

Legal *News*



NEW REGULATIONS ON FOREIGN EXCHANGE MANAGEMENT OF FOREIGN DIRECT INVESTMENT ACTIVITIES IN VIETNAM

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On 26 June 2019, The State Bank of Vietnam issued Circular No. 06/2016/TT-NHNN (“**Circular No.06**”) guiding on foreign exchange management to foreign direct investment in Vietnam, which was officially effective as of 06 September 2019 and replaced Circular No.19/2014/TT-NHNN dated 11 August 2018 (“**Circular No.19**”).

In general, Circular No. 06 fixed a number of provisions of Circular No.19 which are ambiguous and incompliant with Law on Investment 2014 and Law on Enterprise 2014 as follows:

1. **Supplement of entities to be required to open direct investment capital account (“DICA”)**

Previously, Circular No.19 regulated merely two (02) entities which are required to open DICA, including: foreign invested enterprise (“**FDI Enterprise**”) and foreign investor (“**FI**”) entering into business cooperation contract (“**BCC**”).

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Circular No. 06 supplements a new subject which is a FI entering into public private partnership (“PPP”) in case of not establishing project enterprise.

2. Clarification of definition of FDI Enterprise

According to Circular No.06, FDI Enterprise refers to:

- An enterprise established by FI and FI is required to implement procedure for issuance of Investment Registration Certificate (IRC).
- An enterprise with FI(s) holding at least 51% charter capital of such enterprise as a result of (i) shares acquisition/capital contribution of FI; or (ii) being established upon split, de-merger, merger or consolidation; or (iii) being newly established in accordance with specialized laws.
- Project Enterprise established by FI(s) to implement PPP project.

3. Expansion of supporting documents usable to open DICA other than Investment Certificate/Investment Registration Certificate

Apart from Investment Certificate/Investment Registration Certificate as prescribed in Circular No.19, FDI Enterprise and FI may use one of the following supporting documents to open DICA:

- Incorporation and operation certificate;
- Notice on satisfaction of conditions for share acquisition, capital contribution of FI;
- Signed PPP with competent authority;
- Other documentation certifying the capital contribution of FI in line with laws.

4. Clear provision on capital transfer transactions to be conducted via DICA

Circular No.19 has no detailed guidance on capital transfer transactions which are subject to conduct via DICA. According to Circular No.06, account which is used to pay transfer price in FDI Enterprise is regulated as follows:

- The capital transfer transaction between a non-resident and a resident must be coursed through DICA. Currency for payment must be Vietnamese Dong.
- The capital transfer transaction between two residents is not required to make through DICA. Currency for payment must be Vietnamese Dong.
- The capital transfer transaction between two non-residents is not required to make through DICA. Currency for payment is either Vietnamese dong or foreign currency.

5. Payment of pre-investment costs of FI can be remitted directly from oversea

According to Circular No.06, FI is permitted to remit funds directly from foreign country to settle the payment of lawful costs in the course of implementation of pre-investment activities in Vietnam, which has no longer been required to make via operating account in foreign currency at a domestic bank as stated in Circular No.19.

6. Supplement of regulation on cases of closing opened DICA

According to Circular No. 06, FDI Enterprise (except enterprise established by FI and subject to issuance of IRC) is required to close its opened DICA in the following cases: (i) Upon conducting share acquisition, capital contribution or additional shares issuance, foreign capital ownership ratio falls below 51% on (ii) FDI Enterprise become public JSC whose shares are listed or registered at the Stock Exchange. In those cases, non-resident FI owning shares/contribution capital in the FDI Enterprise must open an indirect investment capital account to conduct receivable and payable transactions.

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