

# WORLD SECURITIES LAW REPORT >>>

News and analysis of securities law developments around the world.  
For the latest updates, visit [www.bna.com](http://www.bna.com)

International Information for International Business

VOLUME 0, NUMBER 0 >>> MARCH 2016

Reproduced with permission from World Securities Law Report, 22 WSLR 03. Copyright © 2016 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

## Overseas Securities Investment Now Permitted for Vietnamese Residents

By Giles Cooper and Bach Duong Pham

Buying foreign securities has been for years a vague promise for most Vietnamese residents having an appetite to invest in shares and bonds issued abroad. Although legally permitted since 2006 at the legislative level, such promise remained on paper in practice due to the absence of a detailed regulatory framework. All investments in foreign securities were subject to ad hoc approvals by various governmental authorities, including the Ministry of Planning and Investment and the State Bank of Vietnam ("SBV"). This situation seems set to change when on the last day of 2015 the Government adopted Decree no. 135/2015/ND-CP on Indirect Overseas Investment ("Decree 135") which became effective on 15 February 2016. Certain Vietnamese residents (i.e., economic organisations established and operating in Vietnam, such as companies, cooperatives, cooperative unions and other entities having an investment/business activity, as well as individuals) are now permitted to make investments in foreign securities.

### Three Permitted Channels.

Decree 135 allows the following channels of investment in foreign securities by Vietnamese residents:

**Own-account trading** ("t doanh du t") is available to the following entities: (i) securities and fund manage-

ment companies; (ii) securities investment funds making investments via fund management companies (securities investment funds) and securities investment companies; (iii) insurance companies; (iv) commercial banks; (v) general purpose finance companies; and (vi) the State Capital and Investment Corporation.

**Entrustment trading** ("y tha c du t") is open to resident economic organisations, other than those already authorised to conduct own-trading, having reported profits for at least five years and having no public finance debts. Entrustment trading in foreign securities must be carried out through resident fund management companies or commercial banks licensed by the Ministry of Finance ("MOF") or the SBV respectively.

**Bonus share schemes** involving foreign securities can be offered to Vietnamese citizens employed by foreign organisations. They are the only resident Vietnamese individuals authorised to own foreign securities. Although, further guidance is expected to be issued by the SBV, this seems to merely formalise a long existing practice.

### Eligible Foreign Securities.

Investment is permitted only in respect of foreign securities, valuable papers or foreign securities investment funds and other financial intermediaries named on the list approved by the SBV from time to time. Commercial banks and general finance companies can only invest in foreign bonds and money market instru-

ments named in a separate list approved by the SBV. The SBV has yet to issue either of these lists.

### **Regulatory Conditions and Restrictions.**

Investment in foreign securities is subject to three types of regulatory limits set on an annual basis: (i) global country limit approved by the Prime Minister; (ii) own-account trading limit issued by the SBV to each own-account investor; and (iii) entrustment reception limit issued by the SBV to foreign securities investment trustees. Very importantly, investors can only use their “own” available foreign currency to make investments and the use of borrowed funds is expressly prohibited. In addition, own-account traders must comply with prudential limits imposed by either the MOF or the SBV, as applicable.

Decree 135 is an important step towards opening the tap on outbound securities investments from Vietnam. However, the SBV and the MOF still need to issue a number of implementing texts, particularly the lists of eligible foreign securities and the various licensing and limit registration procedures mentioned above. Vietnamese resident investors should hope that these will be issued before the next 31 December.

***Giles Cooper is Partner, Head of Duane Morris Vietnam LLC, Ho Chi Minh City Branch. He can be reached at [gcooper@duanemorris.com](mailto:gcooper@duanemorris.com). Bach Duong Pham is special counsel at Duane Morris Vietnam LLC, Ho Chi Minh City Branch. He can be reached at [dbpham@duanemorris.com](mailto:dbpham@duanemorris.com).***