

LEGAL UPDATES

COMMERCE

Decree No. 54/2019/ND-CP dated 19 June 2019 regarding karaoke services and nightclub services

Effective date: 1 September 2019

1. Karaoke services and nightclub services are conditional business. Enterprises and households must obtain a license on satisfaction of business conditions and also satisfy conditions required by laws.
2. Below are certain key conditions and responsibilities.

	Karaoke services	Nightclub services
Conditions	<ul style="list-style-type: none"> to ensure all requirements of firefighting and fire prevention and security and public order in accordance with the Vietnamese laws not to install locks inside karaoke rooms/nightclub rooms to ensure the minimum usage area of 20m² (excluding auxiliary works) for each karaoke room 	<ul style="list-style-type: none"> to ensure the minimum usage area of 80m² (excluding auxiliary works) for each nightclub room location must be at least 200 meters away from schools, hospitals, religious institutions and culture/ historical heritages
Responsibilities	<ul style="list-style-type: none"> to comply with the prevailing laws on labour, labour safety, environmental protection, food safety, copyright, alcohol business, tobacco harm prevention, insurance and other relevant regulations to use songs licensed for publication and circulation to equip employees with uniform and name tags to ensure sound proof in accordance with the National Technical Regulation on Noise not to operate from 0.00 a.m. to 8.00 a.m. to ensure that visual presentation on screen is appropriate to song lyrics and Vietnamese culture, morality and customs. 	<ul style="list-style-type: none"> not to operate from 2.00 a.m. to 8.00 a.m. not to serve customers below 18 years old. to comply with legal regulations on art performance if there are programs of art performance.

3. Non-compliance may cause the operations to be suspended up to 3 months or the relevant license to be revoked.

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FOREIGN EXCHANGE CONTROL

Circular No. 06/2019/TT-NHNN dated 26 June 2019 guiding foreign exchange control over foreign direct investment in Vietnam

Effective date: 6 September 2019

1. Circular No. 06/2019/TT-NHNN (“**Circular 06**”)
 - (a) replaces Circular No. 19/2014/TT-NHNN dated 11 August 2014 guiding the same matters (“**Circular 19**”); and
 - (b) amends certain provisions of Circular No. 05/2014/TT-NHNN dated 12 March 2014 guiding the opening and use of indirect investment capital accounts (“**IICA**”) for foreign indirect investment in Vietnam (“**Circular 05**”).
2. Certain new provisions under Circular 06 in compared to Circular 19 are as follows

No.	Items	Circular 19	Circular 06
1	Scope of governing	Foreign exchange control in foreign direct investment (“ FDI ”) in Vietnam: <ol style="list-style-type: none"> (1) capital contribution; (2) opening and using of direct investment capital account (“DICA”) in foreign currency and Vietnam Dong; (3) repatriation of capital, profits and other lawful revenues; and (4) transfer of investment capital in the pre-investment phase. 	In addition to the foregoing, Circular 06 also governs the foreign exchange control over transfer of investment capital and transfer of investment project.
2	Applicable subjects	<ol style="list-style-type: none"> (1) Residents being foreign directly invested capital enterprises (“FDI enterprises”); (2) Non-residents participating in business cooperation contracts (“BCC”) in Vietnam; (3) Non-residents being foreign investors in the FDI enterprises; and (4) Other organizations and individuals involved in the FDI activities in Vietnam 	Circular 06 additionally applies to Vietnamese investors in the FDI enterprises and foreign investors participating in public private partnership (“ PPP ”) projects in Vietnam.
3	Definition of “foreign investors”	Foreign investors mean non-residents being organizations and individuals who conduct the FDI activities in Vietnam.	Foreign investors mean individuals with foreign nationality and organizations established under foreign laws who conduct the FDI activities in Vietnam.
4	Definition of “FDI enterprises”	A FDI enterprise means an enterprise in which a foreign investor participates by contributing capital for establishment, management of such enterprise	New Circular 06 provides a more specific definition of FDI enterprises, which serves as a basis to determine which enterprises to be allowed to

	<p>and conducting investment activities in Vietnam</p>	<p>open direct investment accounts:</p> <ul style="list-style-type: none"> (1) enterprises established under investment form of economic organization establishment and having members/ shareholders being foreign investors who are subject to issuance of the Investment Registration Certificate (“IRC”). (2) enterprises not falling within Item 4(1) of this column and in which foreign investors hold at least 51% of the charter capital in the following cases: <ul style="list-style-type: none"> (a) capital contribution/ share purchase/ acquisition of contributed capital by foreign investors results in foreign shareholding in such enterprises of at least 51%; (b) division/ merger/ consolidation results in foreign shareholding in such enterprises of at least 51%; (c) enterprises newly established in accordance with the specialized laws. (3) project enterprises established by foreign investors for implementing PPP projects in accordance with the laws on investment.
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<p>5 Basis of investment capital amount for contribution</p>	<p>Investment capital shall be contributed according to the amount as specified in the Investment Certificate.</p>	<p>Investment capital shall be contributed according to the amount as specified in one of the following documents:</p> <ul style="list-style-type: none"> (1) IRC; (2) Certificate of establishment and operation according to the specialized laws; (3) Notification on satisfaction of conditions for capital contribution/ share purchase/ acquisition of
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				<p>contributed capital of foreign investors (M&A approval);</p> <p>(4) PPP contracts signed with competent authority; and</p> <p>(5) other documents evidencing that the capital contribution by foreign investors are in accordance with the laws.</p>
6	Entities responsible for opening and using the DICA	<p>(1) FDI enterprises; and</p> <p>(2) Foreign investors participating in the BCC.</p>		<p>(3) FDI enterprises;</p> <p>(4) Foreign investors participating in the BCC; and</p> <p>(5) Foreign investors directly implementing the PPP projects in case of not establishing project enterprises.</p>
7	Compulsory closure of the DICA	None		<p>FDI enterprises falling under Item 4(2) and 4(3) of this column are obliged to close the DICA if:</p> <p>(1) following shares transfer/ contributed capital transfer / issuance of new shares, foreign shareholding in such enterprises falls below 51%; or</p> <p>(2) they are listed.</p> <p>In the above circumstances, non-resident foreign investors of such FDI enterprises shall open indirect investment capital account ("IICA").</p>
8	Pre-investment money transfer	Foreign investors may transfer investment capital into Vietnam via current account in foreign currency at an authorized bank.		Money transfer in the pre-investment phase can be made from overseas or via current account in foreign currency or Vietnam Dong at an authorized bank in Vietnam.
9	Transfer of investment capital and investment project	None		<p>Circular 06 provides guidance on bank accounts and currencies used in transfer of investment capital and investment project.</p> <p><u>Bank account</u></p> <p>(1) Transfer of share /capital in the FDI enterprises</p> <p>(a) between non-residents or between residents: not via the DICA.</p> <p>(b) between a non-</p>

resident and a
resident: via the
DICA.

- (2) Transfer of investment project under BCC and PPP between non-residents or between a non-resident and a resident: via the DICA.

Currency

Transfer of investment capital and investment project

- (1) between non-residents: foreign currencies permitted.
- (2) between residents or between a non-resident and a resident: in Vietnam Dong.
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3. **Transition period.** Within 12 months from the effective date of Circular 06,

- (a) Enterprises shall open the DICA in case their foreign investors used the IICA for capital contribution, acquisition of shares/contributed capital which resulted in the foreign shareholding percentage of at least 51% in such enterprises.
- (b) The following enterprises (which already have the DICA) shall close the DICA and their non-resident foreign investors shall open the IICA in case:
- (i) foreign shareholding is less than 51% (except for the FDI enterprises under Item 4(1) of the second column of the above table);
 - (ii) enterprises, which are not required to obtain the IRC by law, already obtained the IRC; or
 - (iii) FDI enterprises are listed.

However, if the above enterprises are implementing the lending and repayment of foreign loans via the DICA, they are permitted to maintain the DICA for such purpose.

4. Circular 06 removes the criterion of “*not directly participating in enterprise management and administration*” under Circular 05 relating to certain forms of foreign indirect investment.

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BANKING**Circular No. 11/2019/TT-NHNN dated 2 August 2019 stipulating special control over credit institutions**

Effective date: 1 October 2019

This Circular replaces Circular No. 07/2013/TT-NHNN dated 14 March 2013. Key points of the new Circular are highlighted below:

1. The new Circular provides for criteria to determine a credit institution (in danger of) being insolvent or a credit institution (in danger of) being unable to meet payment obligations. In particular:

a. A credit institution is in danger of being insolvent in case where the inadequacy rate of liquid assets is 20% or more at the time of calculating the solvency ratio and leads to its inability to maintain the solvency ratio required by laws for 3 consecutive months.

b. A credit institution is insolvent in case where

- (i) it is unable to fulfil its debt obligations within 1 month from the due date; and
(ii) subsequent to the foregoing period,

$$\text{ratio of } \frac{\text{[the total amount of bad debts, rescheduled debts which potentially become bad debts and bad debts sold to the Asset Management Company but not settled]}}{\text{[the total amount of debts and bad debts sold to the Asset Management Company but not settled]}} = 10\% \text{ or more}$$

c. A credit institution is in danger of being unable to meet payment obligations in case where

- (i) tier-1 capital adequacy ratio is less than 4% within 6 consecutive months; and
(ii) subsequent to the foregoing period,

$$\text{ratio of } \frac{\text{[the total amount of bad debts, rescheduled debts which potentially become bad debts and bad debt sold to Asset Management Company but not settled]}}{\text{[the total amount of debts and bad debts sold to Asset Management Company but not settled]}} = 10\% \text{ or more}$$

d. A credit institution is unable to meet payment obligations in case where it is unable to fulfil debt obligations within 3 months from the due date.

2. Forms of special control remain unchanged, which include special monitoring and comprehensive control.

3. In respect of a commercial bank under special control and subject to mandatory transfer plan as stipulated in the prevailing Law on Credit Institutions, its charter capital shall be recorded to zero Vietnam Dong in a Decision on Mandatory Transfer issued by the State Bank of Vietnam in case actual value of its charter capital and reserve funds (as confirmed by an independent audit organization) and consolidated business results (as confirmed by the Board of Special Control in charge of such bank) is negative.

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