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Kinstellar Southeast Asia Insights

Kinstellar Southeast Asia Insights offers a concise overview of key legal and business trends in Vietnam and their potential impact on your business.

In this August 2026 edition, we highlight new SBV circulars on foreign exchange management for foreign and outward investment, a draft circular on securities registration and settlement, a decree on investor selection under the Law on Bidding, and in our spotlight, a new decree on corporate bond offerings.

SECTION I. OVERVIEW OF THE RECENT LEGISLATION

Circular No. 38/2026/TT-NHNN replacing Circular No. 06/2019/TT-NHNN - Foreign Exchange Management of Foreign Investment Activities in Vietnam

On 31 July 2026, the State Bank of Vietnam issued Circular No. 38/2026/TT-NHNN replacing Circular No. 06/2019/TT-NHNN on foreign exchange management for foreign investment in Vietnam ("**Circular 38**"), which took effect on 18 August 2026. Circular 38 is intended to align Vietnam's foreign exchange regime with the Law on Investment 2025. Notably, Circular 38 renames the statutory special-purpose bank account previously known as a 'direct investment capital account' ("**DICA**"), which will henceforth be known as a 'foreign investment capital account' ("**FICA**").

Other key highlights of Circular 38 include the following:

(i) **Earlier opening of FICAs for greenfield projects.** Foreign-invested companies may open a foreign currency FICA and/or a Vietnam Dong FICA at a duly licensed bank, before having obtained an investment registration certificate ("**IRC**"). Prior to IRC issuance, FICAs may be used only to receive the charter capital contributions, receive interest on the balance of the FICA, pay legitimate project formation expenses, and refund charter capital contributions to the investor(s) if the IRC application is rejected. After IRC issuance, foreign-invested companies may open an additional FICA in another foreign currency. This represents a significant liberalisation to align Vietnam's foreign exchange regime with the Law on Investment 2025 and will solve a number of key funding and administrative challenges previously faced by foreign investors during the pre-IRC project preparation phase.

(ii) **Inclusion of International Financial Centre (“IFC”) member enterprises.** Enterprises who are members of the IFC (as defined under Decree No. 329/2025/ND-CP) (“**IFC Members**”) are brought within the scope of Circular 38. Where an IFC Member invests in an economic organisation established outside the IFC's jurisdictional (geographical) boundaries, Circular 38 treats that investment as a ‘direct investment’ transaction, which emanates from the IFC and is made into the normal jurisdictional territory of Vietnam. In a similar manner to foreign-domiciled (non-resident) foreign investors, IFC Members are required to deploy investment capital into the FICA of the investee enterprise (where the investee enterprise is required by Circular 38 to establish and maintain a FICA). This is a significant development, which indicates that the geographical (and thus jurisdictional) boundaries of the IFC will likely be treated as being broadly similar to international jurisdictional boundaries, from a foreign exchange control perspective. The extent to which IFC Members will otherwise be treated in a similar manner to foreign investors for the purposes of Vietnam law (and particularly foreign exchange control) will be interesting to monitor, as this will be likely to have a significant impact upon the attractiveness of the IFC to foreign investors.

(iii) **Transitional arrangements for existing DICAs.** Enterprises that have opened a DICA but no longer satisfy the conditions for maintaining it must close the DICA. The timing for DICA closure is as follows:

- If the enterprise has no remaining equity interest held by foreign investors or IFC Members or the IRC application is rejected, then the DICA must be closed within 12 months as from the effective date of Circular 38 (i.e. by 17 August 2027); and
- If, following an equity transfer or a change in the enterprise’s charter capital, the aggregate equity interest of foreign investors and/or IFC Members is reduced to 50% or less, then the DICA must be closed upon completion of the relevant transaction or charter capital change – which in turn gives rise to a requirement for foreign investors and/or IFC Members in the relevant enterprise to open an ‘indirect investment account’ (“**IIA**”). Non-resident investors and IFC Members who engage in ‘indirect investment’ activities within Vietnam’s normal jurisdictional territory are required to open and maintain an IIA and to route all indirect investment-related funds through it.

An exception applies in respect of this DICA closure obligation where the DICA is being used for the borrowing and repayment of foreign loans or other legitimate payment obligations, in which case the DICA may continue to be maintained solely for that purpose and must be closed once all outstanding loan and/or other relevant obligations have been fully discharged.

Circular No. 34/2026/TT-NHNN guiding the Foreign Exchange Management of Outward Investment Activities

On 30 June 2026, the State Bank of Vietnam issued Circular No. 34/2026/TT-NHNN on foreign exchange management of outward investment activities ("**Circular 34**"), which took effect on 31 July 2026. Circular 34 replaces Circular No. 12/2016/TT-NHNN after nearly a decade of its operation and aligns the outbound investment foreign exchange regime with the Law on Investment 2025 and Decree No. 103/2026/ND-CP.

Key highlights of Circular 34 include the following:

(ii) **Pre-investment outbound funds transfers**

- **Expanded payment options:** Outbound investors may transfer pre-investment funds abroad through a foreign-currency and/or VND pre-investment account opened at the same authorised bank.
- **Currency-specific accounts:** In relation to foreign currency pre-investment accounts, an outbound investor may open one account per foreign currency at the same authorised bank.
- **Multiple investors:** Where an outbound investment project is invested in by more than one investor, a separate pre-investment account per outbound investor must be opened at the same bank.

(iii) **New rules on exchange rate conversion**

Circular 34 introduces exchange rate rules which are entirely new (as opposed to being carried over from the previous regulations (namely, Circular 12/2016)). Circular 34 contains specific provisions dealing with the exchange rates which will apply in respect of:

- foreign exchange registration or outbound capital transfers which are implemented in a currency different from the investment currency;
- pre-investment transfers; and
- statistical reporting.

The applicable exchange rate varies depending on the transaction type and is determined by reference either to the authorised bank's quoted rate or the Ministry of Finance's accounting exchange rate.

(i) **Investor responsibilities**

- **Quarterly reporting obligations**: Outbound investors must submit quarterly reports electronically to the State Bank of Vietnam (the "**SBV**"), in addition to filing such reports with the regional branch of the SBV that most recently confirmed the foreign exchange registration. Reports must be submitted no later than the 5th day of the first month of the following quarter.
- **Document submission obligations**: Outbound investors must present documents and supporting evidence relating to the outbound investment as requested by the authorised bank.
- **Remittance instruction requirements**: Outbound investors must specify:
  - the amount and purpose of the pre-investment remittance (for pre-investment remittance transactions); or
  - the amount and purpose of the remittance, together with the investment project code or the automatically generated application reference number issued through the National Investment Information System (for investment capital remittance transactions).

Draft Circular replacing Circular No. 119/2020/TT-BTC – on Registration, Depository, Clearing and Settlement of Securities

The Ministry of Finance has published for public consultation a draft circular replacing Circular No. 119/2020/TT-BTC – on Registration, Depository, Clearing and Settlement of Securities (the "**Draft Circular**"). One of the most notable aspects of Draft Circular is that it sets out the detailed framework for the new central counterparty clearing mechanism. In particular:

(iv) **Central counterparty clearing**: Listed shares, fund certificates, and covered warrants will be cleared under a central counterparty clearing mechanism operated by the Vietnam Securities Clearing Company Limited (in Vietnamese "Công ty TNHH MTV Bù trừ Chứng khoán Việt Nam") ("**VSC**"), a VSDC subsidiary. VSC acts as the central counterparty in respect of all matched trades, meaning that VSC interposes itself and technically becomes the buyer to every seller and the seller to every buyer – resulting in the original bilateral trade being extinguished and replaced by two trades against the central counterparty clearing mechanism. In this way, bilateral counterparty risk is eliminated. Investors and clearing members are required to maintain clearing margin at three levels — initial (at order placement), required (ongoing), and supplementary (on breach).

(v) **No full pre-funding requirement**: The Draft Circular underpins the market's move away from full pre-funding (under which an investor has historically been required to hold funds equivalent to at least 100% of the trade value before placing an order) to a margin-based model. Because VSC interposes itself as central counterparty and guarantees matched trades (backed by the default protection waterfall), each trade is supported by the initial, required and supplementary margin posted through the investor's clearing member, rather than by pre-funding the order in full. The establishment of the central counterparty clearing mechanism is widely (and rightly) regarded as being fundamental to underpinning the market's FTSE reclassification and pursuing further upgrades.

(i) **Custodian settlement banks:** The Draft Circular introduces a new participant category that allows custodian banks who are not clearing members to participate in central counterparty clearing and settlement through a cooperation agreement with a general clearing member securities company.

Apart from the central counterparty clearing mechanism, it is worth noting the following from the Draft Circular:

(ii) **Narrowed scope:** The Draft Circular applies only to equity shares, fund certificates, covered warrants, and listed corporate bonds, with all other debt and financial instruments (for example, corporate bonds issued by private companies) remaining subject to their own dedicated regulatory frameworks.

(iii) **Real time payment for listed corporate bonds:** The Draft Circular establishes a distinct settlement mechanism for listed corporate bonds traded on the HNX. Under this mechanism, delivery of bonds and payment of cash occur simultaneously on a trade-by-trade basis within the same trading day, without going through the central counterparty clearing mechanism.

Decree on Implementation of Law on Bidding in respect of Selection of Investors for Business Investment Projects

On 7 July 2026, the Government issued Decree No. 274/2026/ND-CP detailing certain articles implementing the Law on Bidding in respect of investor selection for business investment projects ("**Decree 274**"), which takes effect on 21 August 2026.

Key highlights of Decree 274 include the following:

(i) **Expanded scope of projects subject to bidding for investor selection:** Decree 274 has notably expanded the scope of projects that are subject to bidding for investor selection. Certain projects not involving land use are now also subject to the bidding requirement, specifically:

- Dredging projects involving the recovery of products in relation to maritime infrastructure and inland waterway infrastructure within seaports and inland waterways; and
- Projects under education, healthcare, culture, sports and environmental sectors where two or more investors register their interest in implementing the same project.

(ii) **Additional exemptions from bidding for investor selection:** Under Decree 274, projects exempt from bidding for investor selection include:

- Projects eligible for land allocation or land lease without a land use rights auction or bidding for investor selection; and
- Socio-economic development projects that: (a) do not use State capital; and (b) involve land that would otherwise be subject to State land recovery for socio-economic development purposes, where the investor acquires land use rights through negotiations, to implement the project.

(iii) **Shortened timelines for amendment and clarification of the bid invitation dossier ("BID"):**

- Amended timeline in respect of domestic BID: At least 10 working days (previously 15 days) before the bid closing date.
- Amended timeline in respect of international BID: At least 15 working days (previously 25 days) before the bid closing date.
- Clarification of the request timeline in respect of domestic BID: At least five working days (previously seven working days) before the bid closing date.
- Clarification of the request timeline in respect of international BID: At least 10 working days (previously 15 days) before the bid closing date.

(iv) **Exemption from evidencing financial capacity:** Under Decree 274, the investors falling within the following categories are not required to demonstrate their owner's equity capital (vốn chủ sở hữu):

- Science and technology enterprises, innovative start-ups, innovation centres and start-up support organisations; and
- High-tech incubators, high-tech business incubator facilities, strategic technology enterprises, high-tech enterprises and enterprises manufacturing high-tech products.

On 5 June 2026, the Government issued Decree No. 200/2026/ND-CP ("**Decree 200**"), which took effect on the same date. Decree 200 governs the offering and trading of privately placed corporate bonds in the domestic market and the offering of corporate bonds in international markets, replacing Decree No. 153/2020/ND-CP on the same subject matter (as amended from time to time) (“**Decree 153**”).

Decree 200 on the offering and trading of privately placed bonds in the domestic market and the offering of corporate bonds in international markets.

Key highlights of Decree 200 are summarised below:

1. Greater Oversight of Issuance Purposes and Use of Bond Proceeds

Decree 200 introduces a more prescriptive framework governing the permissible purposes of corporate bond issuances. While Decree 153 generally allowed bond proceeds to be used for investment programs and projects without defining the scope of such investments, Decree 200 expressly limits the permissible use of proceeds to the following purposes:

(i) implementing investment projects in accordance with the investment forms prescribed under the Law on Investment No. 143/2025/QH15 and other investment forms as prescribed by the Government;

(ii) restructuring the issuing enterprise's own debts; and

(iii) other purposes permitted under the relevant specialised laws.

To ensure compliance with these requirements, the issuing enterprise must clearly specify the purpose of the bond issuance in its issuance plan. The plan must also include, among other matters, details of the proposed use of the bond proceeds, confirmation that the issuance satisfies the applicable offering conditions, and, where relevant, the bond conversion plan (for convertible bonds) or the plan for the exercise of warrant rights (for bonds with warrants). The issuance plan must be approved by the competent corporate authority of the issuing enterprise in accordance with its corporate form.

Following the issuance, Decree 200 further requires the issuing enterprise to separately monitor and manage the bond proceeds to ensure that they are used strictly in accordance with the approved issuance plan and the information disclosed to investors.

Where the issuing enterprise proposes to amend the terms and conditions of bonds, including the approved issuance purpose, Decree 200 imposes additional safeguards. In addition to obtaining approval from the competent corporate authority and the consent of bondholders representing at least 65% of the total outstanding bonds of the same class, the issuing enterprise must complete the early redemption of bonds held by bondholders who do not consent to the proposed amendments.

2. Revised Issuance Conditions and Offering Framework

Decree 200 restructures the regulatory framework governing private bond offerings by introducing separate issuance regimes for two categories of issuers:

(i) **Group 1** – public companies, securities companies, and securities investment fund management companies; and

(ii) **Group 2** – all other types of enterprises.

The applicable issuance conditions, offering dossiers, and procedures differ depending on the issuer category.

Decree 200 also introduces a new financial eligibility requirement applicable to the private placement of corporate bonds by both Group 1 and Group 2 issuers. Specifically, an issuing enterprise's total liabilities, including the value of the proposed bond issuance, must not exceed five times its equity, as determined based on its most recent audited financial statements, except in the case of credit institutions, insurance enterprises, enterprises issuing bonds to finance real estate projects, and state-owned enterprises.

3. Strengthened Investor Protection Framework

Decree 200 strengthens the eligibility requirements applicable to individual professional securities investors by narrowing the categories of privately placed corporate bonds in which they may subscribe, trade, or receive by transfer.

Specifically, individual professional investors may freely subscribe for, trade in, and transfer only privately placed convertible bonds issued by Group 1 issuers.

For all other categories of privately placed corporate bonds, individual professional investors may participate in subscription, trading, or transfer transactions only where the bonds carry additional safeguards. In particular, the following bonds must have: (a) a credit rating and be secured by collateral; or (b) a credit rating and a payment guarantee issued by a credit institution:

(i) privately placed bonds with warrants and privately placed non-convertible bonds without warrants issued by Group 1 issuers; and

(ii) privately placed convertible bonds, bonds with warrants, and non-convertible bonds without warrants issued by Group 2 issuers.

Decree 200 further clarifies that the collateral or payment guarantee must secure the full repayment of the bond principal. In addition, the collateral must not consist of the issuing enterprise's own shares, stocks, bonds, or capital contributions.

Notably, Decree 200 introduces a general payment requirement applicable to both individual and institutional investors. All subscriptions, trades, and transfers of privately placed corporate bonds must be settled through non-cash payment methods.

4. Strengthened Responsibility and Information Disclosure

Decree 200 introduces a more comprehensive accountability framework for corporate bond issuances by clearly allocating responsibilities among the issuing enterprise, its internal corporate bodies, and external service providers.

At the corporate level, the competent decision-making bodies (including the General Meeting of Shareholders, the Board of Management, the Members' Council, the Company Chairman, and the Enterprise Owner) are responsible for approving the bond issuance plan and overseeing both the issuance process and the use of bond proceeds in accordance with the approved plan.

External service providers, including audit firms, credit rating agencies, and valuation firms, are likewise responsible for the documents, reports, and other deliverables prepared within the scope of their engagement. They are required to ensure that such work is accurate, objective, and compliant with applicable legal and professional standards.

In addition to strengthening accountability, Decree 200 expands the issuer's information disclosure obligations. Issuers must make periodic disclosures every six months and annually, based on the financial year, until all outstanding bonds have been fully redeemed. The required disclosures now expressly include updates on the use of bond proceeds, which must continue until all proceeds have been fully disbursed or all outstanding bonds have been repaid.

Decree 200 also expands the circumstances in which extraordinary disclosures are required. In particular, issuers must disclose information within 24 hours upon the occurrence of certain material events, including changes to their legal or operational status, amendments to the terms and conditions of the bonds or the disclosed offering information, delays in the payment of bond principal or interest and related developments, mandatory early redemption of bonds, changes to the issuer's legal representative, court judgments or tax penalty decisions affecting the issuer, and other events that may materially affect the issuer's ability to repay bond principal or interest.

About Kinstellar Southeast Asia

Kinstellar Southeast Asia, in cooperation with Asia Counsel Vietnam Law Company Limited, is a fast-growing international law firm with a well-established footprint in Southeast Asia, one of the world's most dynamic and fast-evolving regions, and across Central & Eastern Europe, Southeast Europe, and Central Asia, through our sister law firm, Kinstellar.

We advise clients in Cambodia, Vietnam and across Southeast Asia by combining deep local insight with international legal experience, underpinned by the highest standards of quality, excellence and integrity.

Our practice brings together experienced partners and a multilingual team of local and international lawyers and a deep bench of expertise and support also from Kinstellar. We advise investors, financial institutions, regional and multinational businesses, as well as international law firms whose clients require first-class legal counsel in our jurisdictions.

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Together with our sister law firm, Kinstellar, we operate in 15 offices with a combined team of more than 500 lawyers. This platform offers clients trusted local capability, backed by genuine international reach.

If you have any questions on any of the items discussed above, please do not hesitate to contact us.

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