



LEGAL UPDATE

October 2022

Amendment to the regulations on offering and trading private placement corporate bonds in the domestic market

Our Legal Update is to provide the summary of key regulatory news that potentially impact your investment and business activities in Vietnam.

In this Legal Update, we take a look at the latest regulation changes in regard to the private placement and trading of corporate bonds in the domestic market pursuant to Decree No. 65/2022/ND-CP.

On 16 September 2022, the Government promulgated Decree No. 65/2022/ND-CP (“*Decree 65*”) to amend and supplement a number of articles of Decree No. 153/2020/ND-CP on the private placement and trading of corporate bonds in the domestic market and the offering of corporate bonds to the international market. It is said that Decree 65 will help to protect both investors and issuers better, enhance the publicity and transparency of private bond market.

Given the hot growth and recent inadequacy of the bond market, we would like to present some key changes in connection to the private placement and trading of corporate bonds in the **domestic market** that may be of interest to you.

1. New principles on corporate bond issuance (Clause 2 and 3 of Article 1)

Compared with previous regulations, the corporate bond is issued for only 03 following purposes:

- the implementation of programs and investment projects.
- the debt restructure of the issuing corporation.
- the purposes stipulated in specialized laws.

Besides, it is now clearly expressed that the terms and conditions of bond shall not be amended unless such amendment is approved by the competent authority of the bond issuer and by the number of bondholders representing at least 65% of the total number of bonds of the same type in circulation. The information on such change must be unusually disclosed by the bond issuer in accordance with applicable laws.

2. Par value increased by 1,000 times (Clause 4 of Article 1)

The par value of bonds privately placed in the domestic market now is increased from 100,000 VND or multiples of 100,000 VND to 100 million VND or multiples of 100 million VND.

3. Mandatory premature redemption of bonds (Clause 5 of Article 1)

In addition to the redemption of bonds under the agreement between the issuer and the bondholders, Decree 65 specifies the mandatory redemption at the request of bondholders in some specific events. Those maybe set out in the approved/accepted bond issuance plan or upon the issuer’s breach of either the law as determined by a decision of the competent authority or the bond issuance plan, which cannot be remedied or the remedy is not approved by the number of bondholders representing at least 65% of the total number of bonds of the same type in circulation.

4. More conditions applied to the professional securities investor (Clause 6 of Article 1)

A professional individual securities investor must hold listed securities with the minimum value of 2 billion VND as determined by the daily average market value of the securities portfolio (excluding the value of margin trading payables and repo transactions) for a period of at least 180 consecutive days immediately prior to the date of determining his status. Additionally, the status of that investor once determined is valid for only 3 months.

Before purchasing bonds either on the primary or the secondary market, investors must sign documents in the required form certifying that they have complied with the provisions of their responsibilities by laws and are self-responsible for their purchase decisions.

Besides, they are not allowed to sell or contribute capital to invest in bonds with those who are not professional securities investors. When selling bonds on the secondary market, they are required to provide full disclosure of information of the issuer to the bond purchasers.

The investors violating the provisions of law shall be administratively sanctioned or criminally handled depending on the nature and seriousness of the violation.

5. Amendment to the bond private placement procedure (Clause 7, Clause 8 of Article 1)

Decree 65 shortens the time limit of bond distribution from 90 days to 30 days from the date of information disclosure prior to that placement.

In case of bond placement in multiple waves, the total period of all placements must not exceed 06 months from the issuance date of the first one.

6. Amendment to the dossier of bond private placement (Clause 9 of Article 1)

Decree 65 does not tighten the placement conditions but requires stricter on placement dossier. Several additional documents included in the placement dossier are:

- Contract with the representative of bondholders in case of bond private placement to individual professional securities investors.
- Every 6 months and annual reports on the use of proceeds from bond issuance for outstanding bonds.

- A written certification by the bank where the issuer opens account for receiving payment from the bond private placement.
- Documents on the legal status of collaterals, on the valuation of collaterals by the qualified appraisal, on the security measure registration and on the payment order of bondholders when handling collaterals for debt payment in case of secured bond private placement.
- A written certification of the bond investor before purchasing bonds.
- A written certification from the bidding organization, underwriter or bond issuing agent that the proceeds from the bond private placement have been transferred to the issuer's account.
- Updated information on financial status of the issuer when the interval between two consecutive bond private placements is 03 months or more and when the current bond private placement is not in the same fiscal year with the previous one in case of multiple private placements.

Besides, as from 01 January 2023, there must be the credit ratings of the issuers in some specific following cases:

- The total value of bonds calculated by par value mobilized in each 12 months is greater than 500 billion VND and greater than 50% of the equity based on the latest annual financial statement audited or the latest biannual financial statement examined (if required by laws) by the accredited audit firm; or
- The total outstanding debt of bonds calculated by par value up to the time of placement registration is greater than 100% of the equity based on the latest annual financial statement audited or the latest biannual financial statement examined (if required by laws) by the accredited audit firm.

7. More financial parameters of the issuer required (Clause 10 of Article 1)

Decree 65 requires the issuer to provide more financial norms for 03 consecutive years and relevant changes after the placement (if any) as below:

- Equity (specify the owner's investment capital, funds deducted from after-tax profit and undistributed profit after tax, difference in asset revaluation, exchange rate difference, etc.).
- Total debt including bank loans, debt from bond issuance and other payables (specify payables).

- Capital structure norms include debt-to-total assets-ratio and debt-to-equity ratio.
 - Norms of solvency include short-term ratio (current assets/current debt), quick ratio (current assets - inventory)/current debt).
 - Total outstanding debt of bonds (including all forms of bond debt)/equity.
 - Profit before and after taxes (in case of making losses, it is required to specify losses in the fiscal year and accumulated losses).
 - Profitability norms include profit after tax-to-total assets-ratio and profit after tax-to-equity ratio.
 - Financial safety norms and prudential ratios in their operations as prescribed by specialized laws.
- 8. Stricter regulations on information disclosure (Clause 14 to Clause 17 of Article 1)**

Decree 65 amends a number of regulations on the time limit and content of information disclosure and also supplements the cases of extraordinary information disclosure in order to enhance the transparency of issuers' operation and the use of mobilized capital.

Specifically, the time limit for information disclosure on placement results is reduced from 10 days to 05 working days, even in case the bond placement is unsuccessful or canceled.

Moreover, periodically, the issuer must disclosure information on its solvency, audited reports on the finance and the use of bond proceeds for the intended purposes as well as the reports on the implementation of commitments made to bondholders.

9. The representative of bondholders (Clause 11, 25 of Article 1)

A very notable point in Decree 65 is to supplement regulations on the representative of bondholders, which helps to strengthen the role of the investors and better supervise the capital use and commitment implementation by the issuer.

Accordingly, the representative of bondholders shall report to the State Securities Commission and the Stock Exchange on a quarterly and annual basis and report in case the issuer is detected violations affect the interests of bondholders.

The bondholder's representative is responsible for complying with the provisions of laws and is subject to the management of the bondholders as well as of the State Securities Commission. In case of violation, they will be administratively sanctioned prosecuted depending on the nature and seriousness of such violation.

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