Legal Update

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# VIETNAM MODERNIZES ITS FOREIGN-INVESTMENT FOREIGN EXCHANGE FRAMEWORK

## Greater Investment Funding Flexibility – VIFC Capital Flows Framework

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The State Bank of Vietnam has issued Circular No. 38/2026/TT-NHNN (“**Circular 38**”), replacing Circular No. 06/2019/TT-NHNN (“**Circular 06**”) with effect from 18 August 2026.

Circular 38 is more than a technical update. While preserving the familiar framework for investment capital accounts, capital contributions, acquisition payments and profit repatriation, Circular 38 modernizes that framework in several important respects.

Most notably, the new Circular:

- integrates investments from the Vietnam International Financial Centre (“**VIFC**”) into the foreign-exchange framework applicable to the rest of Vietnam;
- permits investment capital to be remitted before certain investment registration procedures are completed;
- adequately accommodates multi-currency capital contributions; and
- introduces more explicit requirements for transparency and supporting documentation.

The key changes are summarized below.

## 1. The VIFC enters Vietnam's foreign-exchange architecture

To capture the recent establishment of the VIFC, Circular 38 expressly regulates investment flows from the VIFC into the rest of Vietnam.

Circular 38 introduces two relevant categories:

- "member enterprises" – enterprises established and operating as VIFC members; and
- "member banks" – commercial banks and foreign bank branches established and operating as VIFC members.

When investing outside the VIFC, member enterprises are treated broadly in parallel with foreign investors. They may contribute capital, acquire investments and receive capital, profits and other lawful income through a prescribed account structure.

The key difference is directional: funds returned to a foreign investor may be remitted abroad, while funds returned to a member enterprise may be transferred to its Capital Account maintained with a member bank. In both cases, the funds may alternatively be transferred to the relevant foreign currency or VND payment account maintained by the foreign investor or member enterprise with an authorized bank.

This creates an important regulatory bridge between the VIFC and Vietnam's domestic economy - and provides part of the financial plumbing needed for the VIFC to operate as a genuine investment platform.

## 2. The account name is changed to "investment capital account"

Circular 38 replaces the former concept of a "direct investment capital account" with the broader "foreign investment capital account in Vietnam," referred to in the Circular as the "investment capital account" ("**Capital Account**").

## 3. Capital may be remitted and used prior to IRC issuance

One of Circular 38's most commercially significant changes is the express permission for investors and member enterprises to remit funds into a Capital Account before the investee company completes the procedures for registering an increase in charter capital or a change in ownership interests. This should provide greater flexibility in sequencing capital contributions and regulatory filings.

Circular 38 also addresses the mechanism introduced under the new Investment Law allowing a foreign investor, in eligible cases, to establish an enterprise before obtaining or amending its investment registration certificate ("**IRC**"). The enterprise may open and use a Capital Account in advance for limited purposes, including:

- receiving charter capital contributions and interest accrued on the account balance;
- paying lawful pre-investment expenses in Vietnam; and
- refunding the contributed capital if the IRC is not subsequently issued or amended.

Once the IRC is issued or amended, the Capital Account may be used for the broader transactions permitted under Circular 38. This resolves a practical sequencing issue that was not adequately addressed under Circular 06.

### 4. Multi-currency capital structures are better accommodated

Circular 38 explicitly allows a separate Capital Account for each foreign currency used for capital contributions, provided that all Capital Accounts, including any VND Capital Account, are maintained with the same authorized bank.

Where capital is contributed in multiple currencies:

- one of the contribution currencies must be selected as the reference currency for determining the aggregate contributed amount;
- that reference currency must be used consistently throughout the contribution process;
- the aggregate value of the capital contributions after conversion into the reference currency must not exceed the capital contribution amount specified in the relevant investment documents; and
- the applicable conversion rate is the rate used by the account bank when the relevant funds are credited to the Capital Account.

The last point may have real implications for completion mechanics. Where investors contribute at different times or exchange rates fluctuate between remittance and crediting, transaction documents should allocate the resulting timing and FX risks clearly.

### 5. Capital transfer payments with member enterprises are regulated

Circular 38 adds a framework for payments relating to transfers of shares, capital interests and investment projects between member enterprises and other investors. For share and capital transfers in enterprises subject to the Capital Account regime:

- payments between two member enterprises or between a member enterprise and a non-resident investor do not pass through the Capital Account; and
- payments between a member enterprise and a resident investor must pass through the Capital Account.

### 6. Greater scrutiny of the purpose and documentation of remittances

Circular 38 places increased emphasis on the transparency of investment flows.

Authorized banks must adopt and publicize internal procedures governing Capital Accounts and remittances. Those procedures must require each payment instruction to state clearly both the amount and the purpose of the transfer.

The likely practical result is closer scrutiny of transaction descriptions, remittance instructions and the consistency between payment documents, corporate approvals and investment registrations. Investors should therefore align with their account bank on documentary requirements well before funding or completion.

## 7. Transitional arrangements and investors' next steps

Circular 38 allows a foreign-invested enterprise that previously received charter capital through a payment account pending issuance of its IRC to transfer the relevant balance into a properly opened Capital Account.

What should investors do now?

Foreign investors, member enterprises, joint-venture partners and foreign-invested enterprises should consider taking the following steps:

- review proposed funding and completion mechanics, particularly where funds will be transferred before investment registration procedures are completed;
- revisit transaction documents that allocate exchange-rate risk or determine the effective date of capital contribution;
- confirm the correct payment route and currency for upcoming equity, capital or project transfers; and
- update remittance instructions, completion checklists and supporting-document protocols in line with the account bank's requirements.

Circular 38 reflects a wider transformation of Vietnam's investment framework. It provides more flexible funding mechanics, recognizes the emerging role of the VIFC and gives banks greater visibility over investment flows.

For investors, however, greater flexibility comes with a corresponding need for more careful planning: account classification, payment routing, currency selection, contribution timing and documentary consistency should be considered together.

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