

Foreign exchange control of foreign direct investment



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On August 11, 2014 the State Bank of Vietnam enacted Circular No. 19/2014/TT-NHNN (Circular 19) guiding the foreign exchange control of foreign direct investment activities in Vietnam. There are several noticeable points which significantly affect the activities of capital contribution, account utilisation and overseas remittance for enterprises with foreign direct investment capital (FDI enterprises) and foreign investors (Investors) directly investing in Vietnam.

Investment contribution in VND and bank accounts for direct investment activities

According to Circular 19, FDI enterprises and Investors entering into a business cooperation contract (BBC) are entitled to open a Direct Investment Capital Account (Account) in a selected foreign currency and/or in VND at one authorised bank for the implementation of investment capital contribution and other revenue disbursement transactions. This provision could be deemed as a positive innovation compared to the previous regulations which only allowed Accounts to be opened in foreign currencies.

For the case where a foreign investor directly invests in Vietnam in the form of shares/equity acquisition in a Vietnamese company in order to participate in the management of such company, the target company shall open the Account and comply with regulations of Circular 19 if such acquisition is subject to an issuance of an investment certificate in accordance with the laws of Vietnam.

Available for more than one account

Under Circular 19, the Account is also used by the FDI enterprises for drawdowns and repayment of the foreign loans and domestic loans. In case of borrowing a foreign loan in a different currency from the currency used for opening the Account, the FDI enterprise is permitted to open an additional Account in the currency of the loan, but only at the same authorised bank where it opened the first Account. It is further noted that an FDI enterprise may only have one Account for each foreign currency.

Overseas remittance of investors

Through their Account, the Investors are permitted to remit overseas their direct investment capital in cases of dissolution or termination of the FDI enterprise, reduction of investment capital, or completion,

liquidation or termination of the investment project or the BCC. Moreover, the principal, interest and fees of foreign loans, and profit and other lawful income relating to direct investment activity in Vietnam are also permitted to be remitted overseas.

Where the Account of an FDI enterprise is closed due to its dissolution or termination or due to the assignment of its investment capital resulting in a change of its initial legal entity, Investors of such FDI enterprise may use their foreign currency payment account or VND payment account at an authorised bank to purchase foreign currency and, within the next 30 working days, remit their direct investment capital and other lawful income overseas.

Capital transfers for the investment preparation phase

Under Circular 19, Investors may, prior to obtainment of the investment certificate, transfer their investment capital into Vietnam in order to meet lawful expenses of the investment preparation phase in accordance with a written agreement between the parties involved and via their foreign currency payment account opened at an authorised bank. Such investment capital, after the issuance of an investment certificate, may be finalised by conversion into the capital contribution or into the registered foreign loans of an FDI enterprise.

Circular 19 took effect on September 25, 2014 and repealed Article 9 of Circular No. 05/2014/TT-NHNN of the State Bank of Vietnam, dated March 12, 2014, guiding the opening and use of indirect investment capital accounts in order to conduct foreign indirect investment activities in Vietnam.

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