase and selling of foreign currencies in inter-bank foreign currency market to achieve objectives of national monetary policy.

Article 30. Exchange rate regime of the Vietnamese Dong

1. Vietnamese dong exchange rate for foreign currencies shall be determined on the basis of the supply of and the demand for foreign currency in the markets as regulated by the State.

2. The State Bank of Vietnam shall determine Vietnamese dong exchange rate regime in line with concrete macroeconomic objectives in certain periods of time.

Article 31. Gold export and import activities management

The State Bank of Vietnam controls the export and import activities regarding gold in bars, ingots, pieces or foil by credit institutions and others that are authorized to trade gold.

Chapter VI

MANAGEMENT OF STATE FOREIGN EXCHANGE RESERVES

Article 32. Composition of State foreign exchange reserves

1. Foreign currencies in cash, foreign currencies in offshore deposit accounts;
2. Securities and other valuable papers issued by foreign Governments, foreign entities, and international financial institutions;
3. Special drawing rights, and reserve position in the International Monetary Fund (IMF);
4. Gold; and

5. Other types of foreign exchange.

Article 33. Sources of State foreign exchange reserves

1. Foreign exchanges bought from the State Budget and foreign exchange market;
2. Foreign exchanges borrowed from banks and international financial institutions;
3. Foreign exchanges from the State Treasury's and credit institutions' foreign currency deposits at the State Bank; and
4. Foreign exchanges from other sources.

Article 34. Management of State foreign exchange reserves

1. The State Bank of Vietnam shall manage the State foreign exchange reserves in accordance with regulations of the Government in order to implement the national monetary policy, ensure international payment capacity and preserve the State foreign exchange reserves;

2. The Ministry of Finance shall monitor the State Bank of Vietnam's management of the State foreign exchange reserves in accordance with regulations of the Government.

3. The Government shall report to the Standing Committee of the National Assembly on changes in the State foreign exchange reserves;

Article 35. State Budget's revenues in foreign exchange

The Prime Minister shall regulate the proportion of foreign currencies revenue retained by the Ministry of Finance for ensuring the demand of regular foreign exchange expenses from State Budget.

Chapter VII

ACTIVITIES ON PROVISION OF FOREIGN EXCHANGE SERVICES BY CREDIT INSTITUTIONS AND OTHER INSTITUTIONS

Article 36. Subjects and scope of activities on provision of foreign exchange services.

1. The subjects permitted to act on provision of foreign exchange services comprise banks, non-bank credit institutions and other organizations that are permitted to conduct activities on provision of foreign exchange services;

2. The scope of activities on provision of foreign exchange services:

a/ Banks shall be permitted to conduct provision of foreign exchange services in accordance with regulations of the State Bank of Vietnam;

b/ Non-bank credit institutions shall be permitted to conduct provision of a number of foreign exchange services on the basis of their registration of these activities under the conditions stipulated by the State Bank of Vietnam;

c/ Other organizations shall be permitted to conduct provision of a number of foreign exchange services in compliance with the license issued by the State Bank of Vietnam.

Article 37: *Domestically taking deposits and lending in foreign currency.*

The State Bank of Vietnam shall regulate the deposit taking and lending in foreign currencies by credit institutions in the territory of Vietnam.

Article 38. *Foreign exchange activities in international markets*

The Government shall regulate the terms and conditions, scope of foreign exchange activities for each type of credit institutions and other organizations.

Article 39. *Responsibilities of credit institutions and other organizations in conducting activities of provision of foreign exchange services*

1. Strictly comply with and guide customers to strictly observe regulations on foreign exchange management and other relevant regulations;

2. Examine documents provided by customers relating to transactions as regulated by this Ordinance and other laws on foreign exchange management;

3. Be responsible for meeting the foreign currency demands regarding to the international current payment transactions by resident being individuals and organization;

4. Be subject to inspection, supervision and reporting regime in accordance with the laws.

Chapter VIII

THE STATE MANAGEMENT ON FOREIGN EXCHANGE ACTIVITIES

Article 40. *The State Management on foreign exchange activities*

1. The government shall exercise unified state management on foreign exchange activities;

2. The State Bank shall be responsible to the Government for conducting the state management on foreign exchange activities, formulating and issuing the foreign

exchange policies, providing guidance and monitoring the voucher and reporting regime.

3. Ministries, ministerial-level agencies, the municipal and provincial people's committees shall, within their respective duties and powers, be responsible for conducting the State management of foreign exchange activities.

Article 41 *Application of measures for security reasons*

In the necessary cases, the Government may impose, for the national financial and monetary security reasons, the restriction measures as follows:

1. Restrictions on the buying, carrying foreign exchange, and transferring, making payments for current and/or capital account transactions;
2. Application of surrender requirement on the foreign currency to residents being organizations;
3. Application of economic, financial and monetary restriction measures;
4. Other restriction measures.

Article 42. *Information and reporting regime*

1. The State Bank shall be responsible for promulgating, supervising, examining the implementation of the regulations on information and reporting regime, analyzing, forecasting and disseminating information on foreign exchange activities;

2. The State Bank shall take the lead in coordinating with ministries and agencies in compiling data and information for the state management on foreign exchange activities and the compilation of the international balance of payments.

The authorized credit institutions have obligation to report information relating to foreign exchange activities to the State Bank of Vietnam in accordance with the regulations of the State Bank of Vietnam.

Organizations, individuals conducting foreign exchange activities shall be responsible for providing information and data upon the request of the State Bank, and the authorized credit institutions in accordance with laws.

3. Ministries, ministerial-level agencies, the municipal and provincial people's committees, within their respective duties and powers, shall have obligation for reporting on information and data of foreign exchange activities to the State Bank of Vietnam, for the state management of foreign exchange and the compilation of the international balance of payments.

Chapter IX
COMPLAINTS, DENUNCIATION, LAWSUITS AND HANDLING OF VIOLATIONS

Article 43. *Handling of violations*

Organizations, individuals committing any of the offences provisioned in this Ordinance shall, depending on the nature and seriousness of the offence, be subject to disciplinary action, administrative penalties or prosecution from criminal liability; compensation for any damages in accordance with the laws.

Article 44. *Complaints and Denunciations*

1. Complaints against administrative decisions, administrative acts and denunciation of violations in relation to foreign exchange activities shall be conducted in accordance with the laws on complaints and denunciation..

2. Pending resolution of complaints or legal action, the complainant or plaintiff must implement the decision on administrative penalties; Upon the issuance of a decision of the competent State body to resolve the complaint or a verdict or judgment of a court, such decision of the competent State body to resolve the complaint or the verdict or judgment of the court shall be enforced.

Chapter X
IMPLEMENTING PROVISIONS

Article 45. *Effectiveness*

This ordinance shall come into effect on June 1st, 2006;

Article 46. *Guidelines for the implementation*

The Government shall make detailed provisions and guidance for the implementation of this Ordinance.

Hanoi date 13 month 12 year 2005

On behalf of the Standing Committee of the National Assembly

CHAIRMAN

(signed)

NGUYEN VAN AN