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Foreign Exchange Management in Vietnam



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According to a report from the [Asian Development Bank](#), regardless of the impact of the Covid-19 pandemic, Vietnam is forecast to be one of the fastest-growing economies in Southeast Asia.

With a more stable political environment, competitive labor costs, the government's economic reforms and policies on investment encouragement, as well as promising economic prospects, Vietnam presents a dynamic market and an attractive destination for foreign investors to participate in the economy.

In Vietnam, FDI activities are strictly managed by the government under the regulations on foreign exchange management. In particular, among these regulations, transactions related to capital contribution, transfer of capital/shares, offshore loan disbursement and repayment, and profit repatriation of foreign invested enterprises (FIEs) must be implemented via a direct investment capital account (DICA) opened at an authorized commercial bank in Vietnam.

Which Entities in Vietnam are Required to Open a DICA?

The entities required to open and use a DICA under the prevailing regulations (Circular 06/2019/TT-NHNN issued by the State Bank dated June 26, 2019, "Circular 06") include:

- newly established FIEs required to obtain an investment registration certificate (IRC) in accordance with the Law on Investment;

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- FIEs formed as a result of merger and acquisition (M&A) transactions in which at least 51% of the charter capital is owned by foreign investors;

- newly established FIEs with 51% or more foreign ownership in accordance with certain specialized laws;

- project enterprises established by foreign investors to implement public-private partnership (PPP) projects; and

- foreign investors participating in business cooperation contracts.

Which Payments are Required to be Settled via DICA?

According to Circular 06, payments must go through a DICA in the following transactions:

- payments relating to direct capital contribution;

- payment of transfer price in transfer of shares/contributed capital between nonresident investors and resident investors;*

- payments relating to medium-/long-term offshore loans including drawdown of loans, repayment of principal and interest (a DICA is optional for short-term offshore loans); and

- payment of post-tax profit to foreign investors.

* Circular 06 was issued and effective from September 6, 2019 solving the problematic issues of the old Circular 19/2014 in practice relating to the use of a DICA and the payment process in M&A transactions. In particular, previously, Circular 19/2014 stated that upon transferring shares/contributed capital in an FIE, the payment of the transfer price between foreign investors must go through a DICA instead of going directly from the buyer's bank account to the seller's bank account.

However, in accordance with Circular 06, in M&A transactions of FIEs, where the seller and the buyer are both resident investors or both nonresident investors, the payment of the transfer price does not need to be made via a DICA, and only the transactions between nonresident investors and resident investors must be settled via a DICA.

In order to open a DICA, the commercial banks will request any of the following documents:

- IRC;
- M&A approval;
- PPP contract signed with authorized state body; and
- any other documents showing that the investment by the foreign investor is permitted.

Upon the effectiveness of Circular 06, FIEs with foreign ownership of less than 51% post M&A transaction, or FIEs with shares listed or registered with a stock exchange, must close their DICA except where they are in the process of repaying their foreign loan through it, in which case the DICA can be maintained. After the DICA

is closed, the nonresident foreign investors are required to open an indirect investment capital account (IICA) to continue investment activities in Vietnam.

From our observation in practice, in the event of failing to comply with the above regulations, enterprises may encounter difficulties in settling payments out of Vietnam (i.e. loan repayment, profit repatriation). Therefore, keeping abreast of the latest regulations, together with close coordination with professional advisers and banks, is recommended to avoid such non-compliance risks.

This article is of a general nature only and readers should obtain advice specific to their circumstances from the professional advisers.

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