

**THE STATE BANK OF
VIETNAM**

No.: 11/2022/TT-NHNN

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

Hanoi, September 30, 2022

CIRCULAR

PRESCRIBING BANK GUARANTEE

Pursuant to the Civil Code dated November 24, 2015;

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

Pursuant to the Law on Credit Institutions dated June 16, 2010 and the Law dated November 20, 2017 on amendments to the Law on Credit Institutions;

Pursuant to the Law on Real Estate Business dated November 25, 2014;

Pursuant to the Ordinance on Foreign Exchange dated December 13, 2005 and the Ordinance on amendments to the Ordinance on Foreign Exchange dated March 18, 2013;

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

At the request of the Director of the Credit Department for Economic Sectors;

The Governor of the State Bank of Vietnam promulgates a Circular prescribing the bank guarantee.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Circular provides regulations on the bank guarantee operations performed by credit institutions or foreign bank branches with their customers.

Article 2. Regulated entities

1. Credit institutions, including: commercial banks, cooperative banks and finance companies (except specialized finance companies).

2. Foreign bank branches (FBBs).
3. Organizations and individuals engaged in guarantee transactions, including those are residents and non-residents.

Article 3. Definitions

For the purposes of this Circular, the terms below shall be construed as follows:

1. “*bank guarantee*” means a form of credit extension whereby the guarantor that is a credit institution or FBB undertakes to act on behalf of the obligor to fulfill their financial obligations to the obligee in the event the obligor fails to fulfill or insufficiently fulfills their obligations as agreed upon with the obligee; the obligor shall have the obligation to repay the debt to the guarantor.
2. “*counter guarantee*” means a type of bank guarantee under which the counter-guarantor undertakes to fulfill financial obligations to the guarantor in the event that the guarantor is obliged to fulfill financial obligations on behalf of the obligor; the obligor shall have the obligation to repay the debt to the counter-guarantor under the signed agreement.
3. “*guarantee confirmation*” means a type of bank guarantee under which the confirmation giver undertakes to ensure the guarantor’s capacity to fulfill their obligations to the obligee. The guarantee-confirmation giver shall fulfill financial obligations on behalf of the guarantor in the event that the guarantor fails to fulfill or insufficiently fulfills their obligations to the obligee; the guarantor shall have the obligation to repay the debt to the guarantee-confirmation giver. Meanwhile, the obligor shall have the obligation to repay the debt to the guarantor under the signed agreement.
4. “*guarantee for sale or lease-purchase of off-plan housing*” (hereinafter referred to as “off-plan housing guarantee”) means a type of bank guarantee whereby the guarantor that is a commercial bank undertakes to act on behalf of the obligor that is the investor to fulfill their financial obligations to the obligee that is the buyer or the tenant-buyer (hereinafter referred to as the buyer) in the event the investor fails to transfer the house to the buyer on the agreed-upon schedule and fails to fulfill or insufficiently fulfills their financial obligations under the signed purchase contract or lease-purchase contract; the investor shall have the obligation to repay the debt to the guarantor under the signed agreement. In case the commercial bank enters into a counter-guarantee, the counter-guarantor shall fulfill financial obligations to the commercial bank when it is obliged to fulfill financial obligations on behalf of the investor; the investor shall have the obligation to repay the debt to the counter-guarantor under the signed agreement.
5. “*co-guarantee*” means a loan syndication under which 02 (two) or more credit institutions/FBBs work together to provide the guarantee; or a credit institution/FBB and a foreign credit institution work together to provide the guarantee.

6. “*guarantor*” means a credit institution or FBB that provides the guarantee for the obligor. In case of co-guarantee, counter-guarantee and guarantee confirmation, the guarantor shall also include foreign credit institutions.
7. “*obligor*” means an organization (including credit institution, FBB and foreign credit institution) or individual whose obligations are guaranteed by the guarantor or counter-guarantor.
8. “*obligee*” means an organization (including credit institution, FBB and foreign credit institution) or individual that is the beneficiary of the guarantee issued by the guarantor or guarantee confirmation giver.
9. “*counter-guarantor*” means a credit institution, FBB or foreign credit institution that provides the counter-guarantee for the obligor.
10. “*guarantee-confirmation giver*” means a credit institution, FBB or foreign credit institution that gives a guarantee confirmation to the guarantor.
11. “*customer*” means an organization (including credit institutions, FBBs and foreign credit institutions) or individual defined as follows:
 - a) Under the bank guarantee (except counter-guarantee and guarantee confirmation), customer of the guarantor is the obligor;
 - b) Under the counter-guarantee, customer of the guarantor is the counter-guarantor, and customer of the counter-guarantor will be the obligor;
 - c) Under the guarantee confirmation, customer of the guarantor is the obligor, and customer of the guarantee-confirmation giver is the guarantor.
12. “*guarantee issuance agreement*” means a written agreement made between the guarantor or the counter-guarantor or the guarantee-confirmation giver and their customer as well as other related parties (if any) to issue the bank guarantee, counter guarantee or guarantee confirmation to the customer.
13. “*contract for off-plan housing guarantee*” means a guarantee issuance agreement made between a commercial bank and an investor as well as other related parties (if any) to state that the commercial bank agrees to act as the guarantor of the investor during the investor’s selling or lease purchase of off-plan housing.
14. “*guarantee commitment*” means a commitment issued by the guarantor or counter-guarantor or guarantee-confirmation giver in one of the following forms:
 - a) “*letter of guarantee*” means a written commitment between the guarantor and the obligee to the guarantor’s fulfillment of financial obligations on behalf of the obligor in

the event the obligor fails to fulfill or insufficiently fulfills their obligations as agreed upon with the obligee.

Under the counter guarantee or guarantee confirmation, the letter of guarantee shall include the written commitment of the counter-guarantor to the guarantee, or of the guarantee-confirmation giver to the obligee;

b) “*guarantee contract*” means a written agreement made between the guarantor and the obligee as well as other related parties (if any) to ensure that the guarantor shall fulfill financial obligations on behalf of the obligor in the event the obligor fails to fulfill or insufficiently fulfills their obligations as agreed upon with the obligee.

Under the counter guarantee or guarantee confirmation, the guarantee contract shall include the written agreement between the counter-guarantor and the guarantor as well as other related parties (if any), or between the guarantee-confirmation giver and the obligee as well as other related parties (if any).

The off-plan housing guarantee shall be only issued in the form of letter of guarantee.

15. “*investor's financial obligation*” means the sum of advanced payment made by the buyer to the investor from the effective date of the letter of guarantee and any other amounts paid as agreed upon in the signed purchase contract or lease-purchase contract that the investor is required to repay the buyer if the investor fails to transfer the house on the agreed-upon schedule.

Article 4. Foreign exchange management in guarantee transactions

1. Issuance of guarantees in foreign currency by a credit institution or FBB must be relevant to the scope of foreign exchange operations on the domestic and international markets specified in operating license of that credit institution or FBB.
2. Credit institutions and FBBs shall only be allowed to issue guarantees in foreign currency to their customs in respect of lawful financial obligations in foreign currency as prescribed by law.

Article 5. Cases in which guarantee is not given, restricted and credit limit is determined

When issuing guarantees, credit institutions and FBBs must comply with regulations of the Law on Credit Institutions and guidelines given by the State Bank of Vietnam (hereinafter referred to as “SBV”) on cases in which credit extension is not made, restricted and credit limits are determined.

Article 6. Determination of guarantee balance

1. The balance of guarantee given to a customer or a customer and related persons is the balance arising from the issuance of guarantee commitment, counter guarantee commitment and guarantee-confirmation commitment to that customer or that customer and related persons.
2. The balance of guarantee given to a customer or a customer and related persons is determined from the issue date of the guarantee commitment.
3. The balance of off-plan housing guarantee shall be determined according to the provisions of Clause 8 Article 13 of this Circular.

Article 7. Language use

1. Guarantee issuance agreement and guarantee commitment must be written in Vietnamese, except the cases in Clause 2 of this Article.
2. Credit institutions/FBBs are allowed to reach agreement with relevant parties on use of foreign language in the following cases:
 - a) Guarantee transaction is considered a civil relation involving foreign elements as defined in the Civil Code;
 - b) Guaranteed obligations arise from the execution of projects funded by international finance organizations. The list of international finance organizations is enclosed with the SBV's regulations on prudential limits and ratios for operations of credit institutions and FBBs;
 - c) Guaranteed obligations arise from performance of international contract packages.
3. If documents or messages in foreign language are translated into Vietnamese at the request of competent authorities, the translations must be certified by the legal representative of the credit institution or FBB or lawfully notarized or certified and accompanied by their original documents in foreign language.

Article 8. Applied practices and dispute settlement

1. Parties involved in a bank guarantee, counter guarantee, guarantee confirmation, or co-guarantee, shall be allowed to reach agreement on application of commercial practices in accordance with the provisions of Clause 4 Article 3 of the Law on Credit Institutions.
2. All disputes arising from a guarantee transaction shall be settled under agreement between the parties in accordance with regulations of law. If a guarantee involves foreign elements, the parties may reach agreement on applicable laws and dispute-settling authority (including foreign commercial arbitration or court) to settle any disputes concerning the guarantee transaction.

Article 9. Electronic guarantee

1. Credit institutions, FBBs and customers shall be allowed to conduct bank guarantee transactions using electronic means (hereinafter referred to as “e-guarantee”).

When issuing e-guarantee, security, safety and protection of messages as well as confidentiality of information must be ensured in accordance with regulations of law on anti-money laundering, electronic transactions, SBV’s guidelines on management of risks associated with e-banking operations and other relevant legislative documents.

2. Each credit institutions or FBB shall decide methods, forms and technologies employed to provide e-guarantee in respect of the entire or each stage of the guarantee process, incur all risks and meet the following requirements:

a) It has adopted solutions and technologies for ensuring the accuracy, confidentiality and safety during the collection, use and verification of information and data;

b) It has adopted measures for examining, checking, updating and verifying information and data; measures for preventing acts of forging, intervening and falsifying information and data;

c) It has adopted measures for risk assessment, management and control; it has assigned responsibilities to each division and each individual involved in the provision of e-guarantee and risk management and supervision.

3. If customer identification and verification are made electronically when the customer establishes the relationship with the credit institution or FBB (except the cases specified in Points b and d Clause 4 of this Article) for the first time, the credit institution or FBB shall be required to adopt solutions and technologies for collecting, examining and checking information, and meet the following requirements:

a) In case the customer is an individual: the customer’s identity and biometric data (including biological factor/characteristics that are specifically used to identify a person, cannot be forged, and are rarely matched with those of another person such as fingerprints, face, iris, voice and other biometric factors) must match corresponding information and biometric data on documents necessary to identify the customer in accordance with regulations of law on anti-money laundering and as requested by the credit institution or FBB, or personal identity data certified by competent authorities or electronic certification service providers in accordance with regulations of law on electronic certification and identification;

b) In case the customer is an organization:

(i) Information about the organization: Information used for identifying the organization as defined in the law on anti-money laundering and the organization’s legal status (lawfully established and operating as prescribed by law) must match the

information/data on the National Enterprise Registration Database or the information/data certified by competent authorities or electronic certification service providers in accordance with regulations of law on electronic certification and identification;

(ii) Information about legal representative of the organization: Information about the individual conducting the transaction shall be identified and verified in accordance with regulations on identification and verification of individual customers laid down in Point a of this Clause to ensure that it matches the information about the legal representative or authorized representative of the organization provided in the enterprise registration certificate and the power of attorney (in case of authorized representative).

4. In case customer identification and verification are made electronically, the value of each guarantee commitment issued to an individual shall not exceed VND 4.000.000.000 (four billion), and the value of each guarantee commitment issued to an organization shall not exceed VND 45.000.000.000 (forty five), except the following cases:

a) Customer identification information is certified by competent authorities or electronically certified by electronic certification service providers in accordance with regulations of law on electronic certification and identification;

b) The customer sends a request for issuance of e-guarantee through SWIFT system;

c) Customer information and guaranteed obligations are verified and certified to be true through the customs e-payment portal or the national bidding system;

d) The customer uses digital signature as prescribed by law when applying for guarantee or entering into the guarantee issuance agreement with the credit institution or FBB;

dd) The customer is a credit institution or FBB.

5. The information system used for issuing e-guarantee must comply with regulations on security of information systems of class 3 or higher laid down in the Government's regulations on security of information systems by classification and SBV's regulations on safety of information systems in banking operations.

6. Credit institutions and FBBs shall keep and retain information and documents on e-guarantee in accordance with regulations of law, ensure safety and confidentiality of such information and documents which must be also backed up to ensure their adequacy and integrity so as to facilitate access or use, where necessary, or to serve the inspection, settlement of trace requests, complaints and disputes, and to be provided at the request of competent authorities.

Chapter II

SPECIFIC PROVISIONS

Article 10. Scope of guarantee

The guarantor can give guarantee to fulfill partial or entire financial obligations to the obligee in favor of the obligor.

Article 11. Requirements to be satisfied by customers

1. Credit institutions and FBBs shall consider and decide issuance of the guarantee, counter guarantee or guarantee confirmation to customers as long as customers meet the following requirements:

- a) The customer has the full legal personality and legal capacity in accordance with regulations of law;
- b) The guaranteed financial obligations must be lawful;
- c) The customer has been assessed by the credit institution or FBB issuing the guarantee to be capable of repaying sums that the credit institution or FBB has paid to fulfill the guaranteed obligations in favor of them.

2. Credit institutions and FBBs shall not issue guarantee to fulfill payment obligations for bonds issued for the purposes of restructuring of the issuer's debts, contribution of capital to or purchase of shares of another enterprise, or increase of working capital.

Article 12. Guarantee issued to customers that are non-residents

1. Credit institutions and FBBs may only provide guarantee for organizations that are non-residents and must meet one of the following requirements (the customer that is a foreign credit institution shall not be required to meet these requirements):

a) The customer is an enterprise that is established and operating in a foreign country with capital contributed from Vietnamese enterprises in the form of investments prescribed in Points a, c Clause 1 Article 52 of the Investment Law or in other investment form prescribed in Point dd Clause 1 Article 52 of the Investment Law;

b) The customer has fully made a deposit equivalent to 100% of the guarantee value or has ensured 100% of the guarantee value by the customer's assets, including the customer's deposits at the credit institution or FBB issuing the guarantee, and deposit certificates issued by the same;

c) The obligee is a resident.

2. FBBs shall not be allowed to provide guarantee in foreign currency for organizations that are non-residents, unless the guarantee is provided on the basis of the counter guarantee of a foreign credit institution or guarantee confirmation in respect of guaranteed obligations of a foreign credit institution to the obligee that is a resident.

3. When giving guarantee in foreign currency to customers that are non-residents, credit institutions and FBBs shall:

a) comply with regulations of law regarding guidelines for foreign exchange management in overseas lending and collection of debts from provision of guarantee to non-residents;

b) has established procedures for credit risk assessment and management, including risks from provision of guarantee to non-residents.

4. In addition to the provisions of this Article, other contents about the provision of guarantee for customers that are non-residents shall comply with relevant provisions of this Circular.

Article 13. Off-plan housing guarantee

1. A commercial bank is considered to be capable of giving off-plan housing guarantee if:

a) Its license for establishment and operation, or the document stating amendments to this license includes bank guarantee operations;

b) It is not prohibited, restricted, or suspended from provision of off-plan housing guarantee.

2. The SBV shall publish the list of commercial banks capable of giving off-plan housing guarantee in each period on its web portal.

3. The commercial bank shall consider giving guarantee to the investor if:

a) The investor has satisfied all of requirements in Article 11 of this Circular (except the cases where a commercial bank issues guarantee for the investor on the basis of a counter guarantee);

b) The investor's project has satisfied all of requirements for off-plan property to be put on the market as prescribed in Article 55 of the Law on Real Estate Business and relevant laws.

4. Procedures for issuing off-plan housing guarantee:

a) Based on the request of the investor or the counter-guarantor, the commercial bank shall consider, appraise and decide to issue guarantee to the investor;

b) The commercial bank and the investor shall conclude a contract for off-plan housing guarantee in accordance with the provisions of Article 56 of the Law on Real Estate Business and Clause 13 Article 3, Article 15 of this Circular;

c) The investor shall send the signed purchase contract or lease-purchase contract in which the investor's financial obligations are specified to the commercial bank and request it to issue the letter of guarantee to the buyer;

d) The commercial bank shall, based on the received purchase contract or lease-purchase contract and the contract for off-plan housing guarantee, issue the letter of guarantee and send it to each buyer or to the investor that shall then provide it for the buyer as agreed.

5. Validity and contents of a contract for off-plan housing guarantee:

a) The contract for off-plan housing guarantee becomes effective from the day on which it is signed until all letters of guarantee given to the buyer cease to have effect as prescribed in Article 23 of this Circular and the investor has fulfilled all obligations to the commercial bank under the contract for off-plan housing guarantee;

b) In addition to the contents specified in Clause 2 Article 15 of this Circular (excluding the contents in Points h and i which are applied in case the guarantee is issued on the basis of a counter guarantee), the contract for off-plan housing guarantee shall also include the following contents:

(i) The commercial bank is obliged to issue the letter of guarantee to the buyer upon receipt of the purchase contract or lease-purchase contract from the investor before the agreed-upon house transfer date specified in the purchase contract or lease-purchase contract;

(ii) The commercial bank and the investor shall reach a specific agreement on the responsibility to send the letter of guarantee to the buyer after it is issued by the commercial bank;

(iii) The investor's financial obligations;

(iv) Documents submitted to request the commercial bank to fulfill guarantee obligations must be accompanied by the letter of guarantee issued by the commercial bank to the buyer.

6. Validity and contents of a letter of guarantee:

a) A letter of guarantee becomes effective from its date of issue until at least 30 days after the date of the house being transferred to the buyer as agreed upon in the purchase contract or lease-purchase contract, unless guarantee obligations are terminated as prescribed in Article 23 of this Circular. In case the commercial bank and the investor have agreed to terminate the contract for off-plan housing guarantee before its expiry date, the letters of guarantee issued to the buyer shall still remain valid until guarantee obligations are terminated;

b) In addition to the contents specified in Clause 1 Article 16 of this Circular, the letter of guarantee must also indicate the investor's financial obligations which are guaranteed by the commercial bank.

7. The maximum guarantee sum for an off-plan housing project shall not exceed the sum of amounts which the investor is allowed to receive in advance from the buyer in accordance with regulations in Article 57 of the Law on Real Estate Business and any other amounts paid under the purchase contract or lease-purchase contract.

8. Balance of off-plan housing guarantee:

a) The balance of guarantee for the investor or the counter-guarantor is the sum equivalent to the investor's financial obligation. The balance of guarantee decreases gradually when the guarantee obligations to the buyer are terminated as prescribed in Article 23 of this Circular;

b) The balance of guarantee shall be determined at the time when the investor informs the commercial bank of total amount which the investor has received from buyers from the effective date of the letter of guarantee as prescribed in Point c of this Clause;

c) The commercial bank and the investor shall reach an agreement on time of announcing and updating total amount of payments received from buyers from the effective date of the letter of guarantee in the month provided that it shall not be later than the last working day of the month for use as the basis for determination of guarantee balance. The investor shall assume legal responsibility to inform the commercial bank of the accurate amount and time of receipt of payments from buyers.

9. The commercial bank shall have the following rights and obligations:

a) The commercial bank is entitled to:

(i) refuse to issue the letter of guarantee to the buyer if the purchase contract or lease-purchase contract is not conformable with regulations of law or after the contract for off-plan housing guarantee signed with the investor has been terminated;

(ii) refuse to fulfill guarantee obligations in respect of any sums which are not included in the investor's financial obligation or amounts paid by the buyer in excess of the ratio specified in Article 57 of the Law on Real Estate Business or when the buyer fails to present the letter of guarantee issued by the commercial bank.

b) The commercial bank is obliged to:

(i) issue and send the letter of guarantee to the investor or buyer (as agreed) upon receipt of a valid purchase contract or lease-purchase contract before the planned house transfer date specified in the purchase contract or lease-purchase contract;

(ii) In case the commercial bank and the investor have agreed to terminate the contract for off-plan housing guarantee before its expiry date, within the following working day, the commercial bank shall post a notice on its website and send a written notice to the housing authority of province where the investor's housing project is located. Such notice must clearly indicate that the commercial bank will no longer issue letter of guarantee to any buyer that enters into purchase contract or lease-purchase contract with the investor after the contract for off-plan housing guarantee has been terminated. The commercial bank shall still fulfill its obligations under letters of guarantee which have been issued to buyers until guarantee obligations are terminated;

(iii) Fulfill guarantee obligations in respect of the sum paid in proportion to the investor's financial obligation which is determined according to the application for fulfillment of guarantee obligations submitted by the buyer in conformity with the conditions for fulfillment of guarantee obligations set out in the letter of guarantee.

10. The investor shall have the following rights and obligations:

a) The investor is entitled to:

Request the commercial bank to issue the letter of guarantee to all buyers of the off-plan housing project guaranteed by the bank during the validity period of the contract for off-plan housing guarantee.

b) The investor is obliged to:

(i) send the letter of guarantee issued by the commercial bank to the buyers after receiving it from the commercial bank (as agreed);

(ii) In case the commercial bank and the investor have agreed to terminate the contract for off-plan housing guarantee before its expiry date, within the following working day, the investor shall post a notice on its website (if available) and send a written notice to the housing authority of province where the investor's housing project is located;

(iii) inform the commercial bank of the accurate amount received from each buyer from the effective date of the letter of guarantee.

11. A buyer is entitled to:

a) receive the letter of guarantee issued by the commercial bank directly from the commercial bank or the investor within the validity period of the contract for off-plan housing guarantee and before the planned house transfer date specified in the purchase contract or lease-purchase contract;

b) request the commercial bank to fulfill guarantee obligations in respect of the investor's financial obligation by submitting the letter of guarantee and relevant documents (if any).

12. Apart from the provisions of this Article, other contents about the off-plan housing guarantee shall comply with relevant regulations in this Circular.

Article 14. Application for issuance of guarantee

1. An application for issuance of guarantee shall, inter alia, include the following primary documents:

- a) The application form;
- b) Documents about customers;
- c) Documents on guaranteed obligations;
- d) Documents on security (if any);
- dd) Documents about other related parties (if any).

2. Based on the actual status of guarantee operations of each credit institution or FBB and specific characteristics of each customer group, each method of issuing guarantee (traditional method or e-guarantee method), the credit institution or FBB shall provide specific guidelines on documents to be submitted to the credit institution or FBB for their consideration and issuance of guarantee.

Article 15. Guarantee issuance agreement

1. In order to issue guarantee to a customer, the credit institution or FBB and the customer are required to enter into a guarantee issuance agreement. If the guarantee is issued on the basis of a counter guarantee, the guarantor shall not be obliged to enter into the guarantee issuance agreement with the counter-guarantor.

2. A guarantee issuance agreement shall have the following contents:

- a) Applicable laws. Where no applicable laws is specified, this means that the parties have agreed to apply the law of Vietnam;
- b) Information about the parties of the guarantee relationship;
- c) Guaranteed obligations;
- d) Guarantee sum and currency;
- dd) Form of guarantee commitment issuance;
- e) Conditions for fulfillment of guarantee obligations;

- g) Rights and obligations of the parties;
- h) Guarantee service fee;
- i) Agreement on debt incurrence, interest rate charged on the sum paid and obligation to repay the debt when guarantee obligations are required to be fulfilled;
- k) Reference number, signing date and validity period of the guarantee issuance agreement;
- l) Dispute settlement;
- m) Other contents which must not be contrary to regulations of law.

3. Any modification or annulment of contents of the guarantee issuance agreement shall be agreed upon and decided by relevant parties in compliance with regulations of law.

Article 16. Guarantee commitment

1. Based on the guarantee issuance agreement, the guarantor or guarantee-confirmation giver shall issue the guarantee commitment to the obligee. Such guarantee commitment shall include the following contents:

- a) Applicable laws. Where no applicable laws is specified, this means that the parties have agreed to apply the law of Vietnam;
- b) Reference number of the guarantee commitment;
- c) Information about the parties of the guarantee relationship;
- d) Issue date and validity start date of the guarantee and/or cases in which the guarantee validity starts;
- dd) Expiry date and/or cases in which the guarantee validity is terminated;
- e) Guarantee sum and currency;
- g) Guarantee obligations;
- h) Conditions for fulfillment of guarantee obligations;
- i) Application for fulfillment of guarantee obligations (including the application form and required documents);
- k) Method for checking the authenticity of the guarantee commitment;

- 1) Other contents which must not be contrary to regulations of law.
2. Any modification or annulment of contents of the guarantee commitment shall be subjected to the agreement between relevant parties in conformity with the guarantee issuance agreement, and must comply with regulations of law.
3. With regard to guarantee commitments issued through the international communication network, credit institutions and FBBs shall comply with contents and procedures for issuance of guarantee commitment of the international communication network. Credit institutions and FBBs shall adopt procedures for monitoring and management of guarantee issuance operations in these cases in order to ensure safety and efficiency.

Article 17. Authority to sign guarantee issuance agreement and guarantee commitment

1. The guarantee issuance agreement and the guarantee commitment must be signed by the lawful representative of the relevant credit institution or FBB in conformity with regulations of law and internal regulations of that credit institution or FBB.
2. Use of electronic signatures and authorization to sign guarantee issuance agreements and guarantee commitments shall comply with regulations of law.

Article 18. Customer's performance security

1. Credit institutions and FBBs shall reach agreement with relevant parties on whether a security for obligations to repay the sum paid is needed if they are required to fulfill guarantee obligations.
2. Credit institutions and FBBs shall stipulate specific rules and conditions under which a security is applied or not in conformity with regulations of law on guarantee operations and secured transactions, and internal regulations of the relevant credit institution or FBB.

Article 19. Guarantee service fee

1. Credit institutions and FBBs shall reach agreement on guarantee service fees with customers and relevant parties (if any). In case of counter guarantee or guarantee confirmation, the guarantee service fee shall be agreed upon by the parties.
2. In case of co-guarantee, the parties involved in the co-guarantee shall reach an agreement on the guarantee service fee paid to each party.
3. If a guarantee is issued for a joint obligation, the credit institution or FBB shall reach agreement with each customer on the fee amount paid on the basis of the equivalent joint obligation of each customer, unless otherwise agreed upon by the parties.

4. If the guarantee currency is a foreign currency, the parties shall reach an agreement whether the guarantee service fee is paid in that foreign currency or must be converted into VND at the selling rate quoted by the guarantor at the fee collection or fee collection notification date.

5. Parties may reach an agreement on adjustment of the guarantee service fee.

Article 20. Validity period of guarantee commitment and guarantee issuance agreement

1. The validity period of a guarantee commitment shall last from or after the issue date of the guarantee commitment as agreed upon between the parties until the guarantee obligations are terminated as prescribed in Article 23 of this Circular.

2. The validity period of a guarantee issuance agreement shall be agreed upon by the parties but shall not be shorter than that of the guarantee commitment.

3. If the expiry date of a guarantee commitment or guarantee issuance agreement falls on weekly days-off or public holidays, it shall be extended to the following working day.

4. The extension of the validity period of a guarantee commitment or guarantee issuance agreement shall be agreed upon by the parties in conformity with regulations of law.

Article 21. Exemption from fulfillment of guarantee obligations

1. Where the obligee grants exemption from fulfillment of guarantee obligations to the guarantor or the guarantee-confirmation giver, the obligor shall still fulfill the agreed-upon obligations to the obligee, unless otherwise agreed upon between the parties or joint obligations are fulfilled in accordance with regulations of law.

2. If one or some co-guarantors are granted exemption from fulfillment of their guarantee obligations as agreed upon with relevant parties, other co-guarantors shall still fulfill their guarantee obligations according to the guarantee commitment, unless otherwise agreed upon between the parties.

Article 22. Fulfillment of guarantee obligations

1. In order to request fulfillment of guarantee obligations, the obligee shall submit an application for fulfillment of guarantee obligations which is made according to Point i Clause 1 Article 16 of this Circular to the guarantor. The guarantor shall check the received application for fulfillment of guarantee obligations, compare it with terms and conditions of the guarantee commitment for fulfilling guarantee obligations as prescribed in Clause 3 of this Article if the application is valid. If the application for fulfillment of guarantee obligations is invalid, the guarantor refuses to fulfill guarantee obligations as prescribed in Clause 4 of this Article.

2. An application for fulfillment of guarantee obligations is considered valid if:

a) The guarantor has received the application comprising adequate documents as required within the validity period of the guarantee commitment. To be specific:

(i) In case of direct submission, the application must be received within working hours of the guarantor;

(ii) In case the application is submitted in the form of a registered mail by post, the application receipt date is the date on which the receipt of that registered mail is confirmed;

(iii) In case the application is submitted electronically, the application receipt date is the date on which the guarantor receives messages in accordance with regulations of law on electronic transactions.

b) Conditions for fulfillment of guarantee obligations specified in the guarantee commitment have been satisfied.

3. Fulfillment of guarantee obligations:

a) In case of bank guarantee (except counter guarantee and guarantee confirmation):

Within 5 working days after the guarantor receives a valid application for fulfillment of guarantee obligations as prescribed in Clause 2 of this Article, the guarantor shall correctly and sufficiently fulfill the agreed-upon guarantee obligations to the obligee, and record the amount paid on behalf of the obligor to the mandatory loan account as well as notify the obligor of this action. The obligor is obliged to fully repay the amount paid by the guarantor on its behalf and interests thereon as prescribed in Clause 5 of this Article;

b) In case of counter guarantee:

Within 5 working days after the guarantor receives a valid application for fulfillment of guarantee obligations as prescribed in Clause 2 of this Article, the guarantor shall request the counter-guarantor to make payment on behalf of the obligor.

The counter-guarantor shall correctly and sufficiently fulfill the guarantee obligations as agreed upon with the guarantor and record the amount paid on behalf of the obligor to the mandatory loan account as well as notify the obligor of this action. The obligor is obliged to fully repay the amount paid by the counter-guarantor on its behalf and interests thereon as prescribed in Clause 5 of this Article.

If the counter-guarantor fails to fulfill or insufficiently fulfills obligations as agreed upon with the guarantor, the guarantor shall correctly and sufficiently fulfill the guarantee obligations as agreed upon with the obligee and record the amount paid to the mandatory loan account as well as notify the counter-guarantor of this action. The counter-guarantor

is obliged to fully repay the amount paid by the guarantor on its behalf and interests thereon as prescribed in Clause 5 of this Article;

c) In case of guarantee confirmation:

Within 5 working days after the guarantor receives a valid application for fulfillment of guarantee obligations as prescribed in Clause 2 of this Article, the guarantor shall correctly and sufficiently fulfill the agreed-upon guarantee obligations to the obligee, and record the amount paid on behalf of the obligor to the mandatory loan account as well as notify the obligor of this action. The obligor is obliged to fully repay the amount paid by the guarantor on its behalf and interests thereon as prescribed in Clause 5 of this Article.

If the guarantor fails to fulfill or insufficiently fulfills the agreed-upon guarantee obligations to the obligee, the obligee shall submit the application for fulfillment of guarantee obligations as agreed upon in the guarantee commitment to the guarantee-confirmation giver. Within 5 working days after the guarantee-confirmation giver receives a valid application for fulfillment of guarantee obligations as prescribed in Clause 2 of this Article, the guarantee-confirmation giver shall correctly and sufficiently fulfill the agreed-upon guarantee obligations to the obligee, and record the amount paid on behalf of the guarantor to the mandatory loan account as well as notify the guarantor of this action. The guarantor is obliged to fully repay the amount paid by the guarantee-confirmation giver on its behalf and interests thereon as prescribed in Clause 5 of this Article, and request the obligor to repay the debt to the guarantor.

4. In case of refusal to fulfill guarantee obligations, within 5 working days from the receipt of the application for fulfillment of guarantee obligations, the refusing party shall provide reasons for such refusal in writing.

5. The guarantor, counter-guarantor or guarantee-confirmation giver) shall charge the interest rate on the amount paid in conformity with the guarantee issuance agreement provided that it shall not be higher than the highest lending interest rate on overdue amount applied by the credit institution or FBB.

6. In case of payment in foreign currency, the payer shall record the payment to the mandatory loan account in that foreign currency. In case of payment in VND, the payer shall record the payment to the mandatory loan account in VND.

Article 23. Termination of guarantee obligations

Guarantee obligations shall be terminated in the following cases:

1. The obligor's obligations are terminated.
2. Guarantee obligations have been fulfilled according to the guarantee commitment.

3. The guarantee is cancelled or replaced by other security measures as agreed upon between the obligee and guarantor, other relevant parties (if any).
4. The validity of the guarantee commitment has expired.
5. The obligee has granted exemption from fulfillment of guarantee obligations to the guarantor.
6. Guarantee obligations are terminated as agreed upon between the parties.
7. Guarantee obligations are terminated in other cases as prescribed by law.

Article 24. Co-guarantee

1. Co-guarantee principles, conditions and procedures shall comply with the provisions of this Circular, SBV's regulations on syndicated loans granted by credit institutions and FBBs to their customers, and relevant laws.
2. Parties involved in the co-guarantee shall assume the joint responsibility to fulfill guarantee obligations, unless otherwise agreed or independent fulfillment of obligations is prescribed by law. Where the leading credit institution or FBB is required to fulfill guarantee obligations, the parties involved in the co-guarantee shall make corresponding payments to this leading credit institution or FBB according to the co-guarantee contribution ratio agreed upon by the parties.

Article 25. Guarantee for a joint obligation

A credit institution or FBB shall issue guarantee for a joint obligation on the basis of a contract containing joint rights and obligations of the parties.

Article 26. Internal regulations on guarantee of credit institutions and FBBs

1. Pursuant to the provisions of this Circular and relevant laws, credit institutions and FBBs shall promulgate their own internal regulations on guarantee operations (including regulations on e-guarantee and off-plan housing guarantee (if any), guarantee for customers that are non-residents) in conformity with regulations on credit extension, in which the responsibility to appraise and approve applications for guarantee must be clearly defined.
2. The credit institution or FBB shall send 01 copy of its internal regulations on guarantee to the SBV (via the SBV Banking Supervision Agency or SBV's provincial branch) in accordance with regulations of relevant laws.

Article 27. Rights of a guarantor

1. Approve or refuse applications for guarantee issuance.

2. Request the guarantee-confirmation giver to give guarantee confirmation in respect of its guaranteed amounts to the obligor.
3. Request the obligor or the counter-guarantor and relevant parties to provide information and documents concerning the appraisal of guarantee and collateral (if any).
4. Request the obligor or the counter-guarantor to provide security for the guaranteed obligations (if needed).
5. Examine and monitor the financial status of customers during the validity period of the guarantee.
6. Collect and adjust guarantee service fee; impose and adjust interest rates or penalty interest rates.
7. Refuse to fulfill guarantee obligations when the application for fulfillment of guarantee obligations is invalid or there are reasonable grounds to believe that the submitted documents are forged.
8. Request the counter-guarantor to fulfill the agreed-upon guarantee obligations.
9. Record to account the amount paid on behalf of the obligor (in case of bank guarantee) immediately after fulfilling guarantee obligations in accordance with SBV's regulations; or on behalf of the counter-guarantor (in case the guarantee is issued on the basis of a counter guarantee) immediately when the counter-guarantor fails to fulfill or insufficiently fulfills the agreed-upon guarantee obligations; request the obligor or counter-guarantor to repay the amount paid by the guarantor on their behalf.
10. Request other co-guarantors to repay amounts paid by the guarantor to the obligor on their behalf according to the co-guarantee contribution ratio as agreed upon by the parties in case the guarantor acts as the leading guarantor in fulfilling obligations of a co-guarantee relationship.
11. Dispose of collateral as agreed and in accordance with regulations of law.
12. Transfer their rights and obligations to another credit institution or FBB as agreed upon with relevant parties in conformity with regulations of law.
13. File a lawsuit in accordance with regulations of law when the obligor or counter-guarantor is in breach of their agreed-upon obligations.
14. Perform other rights as agreed upon between the parties in conformity with regulations of law.

Article 28. Rights of a counter-guarantor

1. Approve or refuse applications for issuance of counter-guarantee.
2. Request the guarantor to issue guarantee for their customer's obligations to the obligee.
3. Request customers to provide information and documents concerning the appraisal of counter guarantee and collateral (if any).
4. Request customers to provide security for guaranteed obligations (if needed).
5. Examine and monitor the financial status of customers during the validity period of the guarantee.
6. Collect and adjust guarantee service fee; impose and adjust interest rates or penalty interest rates.
7. Refuse to fulfill counter-guarantee obligations when the application for fulfillment of guarantee obligations is invalid or there are reasonable grounds to believe that the submitted documents are forged.
8. Record to the amount paid on behalf of the obligor to account immediately after fulfilling counter-guarantee obligations to the guarantor in accordance with SBV's regulations; request the obligor to repay the amount paid by the counter-guarantor to fulfill counter-guarantee obligations on behalf of the guarantor as agreed.
9. Dispose of the obligor's collateral as agreed and in accordance with regulations of law.
10. File a lawsuit in accordance with regulations of law when the obligor or guarantor is in breach of their agreed-upon obligations.
11. Transfer their rights and obligations to another credit institution or FBB as agreed upon with relevant parties in conformity with regulations of law.
12. Perform other rights as agreed upon between the parties in conformity with regulations of law.

Article 29. Rights of a guarantee-confirmation giver

1. Approve or refuse applications for guarantee confirmation.
2. Request customers to provide information and documents concerning the appraisal of guarantee and collateral (if any).
3. Request customers to provide security for guaranteed obligations (if needed).
4. Collect and adjust guarantee service fee; impose and adjust interest rates or penalty interest rates.

5. Examine and monitor the financial status of customers during the validity period of the guarantee.

6. Record to the amount paid on behalf of the guarantor to account immediately after fulfilling obligations under the guarantee confirmation in accordance with SBV's regulations; request the guarantor to repay the amount paid by the guarantee-confirmation giver on their behalf.

7. Dispose of collateral of the guarantor or obligor as agreed and in accordance with regulations of law.

8. File a lawsuit in accordance with regulations of law when the guarantor is in breach of their agreed-upon obligations.

9. Transfer their rights and obligations to another credit institution or FBB as agreed upon with relevant parties in conformity with regulations of law.

10. Refuse to fulfill guarantee obligations when the application for fulfillment of guarantee obligations is invalid or there are reasonable grounds to believe that the submitted documents are forged.

11. Perform other rights as agreed upon between the parties in conformity with regulations of law.

Article 30. Obligations of guarantors, counter-guarantors and guarantee-confirmation givers

1. Provide information and documents on the authority to issue guarantee commitment to relevant parties; fulfill guarantee obligations upon receipt of requests in conformity with the provisions of the guarantee commitment.

2. Correctly and sufficiently fulfill guarantee obligations as prescribed in Article 22 of this Circular.

3. Examine and monitor the financial status of customers during the validity period of the guarantee issuance agreement.

4. Fully return collateral (if any) and relevant documents to the guarantor upon liquidation of the guarantee issuance agreement, unless otherwise agreed.

5. Within 05 working days from the receipt of the obligee's complaint about refusal to fulfill guarantee obligations, give written response to such complaint.

6. Retain guarantee documents in accordance with regulations of law.

7. Instruct the obligee to check and confirm the authenticity of the issued guarantee commitment.

8. Discharge other obligations as agreed upon between the parties in conformity with regulations of law.

Article 31. Rights and obligations of an obligor

1. An obligor is entitled to:

a) refuse requests of the guarantor or counter-guarantor which are not conformable with the agreements specified in the guarantee issuance agreement or guarantee commitment;

b) request the the guarantor or counter-guarantor to perform their agreed-upon obligations and responsibilities;

c) File a lawsuit in accordance with regulations of law when the guarantor or counter-guarantor is in breach of their agreed-upon obligations;

d) Transfer their rights and obligations as agreed upon with relevant parties in conformity with regulations of law. Perform their rights and obligations in accordance with regulations of law when relevant parties transfer their guarantee rights and obligations in respect of the guaranteed amount;

dd) Check the authenticity of the guarantee commitment;

e) Perform other rights as agreed upon between the parties in conformity with regulations of law.

2. An obligor is obliged to:

a) provide adequate, accurate and truthful information and documents concerning the guarantee and assume legal responsibility for the accuracy, truthfulness and adequacy of their provided information and documents;

b) perform obligations and responsibilities as agreed upon in the guarantee issuance agreement in a sufficient and timely manner;

c) repay the amounts paid by the guarantor or counter-guarantor to fulfill guarantee obligations as agreed upon in the guarantee issuance agreement or guarantee commitment, and incur any costs associated with the fulfillment of guarantee obligations;

d) bear the inspection of the guarantor or counter-guarantor during fulfillment of guaranteed obligations; submit reports on operations concerning the guarantee transaction to the guarantor or counter-guarantor;

dd) cooperate with the guarantor or counter-guarantor and relevant parties in disposing of collateral (if any);

e) discharge other obligations as agreed upon between the parties in conformity with regulations of law.

Article 32. Rights and obligations of an obligee

1. An obligee is entitled to:

a) request the guarantor or guarantee-confirmation giver to perform their obligations and responsibilities under the guarantee commitment;

b) make complaint against the guarantor or guarantee-confirmation giver within 05 working days from the receipt of notice of refusal if reasons for refusal to fulfill guarantee obligations are found not conformable with conditions for fulfillment of guarantee obligations specified in the guarantee commitment.

c) file a lawsuit in accordance with regulations of law when the guarantor or guarantee-confirmation giver is in breach of their agreed-upon obligations;

d) check the authenticity of the guarantee commitment;

dd) transfer their rights and obligations to another organization or individual as agreed upon with relevant parties in conformity with regulations of law;

e) grant exemption from fulfillment of guarantee obligations to the guarantor or guarantee-confirmation giver;

g) perform other rights as agreed upon between the parties in conformity with regulations of law.

2. An obligee is obliged to:

a) fully and correctly perform the obligations under contracts concerning the guarantee obligations; correctly perform the obligations under the guarantee commitment (if any);

b) inform the guarantor, the guarantee-confirmation giver and relevant parties of any sign or act of violation committed by the obligor;

c) assume legal responsibility for the accuracy, adequacy, legitimacy and validity of documents submitted under the guarantee commitment and information provided in the application for fulfillment of guarantee obligations of the obligee;

d) discharge other obligations as agreed upon between the parties in conformity with regulations of law.

Chapter III

REPORTING AND IMPLEMENTATION ORGANIZATION

Article 33. Accounting and reporting information

1. Credit institutions and FBBs shall do accounting works and keep track of all guarantee items arising as prescribed by law.
2. Credit institutions and FBBs shall submit reports on their guarantee operations in accordance with SBV's regulations on statistical reports.

Article 34. Responsibilities of SBV's affiliated units

1. The Credit Department for Economic Sectors shall:
 - a) monitor and consolidate information on guarantee operations of credit institutions and FBBs;
 - b) cooperate with SBV Banking Supervision Agency to announce the list of eligible commercial banks as prescribed in Point b Clause 2 of this Article;
 - c) act as the contact point in charge of settling any difficulties concerning guarantee operations.
2. SBV Banking Supervision Agency shall:
 - a) play the leading role and cooperate with relevant regulatory authorities in conducting inspection of guarantee operations of credit institutions and FBBs, and taking actions against violations within their competence;
 - b) act as the contact point in consolidating and requesting the SBV's Governor to issue decision on announcement of the list of commercial banks capable of giving off-plan housing guarantee in accordance with the provisions of Clause 2 Article 13 of this Circular as well as modify the list upon occurrence of changes.
3. The Department of Finance and Accounting shall instruct credit institutions and FBBs to comply with regulations on accounting in respect of guarantee transactions as prescribed in this Circular.
4. The Foreign Exchange Management Department shall provide guidelines on foreign exchange management in fulfillment of guarantee obligations and collection of debts from non-residents for credit institutions and FBBs.
5. The Information Technology Department shall cooperate with the SBV Banking Supervision Agency in inspecting the compliance with regulations on management of

risks from application of information technology to provision of e-guarantee by credit institutions and FBBs.

6. SBV's provincial branches shall inspect the compliance with provisions of this Circular by credit institutions and FBBs within their competence.

Chapter IV

IMPLEMENTATION

Article 35. Transition

1. Guarantee issuance agreements and guarantee commitments signed and taking effect before the effective date of this Circular shall remain valid until guarantee obligations under such documents are terminated. Any amendment or modification to these documents must comply with the provisions of this Circular.

2. Commercial banks that are suspended from provision of off-plan housing guarantee due to their failure to maintain the satisfaction of the requirements laid down in Clause 1 Article 13 of this Circular shall still continue performing the signed agreements or commitments until guarantee obligations are terminated. Any amendments or modifications to the signed agreements or commitments shall be allowed only if they do not affect benefits of buyers and comply with the provisions of this Circular.

Article 36. Effect

1. This Circular comes into force from April 01, 2023.

2. This Circular supersedes the Circular No. 07/2015/TT-NHNN dated June 25, 2015 of the Governor of State Bank of Vietnam and the Circular No. 13/2017/TT-NHNN dated September 29, 2017 of the Governor of State Bank of Vietnam.

Article 37. Implementation organization

The Chief of Office, the Director of the Credit Department for Economic Sectors, heads of SBV's affiliated units, credit institutions and FBBs shall organize the implementation of this Circular./.

**PP. GOVERNOR
DEPUTY GOVERNOR**

Dao Minh Tu

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