INTER-MINISTERIAL CIRCULAR

PROVIDING FOR THE MANAGEMENT AND USE OF DEPOSIT OF ENTERPRISES AND LABORERS GOING ABROAD FOR WORKING UNDER LABOUR CONTRACT

Pursuant to the Law on Vietnamese laborers going abroad for working under the labour contract, dated November 29th, 2006;
Pursuant to the Decree No. 126/2007/ND-CP dated August 1st, 2007 of the Government providing in details for and guiding the implementation of several articles of the Law on Vietnamese laborers going abroad for working under the labour contract;

Inter-ministries of Labor, War Invalids and Social Affairs and State Bank of Vietnam provide in details for the management and use of deposit of enterprises and laborers going abroad for working under the labour contract as follows:

I. GENERAL PROVISIONS

1. Governing scope

This Circular provides for the depositing, management and use of deposit of enterprises and laborers going abroad for working under the labour contract.

2. Subjects of application

a. Enterprises engaging in the service activity of sending laborers to foreign countries for working in accordance with provisions of Article 8 and enterprises which send laborers to foreign countries for working in the form of practising for skill improvement as provided for in Article 34 of the Law on Vietnamese laborers going abroad for working under the labour contract (herein after referred to as enterprise);

b. Laborers going abroad for working under the contract of sending laborers to foreign countries for working entered into with the service enterprise (herein after referred to as laborer);

c. Commercial bank accepts deposit.

3. Enterprise performs the depositing in Vietnam dong in accordance with the level regulated by the Government from time to time; laborer agrees with service Enterprise on performing the depositing in Vietnam dong according to provisions of Article 23 of the Law on Vietnamese laborers going abroad for working under the labour contracts and guidance of the Ministry of Labor, War Invalids and Social Affairs. The depositing of enterprise and laborer shall be performed at commercial bank authorized to operate in Vietnam where enterprises head office is located.

4. Interest rate of deposit
a. Depositing enterprise shall be entitled to receive deposit interests from commercial bank accepting the deposit by the interest rate agreed upon by the two parties, corresponding with interest rate level of the deposit with the term correlative with depositing term; where the enterprise withdraws the deposit and settles account of deposit prior to its maturity, the applicable interest rate shall be the interest rate for deposit with the term correlative with factual depositing term;

b. Laborer who directly or through service enterprise pays money as deposit to a private account opened by the enterprise in a commercial bank in order to keep deposit of laborer, shall be entitled to receive deposit interests from the commercial bank which accepts the deposit according to the interest rate level applicable to the deposit with term correlative with the depositing term; where the laborer withdraws deposit and settles account of deposit prior to its maturity, the applicable interest rate shall be the interest rate for deposit with term correlative with factual depositing term;

II. DEPOSIT OF ENTERPRISE

1. Performance of depositing

a) Enterprise shall perform the depositing so as competent state agency considers granting permit and guarantees for activity of sending Vietnamese laborers to foreign countries for working or guarantees for implementation of the contract of sending laborers to foreign countries for working in the form of practising for skill improvement;

b. Enterprise shall send a request for opening deposit account to the bank (according to the Appendix No. 01)

c. Bank and enterprise shall enter into a depositing contract in line with provisions of this Circular and related laws, which contains such contents as: name, address of the enterprise and the bank; amount to be deposited; interest rate of the deposit; opening and use of deposit account; withdrawal of deposit; refund of deposit; responsibilities of parties and other agreements;

d. Bank shall account the money amount deposited by the enterprise into the account VND deposit according to level 3 account Guarantee for other payments, perform the detailed accounting by each corporate customer and confirm the depositing by enterprise at the bank (Appendix No. 02);

dd. Enterprise shall hand in the certificate of deposit to Department of oversea laborer management or Department of Labour, War Invalids and Social Affairs (in respect of the contract of sending labourers to foreign countries for working in the form of practicing for skill improvement for less than 90 days).

2. Use of deposit

Where it is required to bring labourer working abroad back to the country in accordance with the instruction of competent state agency in case of death, on-the-job accident, accident due to risk, occupational disease, life threatening of laborer or when income and working, accommodation conditions of laborer are not secured, but the enterprise fails to do so, Director of the Department of oversea laborer management or Director of Department of Labour, War Invalids and Social Affairs (for the contract of sending laborers to foreign countries for working in the form of
practicing for skill improvement for less than 90 days) shall use deposit of the enterprise to make payment for expenses on bringing labourer back to the country.

3. Procedures, file for deposit withdrawal

The Director of Department of oversea laborer management or Director of Department of Labour- War Invalids and Social Affairs (for the contract of sending laborers to foreign countries for working in the form of practicing for skill improvement for less than 90 days) shall send the bank a written request for deposit withdrawal or deducting from deposit account of the enterprise to use for the contents provided for in paragraph 2 of this Section.

Within 30 days from the withdrawal of deposit, enterprise must pay additional amount to have sufficient amount of deposit as stipulated. If the enterprise fails to do so, the bank shall give a written notice to the Department of oversea labourer management or Department of Labour, War Invalids and Social Affairs (for the contract of sending laborers to foreign countries for working in the form of practicing for skill improvement for less than 90 days) to have solution in accordance with provisions of applicable laws.

4. Settlement of deposit account

a. The bank shall refund deposited amount and settle the account of service enterprise in following cases:

- Where Department of Oversea Laborer Management replies in writing to enterprise that is not qualified for being granted permit to send labourers to foreign countries for working;

- Where Department of Oversea Laborer Management replies in writing to enterprise that is not qualified for being granted permit to send labourers to foreign countries for working and certifies that the enterprise has fully performed its obligations to laborers in accordance with the contract of sending labourers to foreign countries for working, has made full contribution to the Fund for oversea employment support in accordance with provisions of applicable laws;

- Where Department of Oversea Laborer Management confirms in writing that enterprise has stopped sending labourers to foreign countries for working and has fully performed its obligations to laborers in accordance with the contract of sending labourers to foreign countries for working, has made full contribution to the Fund for oversea employment support in accordance with provisions of applicable laws;

b. The Bank shall refund the deposit and settle the account of enterprise which sends labourers to foreign countries for working in the form of practicing for skill improvement when Department of Oversea Laborer Management or Department of Labour, War Invalids and Social Affairs (for the contract with the term of less than 90 days) confirms in writing that enterprise has completed the contract of sending labourers to foreign countries for working and has liquidated the contract entered into with the labourer.

III. DEPOSIT OF LABOURER

1. Performance of depositing

a. Deposit of the labourer must be clearly stated in the contract of sending labourers to foreign countries for working and the depositing shall only be made after the labourer signs this contract with the enterprise and he is accepted to work or granted visa by foreign party;
b. Depositing term of labourer is correlative with the term of the contract of sending labourers to foreign countries for working entered into between the enterprise and laborer;

c. Laborer shall directly or through service enterprise, pay money to deposit account opened by the enterprise in the bank. Where laborer deposits money through the enterprise, the enterprise shall have to issue a receipt to the labourer and must pay all these money amounts to the account opened at the bank after 15 days at the latest since its receipt of deposited amount of labourer.

d. The Bank shall account money amount deposited by labour into the account VND deposit accounting to level 3 account guarantee for other payments, and perform the detailed accounting by each corporate customer. Service enterprise shall be responsible for accounting, following up and managing deposit of each labourer.

2. Use of deposit

Where laborer violates the contract of sending laborers to foreign countries for working, enterprise shall have the right to request the bank to deduct from deposit account of the laborer to compensate for the damage caused by laborers fault to the enterprise. In this case, enterprise has to present a document on successful reconciliation with laborer or effective judgement of the Court. The excessive amount of deposit (if any) must be refunded to the laborer, and the laborer must pay additionally if the deposited amount is not sufficient.

3. Refund of deposit

The bank shall refund deposit of laborer after subtracting the money amount already paid in accordance with provisions in paragraph 2, this Section (if any) in following cases:

a. Enterprise and laborer liquidate the contract of sending labourers to foreign countries for working (laborer completes the contract or comes back to the country before the expiry);

b. Enterprise unilaterally liquidates the contract of sending labourers to foreign countries for working in accordance with provisions in point dd, paragraph 1, Article 27 of the Law on Vietnamese laborers going abroad for working under the labour contract;

c. Enterprise is dissolved or goes bankrupt;

d. Labourer fails to go abroad for working after having paid money as deposit;

e. Enterprise fails to send labourer to foreign country for working after the labourer has paid money as deposit.

4. Procedures, file for refunding deposit

a. For cases mentioned in points a, d and e, paragraph 3 of this Section: enterprise has to present a written request for withdrawing deposit enclosed with the minutes of liquidation of the contract of sending laborers to foreign countries for working, which clearly state the amount of deposit to be refunded to the laborer. In this case the enterprise may authorize labourer to directly withdraw the deposit at the bank.

b. For the case stated in point b, paragraph 3 in this Section: Enterprise has to present a written request for withdrawing deposit enclosed with the request for the refund of deposit by the laborer or by the person authorized by the labourer.

c. For the case stated in point c, paragraph 3 in this Section: Enterprise has to present a written request for withdrawing deposit enclosed with the confirmation of Department of oversea laborer
management on the dissolution or bankruptcy of the enterprise to send to another enterprise or send to the Department of oversea laborer management for settling rights and obligations of labourer in accordance with provisions in paragraph 3, Article 25 and paragraph 3, Article 26 of the Law on Vietnamese laborers going abroad for working under the labour contract.

IV. RESPONSIBILITIES OF BANK, ENTERPRISE AND STATE MANAGEMENT AGENCY

1. Responsibilities of the bank accepting deposit
   a. To carry out and guide the enterprise to open, use and manage deposit account in accordance with provisions in this Circular and related laws;
   b. To pay interest for the deposit balance of the enterprise and labourer in accordance with provisions in paragraph 4, Section I of this Circular;

2. Responsibilities of enterprise
   a. To make report on the state of deposit of laborer upon request of competent agencies;
   b. Not to use deposit for the wrong purpose in accordance with provisions in this Circular and related laws;

3. Responsibilities of the Department of oversea laborer management
   a. To provide guidance to enterprise and labourer on the implementation of depositing in accordance with provisions of this Circular and related laws;
   b. To coordinate with the bank in refunding and settling the deposit account of the enterprise in accordance with provisions in paragraph 3 and paragraph 4, Section II of this Circular.
   c. To examine, deal with violation acts within the competence or request for the settlement of violation acts in the management and use of deposit of enterprise and laborer.

4. Responsibilities of Department of Labour, War Invalids and Social Affairs
   a. To provide guidance to the enterprise on the implementation of the depositing in accordance with provisions in this Circular and of related laws;
   b. To examine, deal with violation acts within the competence or request for the settlement of violation acts in the management and use of deposit of enterprise;
   c. To coordinate with Department of oversea labourer management, Labour Management Committees or oversea representative agencies of Vietnam and the bank in using and settling the deposit account of enterprise in accordance with provisions in this Circular and related laws.

V. IMPLEMENTATION ORGANIZATION

1. This Circular shall be effective after 15 days since its publication in the Official Gazette, to repeal the Circular No. 02/2004/TT-NHNN dated 19 May 2004 of the State Bank providing guidance on depositing at the bank for enterprises engaging in labour export activity.

2. Any query that may occur during the implementation process should be reported to Inter-Ministries of Labour, War Invalids and Social Affairs, State Bank of Vietnam for study and solutions.
APPENDIX 01

(Issued in conjunction with the Inter-ministerial Circular No. 17/2007/TTLT-BLDTBXH-NHNNVN dated 4 September 2007)

NAME OF ENTERPRISE

SOCIALIST REPUBLIC OF VIETNAM

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Independence - Freedom – Happiness

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REQUEST FOR DEPOSITING

Pursuant to the Inter-ministerial Circular No. 17/2007/TTLT-BLDTBXH-NHNNVN dated 4 September 2007 of Inter- Ministries of Labour, War Invalids and Social Affairs and State Bank of Vietnam, providing for the management and use of deposit of enterprises and deposit of labourers going abroad for working under the labour contract.

Name of enterprise

Trading name in English (abbreviated):

Address of Head Office:

Tel: Fax:

would like to request the bank to accept the depositing of the enterprise for the activity of sending labourers to foreign countries for working, with the amount of . (in words: )

We undertake to comply with provisions of applicable laws on depositing at the bank

, date.

Head of the unit

(Sign, clearly state the full name and seal)

APPENDIX 02

(Issued in conjunction with the Inter-ministerial Circular No. 17/2007/TTLT-BLDTBXH-NHNNVN dated 4 September 2007)
CONFIRMATION OF HAVING PAID MONEY AS DEPOSIT

Pursuant to the Inter-ministerial Circular No. 17/2007/TTLT-BLDTBXH-NHNNVN dated 4 September 2007 of Inter- Ministries of Labour, War Invalids and Social Affairs and State Bank of Vietnam, providing for the management and use of deposit of enterprise and deposit of labourers going abroad for working under the labour contract and the contract of depositing No., dated entered into by and between the enterprise and the bank.

The bank: (Name of the bank where the enterprise deposits money)

Confirms hereby

Name of enterprise:

Trading name in English (abbreviated):

Address of Head Office:

Tel: Fax:

Account holder: Title:

has paid full amount of deposit for labour export activity to be of: . (in words:) to the account No. at the bank

This confirmation is made into 3 copies: 02 copies kept by the enterprise, 01 copy kept by the bank

., date.

Director

(Sign, clearly state the full name and seal)