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VILAF
VIETNAM INTERNATIONAL LAW FIRM

Briefing note

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VIETNAM: Investment companies, ETFs and REIFs

To add vitality to the securities market, Vietnam's Ministry of Finance ("MOF") recently introduced certain regulatory changes on foreign investors' securities trading, and for the first time authorized the formation of securities investment companies ("investment companies"), exchange-traded funds ("ETFs") and real estate investment funds ("REIFs").

Investing in securities

Circular 213

A foreign investor wishing to invest in securities must obtain a securities trading code ("Trading Code") and open a "capital account" with a custodian bank in Vietnam ("Securities CA") prior to the purchase of securities, except where the investor has entrusted a fund management company to manage his portfolio. These same requirements apply under new Circular 213 (effective from 15 February 2013) as well as under the repealed Decision 121/2008/QD-BTC.

Defining securities

Circular 213 clarifies some confusion that existed under the repealed Decision 121/2008/QD-BTC and makes it clear that the following are not considered as investment in securities:

- direct investment pursuant to the Law on Investment; and
- purchase of shares in non-public companies or capital interests in limited liability companies.

Therefore, the above types of investments are not subject to the requirements of opening and maintaining a Trading Code or a Securities CA.

Foreign investors

For the purposes of Circular 213, a "foreign investor" includes:

1. any organization incorporated in a foreign country
2. any organization incorporated in Vietnam with 100% foreign equity
3. any members' fund or private investment company of which the charter allows more than 49% foreign equity
4. other cases pursuant to the Prime Minister's decision.

The Prime Minister's decision under 55/2009/QĐ-TTg considers any organization, fund, or investment company with more than 49% foreign equity as a "foreign investor," making (2) above inapplicable. Decision 55/2009/QĐ-TTg is expected to be replaced soon, but it is uncertain if its replacement will change this.

Investment companies

Circular 227

Under Circular 227, an investment company can be a public company or a private company. Shareholders of a private investment company may pay for their shares in cash or in the form of listed securities.

A public investment company may invest in the following:

- Saving deposits
- Debt instruments under banking regulations
- Government bonds, municipal bonds, bonds with Government guarantee
- Listed shares and bonds
- Shares of public companies, unlisted bonds, shares of private companies, capital interests in limited liability companies; and/or
- other types of securities pursuant to the MOF's guidance.

A public investment company's operations may not be financed with loans, except loans with a term not longer than 30 days, and the aggregate of which may not exceed 5% of its net asset value.

A public investment company's assets may not be lent, used for margin trading or invested in other investment funds or investment companies.

Subject to its charter and its general shareholders' meeting approved credit limits, a private investment company may borrow funds from the custodian bank or supervising bank in margin trading, overdrafts, securities repurchase transactions and securities borrowing/lending. Its aggregate financial indebtedness must not exceed 30% of the total value of its assets.

ETF's

Circular 229

An ETF is an open-end fund, formed with the swap of ETF certificates with a basket of securities. ETF certificates must be listed. Each ETF certificate has a par value of ten thousand Vietnamese Dong.

ETFs will provide foreign investors with more opportunity. This is because foreign investors are not subject to any foreign equity cap in respect to ETFs. This means that it is possible for all ETF certificates of an ETF to be held by foreign investors.

At the initial public offering of an ETF, each ETF founder or other qualified investor must purchase at least one block of ETF certificates where each block (i.e., creation unit) includes at least 100,000 ETF certificates. They must pay for such ETF certificates with the required baskets of the underlying securities based on the reference index on the last trading day of the offering, or, if the ETF's charter permits, with cash.

The reference indexes are developed and managed by Vietnam's stock exchanges. The portfolio of the reference index must have at least 10 constituent stocks for a stock index and at least five constituent bonds for a bond index. The maximum weight of each bond or stock is 20% of the index value.

If a swap of ETF certificates by a foreign investor in any case results in that investor holding more shares than the foreign equity cap in an issuer, or holding more than 25% (25% is the ownership threshold for tender offers) of the outstanding shares of an issuer, the fund manager must sell the excess shares and pay the cash proceeds after tax and fees to that investor.

An ETF's investment portfolio may include the underlying securities in the index portfolio and the following:

- Saving deposits
- Debt instruments under banking regulations
- Government bonds, municipal bonds, bonds with Government guarantee
- Listed shares and bonds
- Listed derivative securities if the investment is for risk hedging purposes; and/or
- other assets arising out of the securities in the ETF's investment portfolio.

An ETF may not invest in real estate, unlisted shares, privately placed bonds, or capital interests in limited liability companies.

An ETF's operations may not be financed with loans, except loans with a term not longer than 30 days, the aggregate of which may not exceed 5% of the ETF's net asset value.

Stock exchanges will be the only agencies that are able to make and manage the base indices for ETFs. Currently, Vietnam's stock exchanges are working on infrastructure facilities to support the market for ETF certificates.

REIF's

Circular 228

A REIF can be formed either as an investment fund or an investment company. REIF certificates (or shares) must be listed. A REIF must be a closed-end and public fund and at least 65% of the REIF's net assets must be invested in real estate.

In addition to qualified real estate, an REIF may invest in the followings:

- Saving deposits
- Debt instruments under banking regulations
- Government bonds, municipal bonds, bonds with Government guarantee
- Listed shares and bonds
- Shares of public companies, unlisted bonds, shares of private companies, capital interests in limited liability companies; and
- other assets pursuant to the MOF's guidance.

The REIF's indebtedness must not exceed 5% of its net asset value.

The REIF's assets may not be loaned, used for margin trading, or invested in other investment funds or investment companies.

Implementation

The new regulations are:

- Circular 213/2012/TT-BTC ("Circular 213") on foreign investment in the securities market
- Circular 227/2012/TT-BTC ("Circular 227") on investment companies
- Circular 228/2012/TT-BTC ("Circular 228") on REIFs; and
- Circular 229/2012/TT-BTC ("Circular 229") on ETFs.

Circular 213 took effect on 15 February 2013. Circular 227 and Circular 228 will take effect on 1 July 2013 and Circular 229 will take effect on 1 September 2013. Unfortunately, the much-anticipated circular on the taxation of securities trading has not been issued and it is yet to be seen how these new types of investment funds may bring tax benefits to investors.

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