

**Circular No. 28/2012/TT-NHNN dated October 03, 2012**

Thứ năm, 11 Tháng 10 2012 08:10

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Circular No. 28/2012/TT-NHNN dated October 03, 2012 of the State Bank of Vietnam providing on bank guarantee

**THE STATE BANK OF VIETNAM**

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No. 28/2012/TT-NHNN

**SOCIALIST**

**REPUBLIC**

**O**

**Independence - Freedom - Happiness**

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*Hanoi*

*, October 03, 2012*

**CIRCULAR**

**PROVIDING ON BANK GUARANTEE**

*Pursuant to the Civil Code No.33/2005/QH11, of June 14, 2005;*

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

**Circular No. 28/2012/TT-NHNN dated October 03, 2012**

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*Pursuant to the Law on credit institutions No.47/2010/QH12, of June 16, 2010;*

*Pursuant to the Ordinance on foreign currency No.28/2005/PL-UBTVQH11, of December 12, 2005;*

*Pursuant to the Government's Decree No.96/2008/ND-CP, of August 26, 2008 defining the functions, tasks, powers and organizational structure of the State bank of Vietnam;*

*At the proposal of Director of Credit;*

*The Governor of the State bank of Vietnam promulgates the Circular providing on bank guarantee.*

## **Chapter 1.**

### **GENERAL PROVISION**

#### **Article 1. Scope of regulation**

The Circular provides on guarantee operation of credit institutions, branches of foreign bank with respect to clients.

#### **Article 2. Subjects of application**

1. The credit institutions include: commercial banks, cooperatives banks and finance companies.
2. Branches of foreign bank.
3. The central people's credit Funds while it has not yet transferred into cooperatives bank, performs guarantee as prescribed for cooperatives bank.
4. Organizations (including foreign credit institutions in case of co-guarantee), individuals relating to guarantee operation.

### **Article 3. Interpretation of terms**

In this Circular, the following terms are construed as follows:

1. *Bank guarantee* (hereinafter referred to as guarantee) means form of credit granting, which the guarantee party commits in writing with party receiving guarantee that it shall perform finance obligation of the guaranteed party upon the guaranteed party fails to perform or insufficiently perform the obligation committed with party receiving guarantee; the guaranteed party must take over debt and repay for the guarantee party as agreement.
2. *The guarantee party* means credit institution or branch of foreign bank performing guarantee.
3. *The guaranteed party* means organization (including credit institutions, branches of foreign bank), individual being resident and organization being not resident being guaranteed by credit institution or branch of foreign bank.

4. *The party receiving the guarantee* means organization or individual being resident or non-resident possessing right to enjoy guarantee issued by credit institution or branch of foreign bank

5. *The counter-guarantee* means bank guarantee, which credit institutions, branches of foreign bank (the counter-guarantee party) commit with the guarantee party that it shall perform the finance obligation for the guarantee party, in case the guarantee party has performed guarantee, and must pay debt of client of the counter-guarantee party

6. *The guarantee confirmation* means bank guarantee, which credit institutions, branches of foreign bank (the party confirming the guarantee) commit with the party receiving the guarantee that it shall ensure capacity of performing the guaranteed obligation of the guarantee party for the guaranteed party. The party confirming the guarantee must perform the guaranteed obligation as commitment on the guarantee confirmation.

7. *Co-guarantee* means combination of capital to guarantee by:

a) From 02 (two) credit institutions or branches of foreign bank or more than guaranteeing for obligation of the guaranteed party; or

b) Credit institution, branch of foreign bank together with foreign credit institution guaranteeing for obligation of the guaranteed party.

8. *The guarantee granting contract* means a written agreed by the guarantee party and the guaranteed party and related parties (if any) about rights, obligations and other contents in performance of guarantee

9. *The guarantee commitment* means a guarantee written of the guarantee party and party receiving the guarantee in one of forms as follows:

a) *A guarantee letter* means a commitment written of the guarantee party with respect to the party receiving the guarantee that the guarantee party shall perform the finance obligation  
o

f the guaranteed party upon the guaranteed party fails to perform or insufficiently perform the obligation committed with the party receiving the guarantee;

b) *A guarantee contract* means a agreement written of the guarantee party and the party receiving the guarantee or between the guarantee party, the party receiving the guarantee and related parties (if any) which the guarantee party shall perform the finance obligation  
of

the guaranteed party upon the guaranteed party fails to perform or insufficiently perform the obligation committed with the party receiving the guarantee;

c) Other commitment forms being agreed by parties and not contrary to law of Vietnam.

10. *A guarantee for capital loan* means a commitment of the guarantee party with respect to the party receiving the guarantee that the guarantee party shall pay debt  
of

the guaranteed party upon the guaranteed party fails to perform or perform insufficiently, not punctually the obligation of paying loan;

11. *A guarantee for payment* means a commitment of the guarantee party with respect to the party receiving the guarantee that the guarantee party shall perform obligation of payment  
for debt o

f the guaranteed party upon the guaranteed party fails to perform or perform insufficiently its obligation of payment when coming time limit;

12. *A guarantee for bidding* means a commitment of the guarantee party with respect to the party receiving the guarantee (bid solicitor) for assurance of obligation participating in bidding of the guaranteed party. If the guaranteed party violates regulation of bidding without performance or with insufficient performance of finance obligation for participation in bidding, the guarantee party shall perform for replacement.

13. *A guarantee for contract performance* means a commitment of the guarantee party with

respect to the party receiving the guarantee in order to ensure a proper and sufficient performance of obligations of the guaranteed party under contract signed with the party receiving the guarantee. If the guaranteed party violates contract and be fined or must compensate for the party receiving the guarantee, and it fails to perform or perform insufficiently the finance obligation, the guarantee party shall perform for replacement.

14. *A guarantee for product quality assurance* means a commitment of the guarantee party with respect to the party receiving the guarantee in order to assure that the guaranteed party shall properly perform agreements on product quality as contract signed with the party receiving the guarantee. If the guaranteed party violates agreements on product quality and must compensate for the party receiving the guarantee, and it fails to perform or perform insufficiently the finance obligation, the guarantee party shall perform for replacement.

15. *A guarantee for repaying advance* means a commitment of the guarantee party with respect to the party receiving the guarantee in order to ensure for obligation of repaying the advance of the guaranteed party under contract signed with the party receiving the guarantee. If the guaranteed party must repay advance but not repay or repay insufficiently, the guarantee party shall perform for replacement.

16. *Other guarantee forms* mean types of guarantee that is not prohibited by law and in conformity with international common practices, granted by credit institutions, branches of foreign bank under request of the guaranteed party, apart from types of guarantee specified in clause 8, clause 9, clause 10, clause 11, clause 12, clause 13, clause 14 and clause 15 of this article.

#### **Article 4. Provisions on foreign current management in bank guarantee**

1. The guarantee granting in foreign currency of credit institutions, branches of foreign bank must suitable with scope of foreign currency business and service supplying in domestic and international market of credit institutions, branches of foreign bank.

2. The credit institutions, branches of foreign bank perform guarantee in foreign currency for organizations, individuals being resident with respect to the guarantee obligation arising from legal transaction in foreign currency.

**Article 5. Cases are not permitted to guarantee, restrained guarantee and implement limit of granting**

1. Cases in which credit institutions, branches of foreign bank are not permitted to guarantee: Implement according to Article 123 of the Law on credit institutions.

2. Cases restrained guarantee: Implement according to Article 127 of the Law on credit institutions.

3. When granting guarantee, credit institutions, branches of foreign bank must abide by provision on limit of granting credit in Article 128 of the Law on credit institutions.

**Article 6. Defining guarantee balance in implementation of provision on limit of granting credit**

1. The guarantee balance with respect to the guaranteed party and related persons means total balance of guarantee commitments granted as prescribed in clause 8, clause 9, clause 10, clause 11, clause 12, clause 13, clause 14, clause 15 and clause 16, Article 3 of this Circular and commitment granted under form of documentary credit by credit institutions, branches of foreign bank for the guaranteed party and related persons.

2. When defining guarantee balance to implement provision on limit of granting credit, credit institutions, branches of foreign bank may:

a) To exclude guarantee balance in the following cases:

- Granting guarantee for the guaranteed party being other credit institution or branch of foreign bank;

- Granting guarantee on the basis of the counter-guarantee of other credit institution or branch of foreign bank;
  - Granting guarantee on the basis of the stand-by credit letter granted by other credit institution or branch of foreign bank;
  - Granting the guarantee confirmation at the suggestion of guarantee party being other credit institution or branch of foreign bank, if related parties agree (in writing) that the party confirming the guarantee has right to keep account for debit entry and request the guarantee party to repay amount which the party confirming the guarantee has paid debt of the guaranteed party when must perform guarantee obligation.
- b) To exclude guarantee balance and balance of granting commitment under forms of documentary credit with security asset being deposit in Vietnam dong, foreign currency; gold; Government Bond of the guaranteed party and/or the third person.

The credit institutions, branches of foreign bank self-define the rate to deduct with respect to each type of security asset as prescribed in this point, on the basis of assessing capacity of withdrawal upon handling that security asset, but not exceeding the maximum rate of deduction with respect to security asset as prescribed by the State bank on classification of existing asset, the level and method of deduction for setting up risk provisions and use of risk provisions in operation of credit institutions, branch of foreign bank.

## **Article 7. Use of langue**

1. Documents relating to guarantee transaction are made in Vietnamese.
2. If need to use foreign language, the related parties may agree to use additional foreign language in documents relating to the guarantee transaction. In case of difference understanding between Vietnamese documents and foreign language documents, the

Vietnamese documents are legal ground.

## **Article 8. Application of practices and selection of dispute settlement**

1. The guarantee party, the guaranteed party and related parties are permitted to agree application of:

a) The international commercial practices promulgated by the International Chamber of Commerce

b) Other commercial practices not contrary to law of Vietnam.

2. Parties may agree law of application, foreign court or arbitrator in order to settle disputes arising with respect to the guarantee transaction as prescribed by law.

## **Chapter 2.**

## **SPECIFIC PROVISIONS**

### **Article 9. The scope of guarantee obligation**

The guarantee party may commitment guarantee for a part or whole of the following obligations of the guaranteed party, specifying:

1. Obligation of paying original debt, interest of loan and other expenditures relating to loan.

2. Obligation of payment for purchasing materials, goods, machines, equipment and expenditures of performing project or plan on investment, manufacture, business or life services.

3. Obligation of payment for tax, charge, other finance obligation for State.

4. Obligation upon participation in bidding.

5. Obligation of contract performance, assurance of product quality, receiving and repaying advance.

6. Other lawful obligation agreed by parties.

#### **Article 10. Conditions with respect to the guaranteed party**

1. Having sufficient civil legal capacity and civil act capacity as prescribed by law.

2. The guaranteed obligation and transaction arising it are legal.

3. Having capacity to perform properly and sufficiently the committed obligation with related parties in guarantee relation.

#### **Article 11. Guarantee for organization being non-resident person**

1. Cases are permitted to guarantee:

a) Credit institutions guarantee for the guaranteed party being enterprises established and operate in foreign country with contribution capital of Vietnamese enterprises under form of abroad direct investment in order to perform projects, plans on manufacture and business which is suitable with the legal operation scope of the guaranteed party;

b) The credit institutions, branches of foreign bank guarantee for organizations when:

- The party receiving the guarantee is resident person, or;
- The guaranteed person makes a deposit of 100% of guarantee value.

c) Other cases may perform only with acceptance in writing of the State bank.

## 2. Conditions with respect to the guarantee party

a) The credit institutions, branches of foreign bank must be licensed by the State bank to business in and supply foreign currency services in international and domestic market, including guarantee operation in foreign currency.

b) In time of 6 adjacent months preceding time of consideration of guarantee for organizations being non-resident person, credit institutions, branches of foreign bank are not be fined for administrative violation on foreign currency management, specified in Article 126, Article 127, Article 128 and Article 130 of Law on credit institutions.

c) Having internal regulation and risk administration in guarantee for non-resident persons;

- d) Having plan on control and handling risks in guarantee for non-resident persons;
- e) Not violating provision on report to the State bank on guarantee for non-resident persons.

**3. Conditions with respect to the guaranteed party**

- a) Being non-resident persons considered for guarantee as prescribed by this Circular;
- b) To abide by provisions in clause 2, clause 3, Article 10 of this Circular;
- c) The guarantee interests and duties of the guaranteed party not contrary to law of Vietnam.

4. Apart from provisions in clause 1, clause 2, clause 3 of this Article, other contents of guarantee for non-resident persons must comply with this Circular.

**Article 12. Dossier of guarantee proposal**

1. Based on actual condition of guarantee operation of credit institutions, branches of foreign bank, detailed characteristics of each client subject group, credit institutions, branches of foreign bank have specific guidance on requirement of types of dossier, documents which client need send to credit institutions, branches of foreign bank for consideration of guarantee.

2. The dossier of proposal for guarantee includes the following main documents:

- a) Application for guarantee;

b) Documents about the guaranteed party;

c) Documents about guaranteed obligation;

d) Documents about security assets (if any);

### **Article 13. Contract of guarantee granting**

1. To perform guarantee, the guarantee party, the guaranteed party and related parties (if any) must agree to sign a contract of guarantee granting.

2. The main contents of the guarantee granting contract as follows:

a) Legal provisions for application;

b) Information of parties in guarantee relation:

- The guarantee party;

- The guaranteed party;

- The party receiving the guarantee;

- Other related parties (if any).

c) Amount, currency of guarantee;

d) Purpose of guarantee;

dd) Form of issuing guarantee commitment;

e) Conditions for implementation of guarantee obligation;

g) Measures to ensure obligation of the guaranteed party, value of security assets (if any);

h) Rights and obligations of parties;

i) Guarantee charge;

k) Terms on exemption, reduction of guarantee amount (if any);

l) Transfer of rights and obligations of parties;

m) Commitment on receive of debt and paying for replacement, compulsory interest of receive of debt and repaying debt (in case of the guarantee party performing guarantee obligation);

n) Settlement of disputes arising;

o) Number, day of signing, effect of contract;

o) Other contents.

2. The amendment, supplement or cancel of content of guarantee granting contract shall be agreed by parties, and decided on the basis of assurance of compliance of current law on guarantee, security transactions and other related provisions.

#### **Article 14. Commitment on guarantee**

1. Based on content of agreement of parties in the guarantee granting contract, the guarantee party issues the commitment on guarantee for the party receiving the guarantee with the main content as follows:

a) Legal provisions for application;

b) Number, form of guarantee commitment;

c) Information of parties in guarantee relation:

- The party receiving the guarantee;

- The guarantee party;

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- The guaranteed party;

- Other related parties (if any).

d) Day of issuing guarantee, day beginning effect of guarantee and/or case beginning effect of guarantee;

dd) The expiry day and/or case of terminated guarantee;

e) Amount of guarantee and currency used for payment;

g) Purpose of guarantee;

h) Scope of guarantee obligation

i) Rights and obligations of parties (if any);

k) Provisions on transfer of rights and obligations of parties (if any);

l) Conditions for implementation of guarantee obligation;

m) Terms on exemption, reduction of guarantee amount (if any);

n) Provisions on settlement of disputes arising (if any);

o) Other contents.

2. Amendment, supplement or cancel of guarantee commitment content shall be agreed by related parties.

3. Credit institutions, branches of foreign bank base on contents of the guarantee granting contract, guarantee commitments specified in this Circular and relevant law to design, print and issue Form of guarantee commitment for guarantee operation in all their system according to their internal regulation. Design, printing, issuance and use of Form of guarantee commitment must be performed, managed and supervised regularly as well as valuable paper aiming to assure safety in issuance of guarantee commitment.

4. For guarantee commitments issued through international information and communication network among banks, apart from performing process of issuing guarantee commitments through international information and communication network among banks, the guarantee party must have a process to supervise, manage the guarantee issuance through this network in safe and effective manner.

#### **Article 15. Authority of signing guarantee granting contract, guarantee commitment**

1. The guarantee granting contract, guarantee commitment of the guarantee party must be signed by:

a) Legal representative;

b) The manager of guarantee-operational risk;

c) The appraiser of guarantee amount.

2. Credit institutions, branches of foreign bank provide authorization of signing the guarantee granting contracts, guarantee commitments with respect to legal representative, manager of guarantee-operational risk and appraiser of guarantee amount for titles in their system in writing or issuing document providing authority of signing guarantee documents in line with provisions in this Circular and law.

#### **Article 16. Assurance for obligation of the guaranteed party**

1. Credit institutions, branches of foreign bank and the guaranteed party shall agree on application of security measures or non-application of security measures.

2. Credit institutions, branches of foreign bank provide conditions, principles of application of each security measure and conditions, principles for cases of non-application of security measure in guarantee granting operation, in line with characteristics, management requirements with respect to each client object and their characteristics, situations, on the basis of compliance of law on guarantee and security transactions.

If not apply measures to secure by assets (guarantee of third person and/or pledge of trust and/or unsecured) for guarantee amount, the guarantee party must meet the minimum conditions as follows:

a) To meet sufficiently conditions specified in article 10 or clause 3, Article 11 of this Circular;

b) Being client in objects granted credit by credit institutions, branches of foreign bank without application of measure secured by assets;

c) At the time of requesting for guarantee granting, the guaranteed party not violating in relation of credit granting, payment at credit institution or branch of foreign bank.

3. If the guarantee party use asset of the third person in order to secure for guarantee, credit institutions, branches of foreign bank must specify conditions for secured assets and conditions for the third person under principle of safe and effective assurance.

4. The establishment of security measure for entire or part of obligation of guaranteed party with respect to the guarantee party shall be agreed by parties.

### **Article 17. Guarantee charge**

1. The guaranree party may agree guarantee charge with the guaranteed party. In case of counter-guarantee or guarantee confirmation, guarantee charge is agreed by parties on the basis of guarantee charge accepted by the guaranteed party.

2. In case of co-guarantee, parties shall agree, unify on the guarantee charge enjoyed by each party on the basis of agreement on rate of participation in co-guarantee and the charge collected from the guarantee party.

3. If credit institutions, branches of foreign bank guarantee for an associated obligation, they must agree with each client about payable charge on the basis of associated obligation corresponding to each client.

4. If the guarantee current is foreign currency, parties shall agree to collect guarantee charge by foreign currency or convert into Vietnam dong at selling exchange rates of the guarantee party at time of collecting charge.

5. In time limit of guarantee, parties may agree to adjust charge.

### **Article 18. Guarantee time limit**

1. The guarantee time limit is defined from the guarantee-issuing day or when such guarantee takes effect under agreement of the guarantee with related parties until expiry time of guarantee indicated in the guarantee commitment. If the guarantee commitment does not indicate specific expiry time of guarantee, the expiry time of guarantee shall be defined at expiry time of guarantee obligation as prescribed in Article 21 of this Circular.

2. If the expiry day coincides with non-working days, holidays, the expiry day shall be transferred for the next working day.

3. Extension of guarantee may be agreed by parties.

#### **Article 19. Exemption of performance of guarantee obligation**

1. If the party receiving the guarantee exempted performance of obligation for the guarantee party, the guaranteed party and/or related party still must perform obligation which they have committed with the party receiving the guarantee, unless parties otherwise agree or performing the associated obligation as prescribed by law.

2. If one of members in co-guarantee is exempted from performance of part of guaranteed obligation which is obligation of such member, the other members still must perform their guarantee obligation under the guarantee commitment.

#### **Article 20. Performance of guarantee obligation**

1. Within guarantee time limit, the guarantee party or the party confirming the guarantee shall perform guarantee obligation when the party receiving the guarantee presents a request for performance of guarantee obligation and legal and valid dossiers, documents, enclosed vouchers (if any) which satisfying sufficient conditions prescribed in guarantee commitment or guarantee-confirming commitment. Not later than 05 (five) working days after the party receiving the guarantee has presented sufficiently the dossier requesting for performance of guarantee obligation, the guarantee party, the party confirming the guarantee shall sufficiently and properly perform the guarantee obligation with respect to the party receiving the guarantee. If refuse

performance of guarantee obligation, the guarantee party, party confirming the guarantee must answer in writing which clearly state the reason therefore.

2. Right after performing guarantee obligation, the guarantee party or the party confirming the guarantee shall, based on the commitment of receiving and paying another's debt in contract of guarantee granting or commitment of parties, documents and vouchers proving performance of guarantee obligation, keep account for debit entry into compulsory loan account for amount paid for debt of the guaranteed party or the counter-guarantee party or guarantee party in the guarantee confirmation and send notification in writing on payment of another's debt to parties relating to the guarantee amount.

3. The parties being paid their debts shall have obligation to repay immediately amount which the guarantee party, the party confirming the guarantee have paid for their debts. If have not yet repaid the paid amount, based on the contract of guarantee granting or commitment of parties, the guarantee party or the party confirming the guarantee shall decide time limit of compulsory loan, term of paying debt, lending interest rates applied to the paid amount for the guaranteed party or the counter-guarantee party or the guarantee party in the guarantee confirmation. The lending interest rates applied maximally not exceeding 150% of normal lending interest rates applying to loans with a similar term. Time to define time limit of lending with respect to loans since the day when the guarantee party, the party confirming the guarantee perform payment for another's debt.

4. In case of perform payment for another's debt in foreign currency, after having performed provisions in clause 1, clause 2 and clause 3 of this Article, credit institutions, branches of foreign bank shall keep account for debit entry of compulsory loan as follows:

a) Keep account for debit entry in foreign currency as guarantee commitment, or

b) Keep account for debit entry in Vietnam dong corresponding to value of foreign currency which credit institutions, branches of foreign bank have paid for another's debt at the selling exchange rates of the guarantee party published at time of payment on the basis of their capacity of balancing foreign currency.

## **Article 21. The termination of guarantee obligation**

The guarantee obligation is terminated in the following cases:

1. The obligation of the guaranteed party is terminated.
2. The guarantee party performed the guaranteed obligation according to the guarantee commitment.
3. The guarantee is canceled or replaced by other security measures.
4. The effect of guarantee commitment is ended.
5. The party receiving the guarantee exempts performance of the guaranteed obligation for the guarantee party.
6. The guarantee obligation is terminated in other cases as prescribed by law.
7. Under agreement of parties.

## **Article 22. Co-guarantee**

1. Principles, conditions, process of organization of performance of co-guarantee comply with this Circular, regulation of the State bank on granting the co-capital credit of credit institutions, branches of foreign bank for clients and relevant laws.

2. The parties participating in the co-guarantee may perform co-guarantee for organizations, individuals being resident persons and organizations being non-resident persons. In case of co-guarantee for organizations being non-resident persons, the parties must comply with provisions on Article 11 of this Circular.

3. The parties participating in the co-guarantee shall together have associated responsibility for performance of guarantee obligation, unless otherwise agreed. If credit institutions, branches of foreign bank guarantee being focal point must perform guarantee obligation for the third party to replace for the guaranteed party, the participated parties shall repay immediately for credit institutions, branches of foreign bank guarantee being focal point amount corresponding to rate of participation in the co-guarantee which have been agreed by parties.

4. When performing co-guarantee for organizations being non-resident persons, credit institutions or branches of foreign bank shall make report according to Form No.01 and Form No.02 under rates of guarantee and rates of paying debt of organizations being non-resident persons.

### **Article 23. The guarantee for an associated obligation**

Credit institutions, branches of foreign bank guaranteeing for an associated obligation must perform on the basis of association contract on rights and obligations of parties.

### **Article 24. The internal regulation of credit institutions, branches of foreign bank regarding guarantee**

1. Based on this Circular and relevant laws, credit institutions, branches of foreign bank promulgate the internal regulations on guarantee operation applying to organizations, individuals being resident persons and organizations being non-resident person.

2. Credit institutions, branches of foreign bank send 01 (one) copy of the internal regulation on guarantee operation to Credit Department right after promulgating or amending and supplementing.

## **Article 25. Rights of the guarantee party**

1. To accept or refuse request for guarantee granting of the guaranteed party or of the counter-guarantee party.
2. To suggest the party confirming guarantee to confirm guarantee with respect its guarantee amount for the guaranteed party.
3. To require the guaranteed party, the counter-guarantee party and related parties to supply documents, information relating to the appraisal of guarantee and security assets (if any).
4. To require the guaranteed party to have security measures for obligation guaranteed by credit institutions or branches of foreign bank (if necessary).
5. To collect guarantee charge, adjust guarantee charge; apply, adjust interest rates, interest rates of sanction as agreement.
6. To refuse performance of guarantee obligation when the guarantee commitment is expired or dossier requesting for guarantee payment fails to meet conditions specified in the guarantee commitment, or having evidences to prove that the presented documents are fake.
7. To keep account for debit entry for the guaranteed party or the counter-guarantee party right after performing guarantee obligation, request the guaranteed party or the counter-guarantee party for repaying immediately in day amount which the guarantee party has paid under commitment.
8. To request other members of co-guarantee for repaying immediately in day amount which having paid for the guaranteed party if member being focal point performed guarantee

obligation in co-guarantee.

9. Handling security assets under agreement and laws.

10. To transfer its rights and obligations for other credit institutions or branches of foreign bank under agreement of related parties and acceptance of the State bank with respect to each specific case.

11. To sue as prescribed by law when the guaranteed party, the counter-guarantee party violate the committed obligations.

12. Other rights under agreement of parties in line with laws.

#### **Article 26. Rights of the counter-guarantee party**

1. To accept or refuse the request for issuing counter-guarantee of clients.

2. To request the guarantee party for issuing guarantee for obligation of its clients with respect to the party receiving the guarantee.

3. To request clients for supply of documents, information relating to the appraisal of counter-guarantee and security assets (if any).

4. To request clients for security measures for obligation counter-guaranteed by credit institutions or branches of foreign bank (if necessary).

5. To collect guarantee charge under agreement.

6. To refuse performance of counter-guarantee obligation when the guarantee commitment is expired or dossier requesting for payment fails to meet conditions specified in the guarantee commitment, or having evidences to prove that the presented documents are fake.

7. To keep account for debit entry for the guaranteed party right after performing counter-guarantee obligation, request the guaranteed party for repaying immediately in day amount which the counter-guarantee party has performed counter-guarantee obligation for the guarantee party under commitment.

8. To handle security assets of the guaranteed party under agreement and laws.

9. To sue as prescribed by law when the guaranteed party, the guarantee party violate the committed obligations.

10. To transfer its rights and obligations for other credit institutions or branches of foreign bank under agreement of related parties and acceptance of the State bank with respect to each specific case.

11. Other rights under agreement of parties in line with laws.

#### **Article 27. Rights of the party confirming the guarantee**

1. To agree or refuse request for confirming guarantee of the guarantee party or clients.

2. To request clients or the guarantee party for supply of documents, information relating to the appraisal of guarantee and security assets (if any).

3. To request clients or the guarantee party for security measures for obligation confirmed guarantee by the guarantee party (if any).
4. To agree with the guarantee party and/or clients on obligation of confirming guarantee, collection of charge of confirming guarantee and order of, procedures for repaying obligation confirmed guarantee which the party confirming guarantee has performed for the party receiving the guarantee.
5. To keep account for debit entry for the guarantee party or the guaranteed party right after performing obligation confirming guarantee, request the guarantee party or the guaranteed party for repaying immediately in day amount which the party confirming the guarantee has paid for them under commitment.
6. To handle security assets of the guarantee party or the guaranteed party under agreement and laws.
7. To sue as prescribed by law when the guaranteed party, the guarantee party violate the committed obligations.
8. To transfer its rights and obligations for other credit institutions or branches of foreign bank under agreement of related parties and acceptance of the State bank with respect to each specific case.
9. To refuse performance of guarantee obligation when the guarantee commitment is expired or dossier requesting for payment fails to meet conditions specified in the guarantee commitment, or having evidences to prove that the presented documents are fake.
10. Other rights under agreement of parties in line with laws.

**Article 28. Obligations of the guarantee party, counter-guarantee party and party confirming the guarantee**

1. To have responsibilities to supply sufficiently information, documents relating to authority of issuing guarantee commitment, performing guarantee obligation of the guarantee party for the guaranteed party, the party receiving the guarantee and relevant parties (if any) when be required.
2. To inspect, supervise compliance of guarantee commitments of guaranteed parties in effective time limit of guarantee amount.
3. To perform sufficiently and properly guarantee obligation right after the party receiving the guarantee fully presents legal and valid dossier, documents, vouchers as prescribed in guarantee commitment and commitment on confirming guarantee for performance of guarantee obligation of the guarantee party and the party confirming the guarantee.
4. The counter-guarantee party in counter-guarantee or the guarantee party in guarantee confirmation shall repay immediately in day amount which the guarantee party in counter-guarantee or the party confirming the guarantee have paid for the guaranteed party.
5. To fully repay the security assets (if any) and relevant documents for the guaranteed party when liquidate contract of guarantee granting.
6. To have a written to answer complaints of clients about reason of refusal of performance of guarantee within 10 (ten) working days after receiving a complaint written of client.
7. To keep the guarantee dossiers as prescribed by law.
8. Other obligations under agreement of parties in line with laws.

## **Article 29. Rights and obligations of the guaranteed party**

### **1. The guaranteed party has the following rights:**

- a) To refuse requirements of the guarantee party, the counter-guarantee party, the party confirming the guarantee which is inconsistent with agreements in contract of guarantee granting or guarantee commitment;
- b) To request the guarantee party, counter-guarantee party and party confirming the guarantee for proper performance of obligations, duties as commitment.
- c) To sue as prescribed by law when the guarantee party, the counter-guarantee party, the party confirming the guarantee violate the committed obligations;
- d) To perform its rights and obligations as prescribed by law when the related parties transfer the guarantee rights and obligations of parties with respect to guarantee amount.

### **2. The guaranteed party has the following obligations:**

- a) To supply fully, exactly and honestly information, documents relating to guarantee amount and take responsibility before law for accuracy, honesty, sufficiency of information, documents have been supplied;
- b) In full manner and due course, to perform obligations, duties committed and agreements specified in contract of guarantee granting;

c) To repay immediately in day for the party repaid for the guarantee party, the confirming party and the counter-guarantee party amounts which the guarantee party, the confirming party and the counter-guarantee party have performed obligation as the contract of guarantee granting or commitment of parties and expenditures arising from performance of guarantee obligation;

d) To be inspected, supervised on duties, obligations of performance of guarantee by the guarantee party, the counter-guarantee party, the party confirming the guarantee. To have obligation to repost operation relating to guarantee transaction to the guarantee party, the counter-guarantee party, the party confirming the guarantee;

dd) Voluntarily and without condition to coordinate with the guarantee party, the counter-guarantee party, the party confirming the guarantee and related parties in the course of handling the security assets (if happening);

e) Other obligations under agreement of parties in line with laws.

### **Article 30. Rights and obligations of the party receiving the guarantee**

#### **1. Rights of the party receiving the guarantee**

a) To request the guarantee party and party confirming the guarantee for proper performance of obligations, duties as guarantee commitment;

b) To sue as prescribed by law when the guarantee party, the party confirming the guarantee violate the committed obligations;

c) To inspect legality and validity of guarantee commitment.

**2. Obligations of the party receiving the guarantee**

a) To perform properly and fully obligations in contracts relating to the guarantee obligation, in assurance of conformity with content of guarantee commitment;

b) To notify timely for the guarantee party, the party confirming the guarantee and related parties about the indications of violation, acts of violation of the guaranteed party.

**Chapter 3.**

**REPORT, ORGANIZATION OF IMPLEMENTATION**

**Article 31. Accounting, information for report**

1. Credit institutions, branches of foreign bank must perform accounting, monitoring all guarantees arising as prescribed.

2. Credit institutions, branches of foreign bank report situation of guarantee performance according to provisions on mechanism of statistics and report of the State bank and as prescribed in this Circular.

3. Credit institutions or branches of foreign bank report on guarantees for organizations being non-resident persons according to the Form No.01, No.02 within 02 (two) working days after issuing the guarantee commitment, report on amounts paid for debts of organizations being non-resident person according to Form No.02 within 01 (one) working day after repaying debt and keep account for debit entry for organizations being non-resident persons.

4. Credit institutions or branches of foreign bank continuously report amounts paid debt of

organizations being non-resident person in according to the report mechanism on lending and collecting foreign debts as prescribed by law on foreign currency management with respect to their lending and collecting foreign debts if after 01 (one) month, from the day of paying debt and keeping account for debit entry, the organizations being non-resident persons fail to pay all debts for credit institutions or branches of foreign bank.

5. To sum up, report figures of guarantee with respect to organizations being non-resident persons and send it to the State bank (the Credit Department) according to the Form No.03.

### **Article 32. Organization of implementation**

1. The responsibility of the Credit Department:

a) To be focal point to receive internal documents providing on guarantee operation of credit institutions, branches of foreign bank as prescribed in article 24 of this Circular; to monitor, sum up performance of guarantee of credit institutions, branches of foreign bank.

b) To be focal point to handle problems relating to guarantee operation;

c) To be focal point to monitor, handle cases specified in point e, clause 2, Article 11, clause 10, Article 25, clause 10 Article 26, clause 8 Article 27 of this Circular.

2. The responsibility of agencies inspecting and supervising banks

a) To assume the prime responsibility for, and coordinate with related units to examine, inspect, supervise the guarantee operation of credit institutions, branches of foreign bank and handle violations within their authority;

b) To supply for the Credit Department information on compliance of provisions on ensuring security in operation of credit institutions, branches of foreign bank relating to bank guarantee operation, credit institutions, branches of foreign bank being handled for their violations in guarantee operation.

### **3. The responsibility of the Finance – Accounting Department**

To guide book keeping operation of transactions relating to guarantee operation of credit institutions, branches of foreign bank as prescribed in this Circular.

### **4. The responsibilities of the foreign currency Management Department**

To monitor, manager capital flows relating to credit institutions or branches of foreign bank paying debt of the guaranteed party being organizations being non-resident person and amounts of collection of debts from these debt payment.

### **5. The responsibilities of the State bank's branches in central-affiliated cities and provinces**

To monitor, examine, inspect credit institutions, branches of foreign bank in compliance of this Circular under their functions and duties; report to the Governor of the State bank about cases of violation and handling violations under their authority.

## **Chapter 4.**

## **IMPLEMENTATION PROVISIONS**

### **Article 33. Transitional Provisions**

The guarantee commitments signed before the effective day of this Circular shall be continuously performed under agreements signed until the guarantee obligation ended. The amendment and supplement of commitments being mentioned above may be performed if content of amendment and supplement in line with this Circular .

#### **Article 34. Effect**

1. This Circular takes effect on December 02, 2012, replaces for the Decision No.26/2006/QĐ-NHNN, of June 26, 2006 of the State bank on promulgating Regulation on bank guarantee.

2. The Chief of office, director of Credit Department, heads of related units under the State bank, directors of the State bank's branches in central-affiliated cities and provinces, presidents of Board of Directors, Members' Council and directors general (directors) of credit institutions, branches of foreign bank and organizations, individuals relating to guarantee operation shall implement this Circular.

**FOR THE GOVERNOR  
DEPUTY GOVERNOR**

**Nguyen Dong Tien**

