

SUMMARY OF REQUIREMENTS FOR THE PAYMENT PROCESS OF M&A TRANSACTIONS IN VIETNAMⁱ

	ACCOUNT TO TRANSFER THE PURCHASE PRICE		ACCOUNT TO RECEIVE THE PURCHASE PRICE			CURRENCY		
	IICA ⁱⁱ	Current Account ⁱⁱⁱ	DICA ^{iv}	IICA	Current Account ^v	VND	Foreign Currency	
A - SALE AND PURCHASE OF SHARES / EQUITY CAPITAL								
A.1. Targets being FDI Enterprises^{vi}								
<i>Buyer</i>	<i>Seller</i>							
Offshore	Offshore	√ ^{vii}			√		√	
Offshore	Onshore	√	√			√		
Onshore	Offshore	√	√			√		
Onshore	Onshore	√			√	√		
A.2. Targets being Non-FDI Enterprises^{viii}								
<i>Buyer</i>	<i>Seller</i>							
Offshore	Offshore	√			√	√		
Offshore	Onshore	√			√	√		
Onshore	Offshore	√		√		√		
Onshore	Onshore	√			√	√		
B - SUBSCRIPTION OF SHARES / CONTRIBUTION OF ADDITIONAL EQUITY CAPITAL								
B.1. Targets being FDI Enterprises								
Offshore investor		√	√			√ ^{ix}	√	
Onshore investor		√	√			√	√ ^x	
B.2. Targets being Non-FDI Enterprises								
Offshore investor	√				√	√		
Onshore investor		√			√	√		

ⁱ While we have tried to capture as many deal structures as possible, in practice there can be variations due to various elements involved which may not yet covered in this summary. Therefore, while this summary can be used as a quick reference guide, consideration should be taken on a case-by-case basis. This summary does not cover the sale and purchase of securities on the stock market.

ⁱⁱ “IICA” means Indirect Investment Capital Account, which is defined as “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” under Article 3.4 Circular No. 05/2014/TT-NHNN issued by the State Bank of Vietnam on 12 March 2014 providing guidance on the open and usage of indirect investment capital account to implement foreign indirect investment in Vietnam, as amended from time to time (“**Circular 05**”).

ⁱⁱⁱ Offshore buyers will use their current accounts from offshore; onshore buyers/targets will use their current accounts from onshore, subject to further discussion in Footnote (vii) below.

^{iv} “DICA” means Direct Investment Capital Account, which is defined as a “... foreign currency or Vietnamese Dong demand accounts opened by foreign invested enterprises and foreign investors at authorized banks to perform transactions regarding the foreign direct investment in Vietnam...” under Article 3.5 Circular No. 06/2019/TT-NHNN issued by the State Bank of Vietnam on 26 June 2019 implementing the foreign exchange control regimes for foreign direct investment activities in Vietnam (“**Circular No. 06**”).

^v Offshore sellers will use their current accounts from offshore; onshore sellers/targets will use their current accounts from onshore, subject to further discussion in Footnote (vii) below.

^{vi} “FDI Enterprises” means Foreign Direct Invested Enterprises as defined under Article 3.2 Circular No. 06 which includes the following:

- (a) Any enterprise established in the form of investment of establishing a business organization whose members or shareholders are foreign investors and granted the investment registration certificate in accordance with the law on investment;
- (b) Any enterprises other than those prescribed in point (a) above and at least 51% of charter capital of which is owned by foreign investors, including:
 - (i) Any enterprises at least 51% of charter capital of which is held by foreign investors through capital contribution or purchase of shares or equity capital;
 - (ii) Enterprises derived from division, acquisition, consolidation whose 51% of charter capital is owned by foreign investors after such events;
 - (iii) New enterprises established in accordance with relevant laws; and
- (c) Project enterprises established by foreign investors to implement PPP projects in accordance with law on investment.

^{vii} In this scenario, the law is not clear on whether payment can be settled outside Vietnam. Therefore, payment made to an onshore current account of the Seller is a prudent approach because it can help the Buyer to create a payment trail evidencing their investment into Vietnam. In this case, the parties should also check with the Seller’s bank to see if they require the payment to be made to the Seller from an onshore account of the Buyer.

^{viii} Under Article 5.1 of Circular No. 05 (as amended), this group of Non-FDI Enterprises include enterprises that do not fall under the concept of FDI Enterprises under Article 3.2 of Circular No. 06 (as cited above).

^{ix} Under Article 4.1 of Circular No. 06, in addition to foreign currency, offshore investors are also allowed to contribute equity capital in Vietnamese Dong with their own sources of Vietnamese Dong.

^x Under Article 4.2 of Circular No. 06, in addition to Vietnamese Dong, Vietnamese investors are allowed to contribute equity capital in foreign currency with their own sources of foreign currency. Having said that, we suggest this alternative, if taken, should be considered carefully together with other factors involved to ensure the full compliance with the foreign exchange rule.

Please contact us if you are interested in discussing any issues relating to the requirements on payment flow for M&A transactions in Vietnam.

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