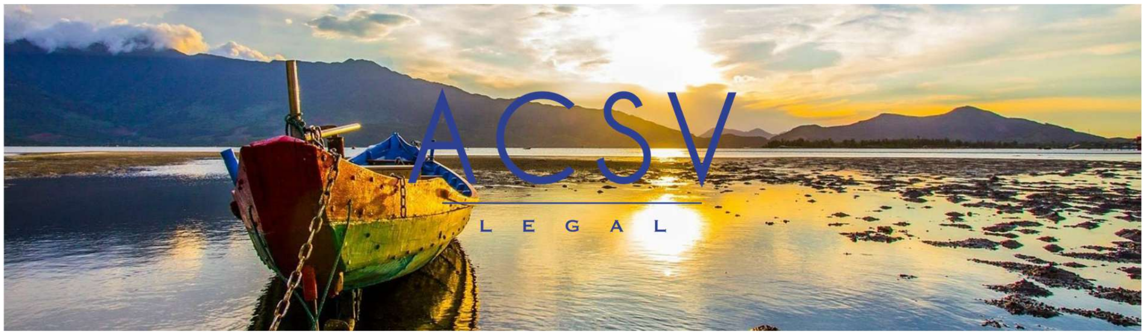


LEGAL UPDATE

NEW FOREIGN EXCHANGE RULES FOR FOREIGN INVESTMENT IN VIETNAM

1. Introduction

On 31 July 2026, the State Bank of Vietnam ("**SBV**") issued Circular No. 38/2026/TT-NHNN ("**Circular 38**") on foreign exchange management for foreign investment activities in Vietnam. Circular 38 took effect on 18 August 2026 and replaced Circular No. 06/2019/TT-NHNN ("**Circular 06**") in its entirety and repealed Clauses 3 and 4 of Article 11 of Circular No. 03/2025/TT-NHNN ("**Circular 03**").[1]

This update focuses primarily on the changes affecting existing and newly established foreign-invested enterprises ("**FIEs**"), including the opening and use of investment capital accounts ("**ICAs**"), capital contributions, investment-related fund flows, ownership changes and ICA closure requirements. It also briefly addresses certain structure- and sector-specific rules applicable to investments involving the International Financial Centre in Vietnam ("**VIFC**"), business cooperation contracts ("**BCCs**"), public-private partnership ("**PPP**") projects and petroleum activities.

2. Entities Required to Open an ICA

Circular 38 retains the principal ownership threshold under Circular 06 that an economic organisation in which foreign investors hold more than 50% of its charter capital must open and use an ICA for foreign investment-related receipts and payments.

However, Circular 38 no longer makes the existence of an investment registration certificate ("**IRC**") part of the threshold test. It also applies the same threshold to ownership by VIFC member enterprises.[2] Accordingly, an FIE established under an enterprise registration certificate ("**ERC**") may open an ICA even before its IRC is issued or adjusted.[3] This change is particularly relevant to newly established FIEs and enterprises undergoing an increase or restructuring of foreign ownership.

An FIE that becomes a public company whose shares are listed or registered for trading on a Stock Exchange falls outside Circular 38's ICA regime. It must close its ICA, and any foreign investor that remains a shareholder must conduct relevant investment transactions through an indirect investment account.[4]

3. Capital Contribution and Pre-Investment Funding Remittance

(i) Mandatory remittance through the ICA

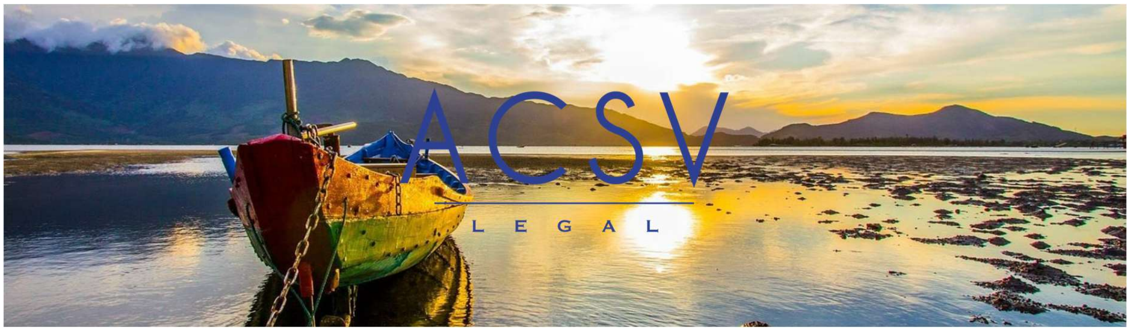
As under Circular 06, cash contributions by foreign investors and Vietnamese investors to an FIE subject to the ICA regime must be made by bank transfer into the FIE's ICA. Capital contributions should therefore not be paid directly into the FIE's ordinary payment account.[5] Circular 38 expands the documents that may evidence the investment or capital contribution to include, among others, ERC, BCC contracts and petroleum contracts, in addition to the IRC, sector-specific licences, the notice confirming satisfaction of foreign ownership/M&A conditions and PPP contracts.[6]

(ii) Contribution before completion of investment or corporate registrations

Circular 38 expressly permits investors and VIFC member enterprises to remit funds into an ICA for a new or additional capital contribution before the FIE completes registration of the charter capital increase or change in contribution ratio.[7] This should give parties greater flexibility to coordinate funding with the corporate and investment registration process.

Moreover, an FIE established before the IRC is issued or amended may open one investment capital account in foreign currency or VND to receive charter capital and interest, pay legitimate pre-investment costs, and refund capital if the IRC is not granted or adjusted.[8] Once such an ICA has been opened, qualifying pre-investment receipts and payments must be routed through it, including the subsequent conversion of those funds into a capital

[1] Articles 18.1 - 18.3 of Circular 38
[2] Articles 6.1 of Circular 38
[3] Articles 7.3 of Circular 38
[4] Articles 1.2, 1.3 and 7.5(b)(ii) of Circular 38
[5] Article 4.4 of Circular 38
[6] Articles 4.1 of Circular 38
[7] Article 4.5 of Circular 38
[8] Article 7.3 of Circular 38



contribution, an offshore loan, or their refund to the investor, once the IRC is issued.[9]

(iii) Account currencies and contributions investors' own foreign currency

Investors may now open only a VND account without also opening a foreign-currency ICA. Where capital is contributed in more than one foreign currency, a separate ICA may be opened for each currency at the same permitted bank.[10] Circular 38 also introduces a specific mechanism for converting and determining the aggregate contribution value where a contribution is made in multiple currencies.[11] Vietnamese investors may continue to contribute their own foreign currency.[12] Circular 38 now defines "own foreign currency" as foreign currency held in a Vietnamese investor's payment account, excluding foreign currency purchased or borrowed from a credit institution.[13]

(iv) Transitional treatment for contributions already received via a payment account

Where an FIE received charter capital contributions into a payment account before 18 August 2026, it may transfer amounts already received into the ICA opened under Circular 38, on a one-off basis.[14]

4. Use of ICA and Investment-related Fund Flows

(i) Retention and reinvestment of capital and profits in Vietnam

Where investment capital, profits or other lawful income are not remitted abroad, Circular 38 permits the funds to be transferred from the ICA to the foreign investor's payment account in Vietnam for use in another investment project in Vietnam.[15] This is broader than Circular 06, which expressly permitted distributed VND profits to be credited back for an increase in capital or expansion of the relevant investment project.[16]

(ii) Onshore receipt and inter-currency conversion

Circular 38 expressly allows certain profits and other lawful income to be credited to the foreign investor's payment account in Vietnam instead of being remitted abroad. It also permits conversion between ICAs denominated in different foreign currencies and maintained at the same bank.[17]

(iii) Refunds where a transfer is not completed

Circular 38 expressly permits amounts paid for a proposed transfer of shares, contributed capital, an investment project or a petroleum participating interest to be refunded through the ICA where the transfer is not completed.[18]

(iv) Foreign loan repayment accounts

Circular 38 no longer includes the mechanism under Circular 06 allowing an FIE to open a separate account to service an offshore loan denominated in a currency different from that of its ICA[19]. An FIE currently maintaining such an account should review the appropriate account arrangement with its servicing bank.

5. M&A, Ownership Changes and Closure of ICA

(i) Payment of transfer consideration

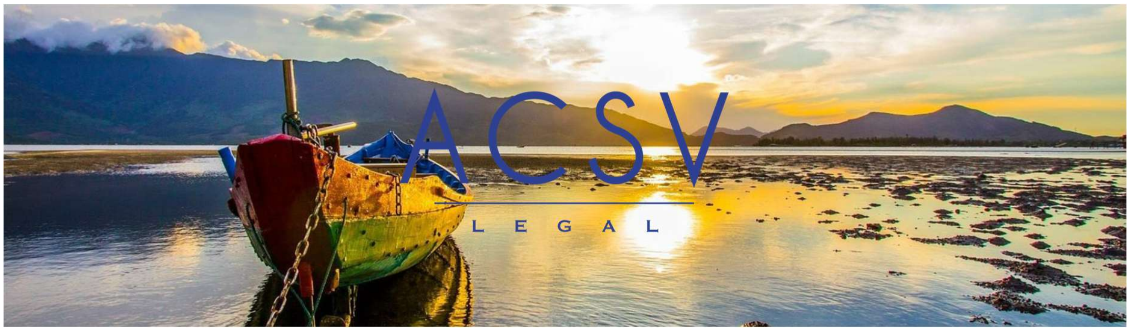
Circular 38 generally retains the residency-based rules for payment of the transfer price for shares, contributed capital and investment projects: a transaction between two non-residents may generally be denominated and paid in foreign currency, whereas a transaction involving a resident must generally be denominated and paid in VND.[20]
The applicable payment route continues to depend on the residence status of the parties and whether the target is subject to the ICA regime. Parties contemplating an M&A transaction should therefore determine the correct currency and payment account before signing and settlement.

(ii) Events requiring closure of an ICA

Subject to accounts that remain necessary for foreign loan repayment or other lawful payment obligations, an ICA must be closed in the following principal circumstances:

- no foreign investor or VIFC member enterprise remains an owner of shares or contributed capital; or

[9] Article 5.2 and 5.4 of Circular 38
[10] Article 7.1 of Circular 38
[11] Article 4.1 of Circular 38
[12] Article 4.2 of Circular 38
[13] Article 3.4 of Circular 38
[14] Article 19.1 of Circular 38
[15] Articles 11.2 and 12.2 of Circular 38
[16] Article 7.1(c) of Circular 06
[17] Articles 8.1(h), 8.2(d), 8.2(k) and 9.2(g) of Circular 38
[18] Articles 8.1(c), 8.2(i), 9.1(c) and 9.2(i) of Circular 38
[19] Article 5.3 of Circular 06
[20] Articles 10 and 13 of Circular 38



- the IRC is not granted or adjusted and the contribution has been refunded; or
- the enterprise is dissolved, becomes bankrupt or cease operation; or
- following a transfer of the investment project that changes the entity's originally-registered legal status; or
- following a transfer or share issuance, aggregate foreign investor or VIFC member enterprise ownership falls to 50% or below; or
- the enterprise becomes a public company whose shares are listed or registered for trading on a stock exchange.[21]

Where an ICA is closed for one of the first four reasons above, Circular 38 provides more detailed rules on the handling of refunded capital and other lawful amounts, including transfers to a payment account at a permitted bank, remittances abroad and, for member enterprises, transfers to a capital account at a member bank. [22]

(iii) Re-crossing the 50% threshold

If foreign investor or VIFC member enterprise ownership subsequently increases from 50% or below to more than 50% of the charter capital, the enterprise must open an ICA again. A foreign investor must correspondingly close an indirect investment account that is no longer required. [23]

6. Immediate Compliance Actions and Transitional Arrangements

Existing and newly established enterprises should consider taking the following actions, as applicable:

- confirm whether the enterprise is required to open, maintain, close or re-open an ICA under the more-than-50% ownership test;
- ensure that capital contributions are made through the correct ICA, including contributions made before completion of an IRC or charter-capital registration;
- identify any capital received through a payment account before 18 August 2026 and determine whether the one-off transfer mechanism applies;
- review the currency and payment route for pending capital contributions, share transfers, capital transfers and project transfers;[24]
- review any separate account currently used to service a foreign loan in a currency different from that of the ICA.

The 12-month transitional period is principally relevant to existing petroleum investors required to open an ICA and to certain ICA holders that are required to close their accounts under the specified transitional closure triggers.[25] It should not be described as a general 12-month compliance period for all FIEs.

7. Specific Investment Structures

(i) Investments involving VIFC member enterprises

Circular 38 introduces a dedicated framework for investments by VIFC member enterprises into the rest of Vietnam. In particular, an economic organisation in which a VIFC member enterprise holds more than 50% of the charter capital is subject to substantially the same ICA requirements as an enterprise held above that threshold by foreign investors.[26]

Investment capital, profits and other lawful income moving between the rest of Vietnam and a VIFC member enterprise's capital account must follow the routes prescribed under Circular 38, including routing through the relevant ICA where required.[27]

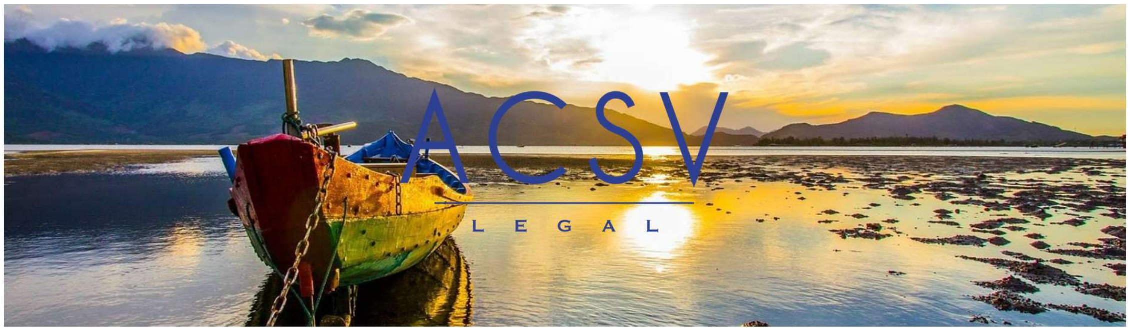
(ii) BCC and PPP arrangements

Circular 38 retains the requirement for a separate ICA for each BCC contract or PPP project and extends the relevant provisions to VIFC member enterprises. It also retains the applicable rules governing payment of transfer consideration for BCC interests and PPP projects.[28]

(iii) Petroleum activities

Circular 38 introduces a dedicated ICA regime for specified petroleum contracts and agreements. A foreign contractor must open a separate ICA for each petroleum contract, subject to the transitional

[21] Articles 7.5(a) and 7.5(b) of Circular 38
[22] Article 7.5(c) of Circular 38
[23] Article 7.6 of Circular 38
[24] Articles 10 and 13 of Circular 38
[25] Articles 19.2 and 19.3 of Circular 38
[26] Articles 1.1, 2.6 and 6.1(b) of Circular 38
[27] Articles 8.1(dd), 9.2(d), 12.1 and 12.2 of Circular 38.
[28] Articles 7.2 and 10.1 of Circular 38



period applicable to petroleum investment activities existing before 18 August 2026. Circular 38 also addresses foreign-currency purchases, transfers between the ICA and permitted payment accounts, and payment for transfers of participating interests, rights and obligations under petroleum contracts.[29]

8. Conclusion

Circular 38 preserves the core principle that foreign investment capital must be routed through the appropriate ICA, while introducing more flexible mechanisms for funding newly established enterprises, completing capital increases, using multiple contribution currencies and retaining funds in Vietnam for further investment. It also provides clearer rules for ICA closure and re-opening following changes in foreign ownership.

Existing FIEs should review their ICA status and payment flows, particularly in connection with capital increases, M&A transactions, ownership restructurings and retained profits. Enterprises in the process of establishment should determine the appropriate account structure before receiving charter capital or incurring pre-investment expenses. The VIFC, BCC/PPP and petroleum provisions should be considered where the relevant specialised structure or activity applies.

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[29] Articles 4.3, 4.6, 7.2, 10.4, 13.2, 14.6 and 19.2 of Circular 38