

## LEGAL ALERT

### NEW REGULATION ON FOREIGN EXCHANGE CONTROL FOR FOREIGN INVESTMENT ACTIVITIES IN VIETNAM

On 26 June 2019, the State Bank of Vietnam introduced Circular No. 06/2019/TT-NHNN providing guidance on foreign exchange control for foreign direct investment activities in Vietnam (**Circular 06/2019**) to replace the current Circular No. 19/2014/TT-NHNN dated 11 August 2014 (**Circular 19/2014**) guiding the same matter. Circular 06/2019 will come into effect on 6 September 2019.

Below is a selection of key issues contained in Circular 06/2019 that foreign investors should be aware of:

- 1 Circular 06/2019 provides a number of significant changes to the current regulations on the opening and management of Direct Investment Capital Accounts (**DICA**) and Indirect Investment Capital Accounts (**IICA**) of foreign invested enterprises (**FIE**) and foreign investors implementing foreign direct investment activities in Vietnam. The most significant changes are illustrated in the table below, which provides a comparison between Circular 06/2019 and Circular 19/2014:

No.	Matter	Circular 06/2019	Circular 19/2014
1	Entities obliged to open the DICA	<ul style="list-style-type: none"> <li>(i) Newly setup FIEs required to obtain an investment registration certificate;</li> <li>(ii) FIEs with 51% or more foreign ownership as a result of M&amp;A transactions or shares subscriptions;</li> <li>(iii) Newly setup FIEs with 51% or more foreign ownership in accordance with certain specialised laws;</li> <li>(iv) Project enterprises established by foreign investors to implement public-private partnership (<b>PPP</b>) projects; and</li> <li>(v) Foreign investors participating in business cooperation contracts (<b>BCC</b>).</li> </ul>	<ul style="list-style-type: none"> <li>(i) All FIEs regardless of foreign ownership percentage; and</li> <li>(ii) Foreign investors participating in BCC.</li> </ul>

No.	Matter	Circular 06/2019	Circular 19/2014
2	Entities obliged to close the DICA	<p>(i) FIEs having their foreign ownership percentage reduced to less than 51% as a result of M&amp;A transactions; and</p> <p>(ii) FIEs having shares listed or registered with a Stock Exchange.</p> <p>After closing the DICA, non-resident foreign investors must open an IICA to continue their investment activities in Vietnam.</p>	Not specified
3	Foreign loan receipt and repayment	Borrowing and repayment of foreign loans of FIEs must go through the DICA and must be implemented in accordance with the current regulations on foreign loans (which provide that cash flow through the DICA is mandatory for medium and long term loans, but optional for short term loans).	Borrowing and repayment of domestic and foreign loans of FIEs (short, medium and long term) must go through the DICA
4	Payment of investment preparation activities (i.e. expenses incurred by foreign investors prior to the approval/ implementation of their investments)	<p>Foreign investors can make payments for their pre-approval investing activities either:</p> <p>(i) directly from overseas; or</p> <p>(ii) from their current account (in either foreign currency or VND) opened in Vietnam.</p>	Foreign investors can make payments for their pre-approval investing activities only via their current account in foreign currency opened in Vietnam.
5	Payment of capital assignment in M&A transactions must be made via the DICA	<p>An exception is introduced for transactions between non-resident investors or between resident investors.</p> <p>As a result, non-resident investors selling equity in a Vietnamese company to other non-resident investors will be allowed to receive the purchase price directly into their bank accounts abroad (i.e. without transiting through Vietnam).</p>	<p>No exceptions</p> <p>As a result, in case of non-resident investors selling equity in a Vietnamese company to other non-resident investors, the purchase price must first transit through the DICA in Vietnam, and only then can be transferred from the DICA to the seller's bank accounts abroad.</p>
6	Permitted currency for implementation and payment of share purchase agreements	<p>(i) Foreign currency is allowed in case the transaction is between non-resident investors; and</p> <p>(ii) VND is required in case the transaction is (a) between non-resident investors and resident investors; or (b) between resident investors.</p>	Not specified

- 2 Within the transition period, being 12 months since 6 September 2019, the entities obliged to close the DICA must ensure that the DICA is closed, and their foreign investors must open an IICA in order to continue their investment activities in Vietnam. An exception is made, however, for enterprises that are in the process of repaying a foreign loan through the DICA.

Please contact us at [legalenquiries@frasersvn.com](mailto:legalenquiries@frasersvn.com) if you are interested in receiving further updates on Circular 06/2019 and on the new legislation on foreign exchange control for foreign investment activities in Vietnam.

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