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VIETNAM

Legal and Tax Digest

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Corporate and Investment

Circular No. 38/2026/TT-NHNN dated July 31, 2026 on “Foreign Exchange Control for Foreign Investment in Vietnam, Replacing Circular No. 06/2019/TT-NHNN”

Overview

This circular, which entered into effect on August 18, 2026, is the first foreign exchange (“FX”) instrument that clearly supports the “**Enterprise Registration Certificate (“ERC”) first, Investment Registration Certificate (“IRC”) later**” route. Under the previous circular, banks often refused to open a direct investment capital account until an IRC had been issued. That left a gap: the company was already a Vietnamese legal entity but had no lawful account to receive foreign capital for set-up costs. This circular closes that gap.

Key Provisions

- The term “own foreign currency” means FX already in a domestic investor’s payment account. FX bought or borrowed from a bank does not count.
- The term “direct investment capital account” is replaced by **investment capital account (“ICA”)**.
- Foreign-invested enterprises and certain International Financial Centre member enterprises investing in other parts of Vietnam must open an ICA.
- After a company is established (ERC issued) and before the IRC has been issued or adjusted, the company is allowed to open **one FX per currency ICA** and/or **one VND ICA** at the **same** licensed bank.
- Until the IRC is granted, the ICAs may only be used to:
 - Receive charter capital;
 - Receive interest on the account balance;
 - Pay **lawful pre-investment costs** in Vietnam; and
 - Return capital if the IRC is refused or the project does not proceed.

During this window, they may **not** be used to fund ordinary trading, pay dividends, lend to affiliates, or purchase shares.
- If investors make capital contributions in different currencies, each currency needs its own account at the same bank. One currency is used to measure the total. The converted total cannot exceed the registered amount.
- Once the IRC is issued, the same account continues as the ordinary ICA. Incoming capital, project funds, and later profit remittances must go through it.

Impact of the ERC-first model

What is now possible

Investors can incorporate, lease an office, hire start-up staff, pay legal and survey costs, and bring in charter capital **without waiting for the IRC**. That matters for projects where the IRC file takes time (e.g., involves land, construction, conditional sectors), but the sponsor needs a local vehicle established beforehand.

What has not changed

The ERC does not replace the IRC. Sector conditions, and land and project approvals are still specified in the IRC. This new circular only unlocks the **bank account**. It does not authorize

the company to implement the project or to use the capital for operations beyond pre-investment spending.

Where deals break

- Paying pre-investment costs that the bank views as trading expenses.
- Sending funds to a current account because the ICA is not ready.
- Contributing more than the registered charter capital pending an IRC increase.
- Using the pre-IRC account to pay an existing shareholder or to fund another group company.

If the IRC is refused

Capital sitting in the ICA can be returned abroad through that account. Keep the bank file (ERC, draft IRC application, invoices for pre-investment costs, and board resolution on refund). An incomplete or messy paper trail is the usual reason a remittance is delayed.

Trade and Customs

*Decree No. 273/2026/ND-CP dated July 7, 2026 on “**Duty-Free Businesses, Replacing Decree No. 100/2020/ND-CP dated August 28, 2020**”*

Overview

This decree, which entered into effect on August 21, 2026, restates the duty-free regime from the shop floor to customs finalization. Circular 82/2026/TT-BTC and Decision 2017/QD-BTC support it. It maintains the same business model as the previous decree but introduces changes in how passengers are identified, how sales are filed, and how quickly an operator can open or enlarge a shop.

Key Provisions

- Goods may still come from temporary imports, non-tariff zones, bonded warehouses, and the domestic market.
- Eligible buyers remain outbound, inbound, and transit travelers, international flight passengers, crew on international vessels, and those with diplomatic privileges and immunity.
- Outbound travelers are allowed to buy without a quantity or value cap, subject to the destination country’s import rules. Inbound allowances still follow Decree 134/2016/ND-CP.
- If the buyer’s details are already in the National Population Database or another official database, customs should not ask for a paper copy.
- Inbound passengers are allowed to buy only in the restricted zone of an international airport, after completing entry formalities.
- Cigarettes, cigars, spirits, and beer must bear the stamp **VIET NAM DUTY NOT PAID** before displaying or delivery.
- Payment may be made in VND, USD, or EUR. A land-border shop may also take the neighboring country’s currency.

- Goods leaving a duty-free area, for domestic sale, re-exportation, or destruction, must follow the general customs law. Destruction of damaged or expired stock still needs to have customs officials on site.

Comparison with the previous decree, no. 100/2020/ND-CP

- Buyer ID: Previously, paper proof for each class of buyer was required. The new decree uses the national database first.
- Sales files: Decree 100 ran three separate procedures, for inbound airport sales, arriving passengers, and inland “waiting to depart”. The new decree folds them into one procedure under Article 11.
- New shop or expansion: The previous decree’s procedure often required customs confirmation, which could take months. Under the new decree, the operator self-assesses compliance against the published location and technical standards and self-declares via the customs portal. The customs department has 10 working days to object, and if there are no objections, the operator can proceed without waiting for specific approval.
- Inbound counter: Decree 100 allowed for more than one possible point of sale. The new decree confines inbound sales to the airport restricted zone.
- Change of use: Decree 100 used duty-free-specific files.

Data Protection and Cybersecurity

*Decree No. 330/2026/ND-CP dated August 19, 2026 on “**Administrative Sanctions for Cybersecurity and Personal Data Protection**”*

Overview

This decree sets out the sanctions for violations of the Personal Data Protection Law and the Cybersecurity Law. It was published and became binding on August 19, 2026, with no transition window.

The scope covers both Vietnamese and foreign organizations for actions that take place in Vietnam, including on systems that Vietnam treats as its cyberspace. The decree does not introduce new penalties, but instead specifies either monetary amounts or, in two cases, a percentage of turnover or of proceeds, for penalties that were already on the books.

Key Provisions

1. Recruitment, labor, and advertising

- **For recruitment and employees**, hiring files, payroll, CCTV of the workplace, attendance tools, and staff photographs are deemed **personal data**. Medical certificates and police clearance papers are deemed **sensitive data**.
- Maintaining a general recruitment pool of candidates indefinitely, forwarding a longlist to a parent company outside Vietnam, or engaging a screening firm without specifying terms and boundaries, each fails a different test: purpose, export of data, and control of the processor.

- Using a staff person's name or face in a campaign, or posting a disciplinary story on a company channel, is considered **disclosure**. Cold lists, scraped leads, and call-out marketing are considered new purposes that would require specific consent. If a list is bought or sold, the penalty can be assessed on the money made from that trade.
- 2. Consent, rights of the data subject, and data collection**
- Taking data and then using it without valid grounds, such as with the subject's consent or other lawful grounds, is fined on its own. So is failing to tell a person that sensitive data about them is being used.
 - The data collection form must match the purpose for its collection. A newsletter that asks for identity papers, or a service form that asks for family details that are not needed, are examples of what would be considered excess collection.
 - There must be a quick turnaround on requests to see, fix, or withdraw data (in current practice, a timely reply would be within two working days or 72 hours), late responses are considered a breach. In addition, failure to respond at all is a separate breach.
- 3. Publication, erasure, transfer, and incidents**
- Publicizing personal data or processing data beyond what the stated purpose requires are disclosure violations. These violations carry a fine and in addition, the authority can order erasure of the data, which can be more costly to a business than the fine.
 - Moving data to a server, ticket tool, or group HR system outside Vietnam without a completed transfer assessment triggers a revenue-based penalty, up to 5% of the previous year's revenue.
 - Missing or late notice of an incident is fined even if the incident itself has been contained. Refusing to work with the inspector is fined at a higher band than a simple purpose error.
- 4. Digital platforms, AI, cloud and specific datasets**
- The decree does not specify a separate AI tariff. The same rules apply as previously noted.
 - A cloud tenant outside Vietnam is an export if Vietnamese personal data can be read from that tenant. An AI model trained on CVs, call recordings, or identity images is still collection. If the model sits abroad, it is also an export. If the output repeats a person's data, it is disclosure.
 - Violations related to health data, biometrics, and precise location data; criminal records; and children's data are subject to stricter consent and notice requirements as these are considered sensitive data. Therefore, such violations carry heavier penalties.
- 5. Governance over online content**
- In addition to the personal data rules above, the decree also penalizes cybersecurity violations, such as harmful or false content, failure to work with the specialized cyber units, and unauthorized access or hostile code.
 - For such cybersecurity violations, in addition to a monetary fine, the violator's social network license, general news site license, cyber product license, or data processing certificate can be suspended for a period of one to 24 months, an interruption that is usually worse than the fine.

- What inspectors will ask to see is not a policy booklet. It is purpose language, a consent log, vendor terms, an incident log, and a specific person assigned responsibility for data compliance.

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