

**THE STATE BANK OF
VIETNAM**

**SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness**

No: 05/2014/TT-NHNN

Hanoi, March 12, 2014

CIRCULAR

**GUIDING THE OPENING AND USE OF INDIRECTLY- INVESTED CAPITAL
ACCOUNTS FOR IMPLEMENTATION OF FOREIGN INDIRECT INVESTMENT
ACTIVITIES IN VIETNAM**

Pursuant to the Law on State Bank of Vietnam No.46/2010/QH12 dated June 16, 2010;

Pursuant to the Law on Credit Institutions No.47/2010/QH12 dated June 16, 2010;

Pursuant to the Law on Investment No.59/2005/QH11 dated November 29, 2005;

Pursuant to the Law on Securities No.70/2006/QH11 dated June 29, 2006;

Pursuant to the Law on amendment, supplementation of a number of articles of the Law on Securities No.62/2010/QH12 dated November 24, 2010;

Pursuant to Ordinance on Foreign Exchange No.28/2005/PL-UBTVQH11 dated December 13, 2005;

Pursuant to the Ordinance No.06/2013/PL-UBTVQH13 dated March 18, 2013 on amendment, supplementation of a number of articles of the Ordinance on Foreign Exchange;

Pursuant to Decree No.156/2013/ND-CP dated January 11, 2013 of the Government stipulating the functions, tasks, power and organizational structure of the State Bank of Vietnam (below collectively referred to as the State Bank);

At the proposal of Director of Department of Foreign Exchange Management,

The Governor of the State Bank promulgates Circular guiding the opening and use of indirectly-invested capital accounts for implementation of foreign indirect investment activities in Vietnam.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Circular prescribes the opening and use of indirectly-invested capital accounts for implementation of transactions relating to foreign indirect investment activities in Vietnam.

Article 2. Subjects of application

1. This Circular applies to the following subjects:

- a) Foreign investors who are nonresidents conducting indirect investment activities in Vietnam;
- b) Organizations and individuals who are related to indirect investment activities in Vietnam.

2. This Circular does not govern foreign investors being residents who are foreign organizations and individuals. These subjects conduct indirect investment activities in Vietnam according to prevailing legal provisions on securities and other relevant normative legal documents.

Article 3. Interpretation of terms

In this Circular, the terms below are construed as follows:

- 1. "Foreign investors" include subjects who are nonresident foreign organizations and individuals conducting indirect investment activities in Vietnam;
- 2. "Licensed banks" include commercial banks and branches of foreign banks licensed to trade and supply foreign exchange service according to legal provisions.
- 3. "Licensed credit institutions" include credit institutions and branches of foreign banks licensed to trade and to supply foreign exchange service according to legal provisions.
- 4. "Indirectly-invested capital account" is a payment account in Vietnam Dong opened by a foreign investor in a licensed bank for implementation of permitted receipt and expense transactions relating to foreign indirect activities in Vietnam.

Article 4. General principles

1. All indirect investment activities of foreign investors in Vietnam must be conducted in Vietnam Dong. Transactions relating to foreign indirect investment activities in Vietnam of foreign investors must be conducted through 01 (one) indirectly-invested capital account opened at 01 (one) licensed bank.

2. When conducting foreign indirect investment activities in Vietnam under forms as prescribed in Article 5 of this Circular, foreign investors will have to comply with provisions of this Circular, legal provisions on opening and use of payment accounts, provisions of the Law on Securities, documents guiding the Law on Securities, prevailing legal provisions pertaining to activities of capital contribution, purchase of shares in Vietnamese enterprises of foreign investors and activities of foreign investors on the securities market of Vietnam and other relevant legal provisions.

3. Balance on indirectly-invested capital accounts of foreign investors are not permitted to transfer to definite-term deposits and saving deposits at credit institutions and branches of foreign banks.

Article 5. Forms of foreign indirect investment in Vietnam

Activities of indirect investment in Vietnam of foreign investors include forms as follows:

1. Capital contribution, purchase or sale of shares or contributed capitals in Vietnamese enterprises which are not listed or registered for transactions yet on securities market of Vietnam and do not directly participate in the management and administration of enterprises.
2. Capital contribution, purchase or sale of shares in Vietnamese enterprises on the Unlisted Public Company Market (UPCOM) and the listed securities market and do not directly participate in the management and administration of enterprises.
3. Sales and purchase of bonds and other types of stocks on the securities market of Vietnam.
4. Sale and purchase of other valuable papers in Vietnam Dong which are permitted to issue within the territory of Vietnam by organizational residents.
5. Investment trust in Vietnam Dong through fund management companies, securities companies and organizations are permitted to conduct the investment trust operation under the legal provisions on securities; investment trust in Vietnam Dong through credit institutions and branches of foreign banks are allowed to conduct the investment trust operation under the provisions of the State Bank.
6. Capital contribution, transfer of contributed capitals of foreign investors (do not directly participate in management) in securities investment funds and fund management enterprises according to legal provisions on securities.
7. Other indirect investment forms according to legal provisions.

Chapter II

SPECIFIC PROVISIONS

Article 6. Opening of capital accounts for indirect investment

1. When conducting indirect investment activities in Vietnam, the foreign investor will have to open one (01) capital account of indirect investment at one (01) licensed bank for implementation of receipt-payment transactions permitted under provisions of Article 7 of this Circular.
2. In the case where the foreign investor is having and using a capital account of indirect investment at a licensed bank but has demand to open another indirectly-invested capital account

in another licensed bank, such foreign investor is requested to close the existing capital account for direct investment, transfer all the balance in this account to the new account. Procedure on the opening and closing of the capital account for indirect investment will be conducted according to provisions of the licensed bank.

The foreign investor will only be entitled to conduct receipt and expense transactions on the newly-opened capital account of indirect investment as prescribed above after having the previously-opened capital account of indirect investment closed and settled.

Article 7. Use of indirectly-invested capital accounts

The indirectly-invested capital account will be used for implementation of receipt-payment transactions relating to foreign indirect investment activities in Vietnam as follows:

1. Receipts:

- a) Receipts from selling foreign currencies to licensed credit institutions;
- b) Receipts from transfer of contributed capital, shares, sale of securities and other valuable papers, receipt of dividends and interests from bonds and valuable papers in Vietnam Dong from foreign indirect investment activities in Vietnam;
- c) Receipts of transfer from payment accounts in Vietnam Dong of foreign investors opened at licensed banks;
- d) Receipts of transfer from accounts of fund management enterprises, securities companies, credit institutions and branches of foreign banks permitted to conduct investment trust operation for foreign investor (applied in cases that foreign investors conduct indirect investment in Vietnam under the form of investment trust);
- dd) Other legal transactions of receipts in Vietnam Dong of foreign investors relating to foreign indirect investment activities in Vietnam.

2. Payments:

- a) Payments for implementation of foreign indirect investment activities in Vietnam under forms prescribed in Article 5 of this Circular;
- b) Payments for buying foreign currencies from licensed credit institutions in order to transfer capitals, interests and other lawful incomes to foreign countries;
- c) Payments for legal expenses incurred in Vietnam;
- d) Payments for transfer to payment accounts in Vietnam Dong of foreign investors opened at licensed banks;

dd) Payments for transfer to accounts of fund management enterprises, securities companies, and organizations permitted to conduct investment trust operation for foreign investor (applied in cases that foreign investors conduct indirect investment in Vietnam under the form of investment trust);

e) Other transactions for lawful payments relating to foreign indirect investment activities in Vietnam.

Article 8. Remittance of invested capitals to foreign countries

In case of having demand in remittance of capitals, interests and other lawful incomes from foreign indirect investment activities to foreign countries, the foreign investor may use Vietnam Dong in the capital account of indirect investment to buy foreign currencies at licensed credit institutions and remit to foreign countries.

Article 9. Transformation of investment forms of foreign investors

1. Transformation of investment from indirect form to direct form or from direct form to indirect form of foreign investors must be conducted according to prevailing legal provisions on investment and other relevant legal provisions.

2. In case that a foreign investor conducting indirect investment in Vietnam under the form of buying shares or contributing capitals to a Vietnamese enterprise transforms to the form of direct investment (participates in management and administration of such enterprise), the transformation of its account will be conducted as follows:

a) In case that the foreign investor does not continue conducting his/her/its indirect investment activities in Vietnam, after completing all procedure for transformation of investment form according to prevailing legal provisions, the foreign investor will open a capital account for direct investment in Vietnam Dong at a licensed bank, after that closes the previously-opened capital account of indirect investment and transfers all balance on this account to the newly-opened capital account for direct investment in Vietnam Dong for implementation of direct investment activities in Vietnam in accordance with prevailing legal provisions on foreign exchange management and other relevant legal provisions. Procedure for closing a capital account of indirect investment and procedure for opening a capital account of direct investment in Vietnam Dong will be conducted according to provisions of the licensed bank;

b) In case of continue conducting indirect investment activities in Vietnam, the foreign investor is entitled to use the previously-opened capital account of indirect investment for implementation of his/her/its indirect investment activities in Vietnam on the basis of compliance with provisions under this Circular and other relevant legal provisions. Concurrently, the foreign investor will conduct the opening and the use of capital account of direct investment for implementation of foreign direct investment activities in Vietnam in accordance with prevailing provisions on foreign exchange management for foreign direct investment activities in Vietnam and other relevant legal provisions.

Chapter III

RIGHTS, OBLIGATIONS OF LICENSED CREDIT INSTITUTIONS AND FOREIGN INVESTORS

Article 10. Rights, obligations of licensed credit institutions

1. When conducting transactions of receipts and payments on the capital accounts of indirect investment of foreign investors, licensed credit institutions are entitled to request foreign investors to present documents and materials pertaining to their indirect investment activities in Vietnam.

2. When conducting transactions of receipts and payments on capital accounts of indirect investment of foreign investors, licensed credit institutions are responsible for:

a) Guiding foreign investors to implement procedures for opening, closing of their capital accounts of indirect investment and provisions of this Circular;

b) Providing for regulations, conducting inspection and storage of documents, materials relating to transactions of receipts or payments conducted on the capital accounts of indirect investment presented by foreign investors to make sure the supply of foreign exchange service is carried out in line with purposes and in accordance with legal provisions;

c) Selling foreign currencies to foreign investors on the basis of self-balance of foreign currency sources of credit institutions.

3. In addition to rights and obligations as prescribed in clause 1, clause 2 of this Article, licensed banks take responsibilities in guiding foreign investors to conduct the transformation of their capital accounts of indirect investment as prescribed in Article 17 of this Circular.

Article 11. Rights, obligations of foreign investors

1. Foreign investors are permitted to conduct indirect investment activities in Vietnam on the basis of compliance with provisions of this Circular and other relevant legal provisions of Vietnam.

2. When conducting transactions of receipts and payments on capital accounts of indirect investment, foreign investors are responsible for:

a) Declaring contents of transactions of receipts and payments which are related to foreign indirect investment activities in Vietnam as per requirements and instructions of licensed banks;

b) Submitting, supplementing dossiers, documents or materials at the requests of licensed banks.

Chapter IV

REPORT REGIME

Article 12. Report regime for licensed credit institutions

Licensed credit institutions will report to the State Bank in accordance with prevailing provisions on regime for report and statistics of the State Bank.

Article 13. Request for extraordinary reports

In extraordinary or necessary cases, foreign investors, licensed credit institutions and branches of the State Bank in provinces or centrally-run cities will report relevant contents at requests of the State Bank.

Chapter V

CHECK, INSPECTION, SUPERVISION AND HANDLING OF VIOLATIONS

Article 14. Check, inspection and supervision

1. The State Bank, branches of the State Bank in provinces, centrally-run cities will conduct check, inspection, supervision of implementation status of provisions of licensed banks and foreign investors which are related to the opening and the use of capital accounts of indirect investment of foreign investors for implementation of foreign indirect investment activities in Vietnam.
2. The checked organizations and individuals are responsible for providing all necessary documents and materials as prescribed for timely and effective check, inspection or supervision.

Article 15. Handling of violations

In cases of infringing provisions of this Circular, depending on levels of violations, foreign investors and licensed banks will be fined in accordance with legal provisions.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 16. Effect

1. This Circular takes effect on April 28, 2014.
2. This Circular will replace Circular No.03/2004/TT-NHNN dated May 25, 2004 of the State Bank guiding on management of foreign exchange in contribution of capital for buying shares of foreign investors in Vietnamese enterprises.

Article 17. Transitional provisions

1. Within 90 days since the effective day of this Circular, foreign investors are responsible for conducting transformation of their capital accounts of indirect investment in order to continue conducting their indirect investment activities in Vietnam as following provisions:

a) In cases that foreign investors have opened their accounts for contributing capitals or buying shares in Vietnam Dong, foreign investors will transform names of their capital accounts for contributing capitals or buying shares in Vietnam Dong as above mentioned into their capital accounts for indirect investment;

b) In cases that foreign investors have opened their accounts for contributing capitals or buying shares in Vietnam Dong, concurrently having balances in Vietnam Dong on indefinite-term specialized deposit accounts in Vietnam Dong opened by securities enterprises at licensed banks:

- Foreign investors will transform names of their capital accounts for contributing capitals or buying shares in Vietnam Dong as above mentioned into their capital accounts for indirect investment;

- Foreign investors will transfer their balances in Vietnam Dong on indefinite-term specialized deposit accounts in Vietnam Dong opened by securities enterprises at licensed banks into their capital accounts of indirect investment opened at licensed banks;

c) In cases that foreign investors have not opened their accounts for contributing capitals or buying shares in Vietnam Dong yet and have balances in Vietnam Dong on indefinite-term specialized deposit accounts in Vietnam Dong opened by securities enterprises at licensed banks:

- Foreign investors will open their capital accounts of indirect investment at licensed banks;

- Foreign investors will transfer their balances in Vietnam Dong on indefinite-term specialized deposit accounts in Vietnam Dong opened by securities enterprises at licensed banks into their capital accounts of indirect investment opened as above mentioned for continue implementing their indirect investment activities in Vietnam;

d) In cases that foreign investors have opened their accounts for contributing capitals or buying shares in Vietnam Dong, concurrently have balances in deposit in foreign currencies on indefinite-term specialized deposit accounts in foreign currencies opened by securities enterprises at licensed banks:

- Foreign investors will transform names of their opened capital accounts for contributing capitals or buying shares in Vietnam Dong into their capital accounts for indirect investment;

- Foreign investors will transfer their balances in foreign currencies on indefinite-term specialized deposit accounts in foreign currencies opened by securities enterprises at licensed banks into Vietnam Dong; afterwards, transfer such amounts of Vietnam Dong to their capital accounts of indirect investment for continue implementing their indirect investment activities in Vietnam.

e) In cases that foreign investors have not opened their accounts yet for contributing capitals or buying shares in Vietnam Dong, concurrently have balances in foreign currencies on indefinite-term specialized deposit accounts in foreign currencies opened by securities enterprises at licensed banks:

- Foreign investors will open their capital accounts of indirect investment at licensed banks;

- Foreign investors will transfer their balances in foreign currencies on indefinite-term specialized deposit accounts in foreign currencies opened by securities enterprises at licensed banks into Vietnam Dong; afterwards, transfer such amounts of Vietnam Dong to their capital accounts of indirect investment for continue implementing their indirect investment activities in Vietnam.

2. In cases that not continue implementation of indirect investment activities in Vietnam:

a) Foreign investors are entitled to transfer their balances of deposits in Vietnam Dong on indefinite-term specialized deposit accounts in Vietnam Dong opened by securities enterprises at licensed banks and their balances of deposits in foreign currencies on indefinite-term specialized deposit accounts in foreign currencies opened by securities enterprises at licensed banks to their Vietnam Dong accounts or foreign currency accounts of foreign investors at licensed banks for serving lawful purposes in Vietnam in accordance with provisions on management of foreign exchange and other relevant legal provisions or remit to foreign countries;

b) Foreign investors are entitled to use their balances in Vietnam Dong on their indefinite-term specialized deposit accounts in Vietnam Dong opened by securities enterprises at licensed banks to buy foreign currencies and remit to foreign countries on the basis of submission of valid documents and materials in compliance with prevailing provisions on management of foreign exchange.

3. In cases of more than 90 days since the effective day of this Circular, foreign investors do not conduct transformation of their capital accounts of indirect investment as prescribed in clause 1 of this Article, foreign investors will not permitted to conduct their indirect investment activities in Vietnam through their accounts for contributing capitals or buying shares and their indefinite-term specialized deposit accounts in Vietnam Dong opened by securities enterprises at licensed banks.

Article 18. Organization of implementation

Chief of office, Director of the Department of Foreign Exchange Management, Heads of relevant units under the State Bank, Directors of branches of the State Bank in provinces, centrally-run cities, Chairmen of the Management Boards, Chairmen of the Board of Members, General Directors (Directors) of credit institutions, branches of foreign banks are responsible for organizing implementation of this Circular.

**FOR GOVERNOR
DEPUTY GOVERNOR**

Dao Minh Tu