

Vietnam Issues New Regulations for Fund Management Companies

On 5 December 2012, the Vietnamese Ministry of Finance (MOF) issued Circular No. 212/2012/TT-BTC (Circular 212) on the establishment, organisation and operation of fund management companies (FMCs).

Previously, Decree No. 58/2012/ND-CP of 20 July 2012 (Decree 58) had paved the way for incorporation of 100 percent foreign-owned securities business companies, including FMCs.

Now, Circular 212 provides detailed guidelines on the implementation of the provisions of Decree 58 on FMCs and replaces Decision No. 35/2007/QD-BTC dated 15 May 2007 (as amended on 26 December 2008) (Decision 35). Some salient provisions of Circular 212 are discussed below.

Governing scope and applicable subjects

Circular 212 stipulates the conditions and procedures for establishing, organising and operating FMCs, and for the operation of relevant organisations and individuals in Vietnam.

Only licensed FMCs may receive funds or hold assets to manage securities portfolios, or raise funds and assets to establish and manage securities investment funds in accordance with the Securities Law.

For the purpose of Circular 212, an FMC is an enterprise which is engaged in the securities business and provides securities investment fund management, securities portfolio management services and securities investment advisory services.

Conditions for issuance of an FMC license

These conditions include:

- having adequate material and technical facilities

- and office equipment;
- having qualified management personnel as required in Circular 212;
- having paid-up charter capital at least equal to the legal capital, which is currently fixed in Decree 58 at VND25 billion;
- having at least two institutional founding shareholders or founding members, at least one of which must be a commercial bank, insurance company or securities company. If the FMC is a one-member limited company, its owner must be a commercial bank, insurance company or securities company. If the shareholder is an organisation, that organisation must have been operational for at least five consecutive years, or two consecutive years if the shareholder is a commercial bank, insurance company or securities company.

In addition, an institutional shareholder must have been profitable in the two consecutive years prior to the year in which it applies to set up the FMC, and in the year in which the application file is submitted, the shareholder must have no accumulated loss. If a shareholder is a commercial bank, insurance company or securities company, it must not be under any special control or suspension of operations, or under any other warning circumstances.

Minimum ownership by founding shareholders or members

The founding institutional shareholders or the founding institutional members of an FMC must subscribe to or contribute at least 65 percent of the charter capital. The founding shareholders or founding members that are commercial banks,

insurance companies or securities companies must own at least 30 percent of the charter capital.

Licensing procedures for establishing an FMC

Investors must submit to the State Securities Commission (SSC) an application file for a license to establish an FMC which includes:

- a written request for issuing an FMC license;
- minutes and resolution of a meeting of shareholders or members approving the establishment of the FMC or the decision of the owner to establish the FMC;
- a proposed charter for the FMC;
- in-principle lease agreement for the proposed office of the FMC (attached with title documents);
- a business operating plan for the first three years after the license is issued;
- documents providing evidence of the financial capacity of investors to contribute to the FMC;
- a list in statutory form of all the shareholders, the members of the board of management or council's members and other management personnel; and
- practicing certificates of the general director, deputy general director and fund managers.

Within 20 days of receiving a valid application file, the SSC will send a notice to the applicant, asking the investors to complete the physical facilities and deposit capital into an escrow account at a bank appointed by the SSC. The SSC will then issue an establishment license within seven days of the date on which it receives:

- written confirmation that the capital has been deposited into the escrow account;
- minutes detailing the inspection of the material facilities; and
- any other required documents.

Within seven days of the date on which the license becomes effective, the FMC must announce its establishment in accordance with Article 66 of the Securities Law.

Establishment of 100 percent foreign-owned FMCs now possible

Under Decree 58, a foreign investor may acquire up to 49 percent of the charter capital in an existing FMC and, provided that certain criteria are met, a new FMC wholly owned by a foreign investor may be set up.

Circular 212 sets out in detail such necessary conditions, making it possible for a foreign investor to acquire capital in an FMC or to establish a 100 percent foreign owned FMC.

Operation of FMCs

As compared with Decision 35, Circular 212 tightens the provisions on the operation and management of FMCs to better protect investors. For example, under Decision 35, a member of the board of management or a members' council member of an FMC may concurrently hold the same position in other FMCs. Circular 212 prohibits a person who holds such a position from concurrently:

- holding any managerial position in any other FMC;
- being a fund management practitioner of any other FMC; or
- being a member of the board of management, a member of the members' council or the executive board, or an employee of, the depositary bank or the supervisory bank providing services to the fund or of the securities investment company that the FMC is managing.

Establishing internal audit department in parallel with internal control department

Unlike Decision 35, Circular 212 requires any FMC that is a public company, a public funds management company or a public fund securities investment company to establish an internal audit department.

The internal audit department of an FMC has the authority to inspect, evaluate and/or audit management activities, compliance with the regulations, and the internal processes and operations of all the departments of the FMC. Circular 212 prescribes operating principles for these auditing activities as well as professional conditions applicable to the members of the internal audit department. The FMC must report to the SSC the appointment or removal of, or changes to, any members of the internal audit department.

The operation of the internal audit department, in parallel with the existence of the internal control department, aims at providing the shareholders or members with another channel through which they can manage and supervise the activities of the executive board and the FMC.

Securities investment consultancy

Under Circular 212, an FMC will be permitted to provide the services of a securities investment consultancy. These services include advising clients on investment policies and transactional strategies (such as the allocation of capital, types of investment assets, method of determining asset value, forms of investment), publishing information on securities investment, and providing the necessary training programmes on securities investment.

To conduct this new business activity, an FMC must sign an investment consultancy agreement with its clients with a number of minimum contents required under Circular 212.

Under Circular 212, an FMC that has not been licensed to provide consultancy services may now apply to amend its establishment license to add consultancy services to its licensed business activities. The application documents required by the SSC include the practicing certificates and other relevant certificates of its consultants (such as CFA, CIIA, etc.). The time-limit for the SSC to issue an amended establishment license is five working days.

Conclusion

Circular 212 came into effect on 1 March 2013.

Together with other recently issued regulations in the securities sector, such as Circular No. 210/2012/TT-BTC guiding the establishment of securities companies and Circular No. 213/2012/TT-BTC guiding the activities of foreign investors in the securities market, Circular 212 is expected to enhance the transparency, safety and growth of Vietnam's securities market.

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