Vietnam Issues Decree on Bond Issuance

On 5 January 2011, the Vietnamese Government issued Decree 01/2011/ND-CP on issuance of Government bonds, Government-guaranteed bonds and local administration bonds (Decree 01).

Of note, Decree 01 clearly sets out the types of projects eligible for Government guarantee: projects in which investment is decided by the National Assembly (NA) or the Prime Minister (PM), projects applying high technologies and projects in the sectors of energy, mineral exploitation and processing, or export production or provision of export services.

Decree 01 is significant in that it links Government bonds issuance activity with public debt management under the Law on Public Debt Management adopted by the NA on 17 June 2009. Decree 01 also allows Government bond issuance to be used to restructure debts and debt portfolios, as well as provides for bond swapping and buyback.

Decree 01 consolidates issuance of both international and domestic Government bonds into a single decree instead of two as previously. In other words, it replaces Decree 141/2003/ND-CP dated 20 November 2003 on issuance of Government bonds, Government-guaranteed bonds and local administration bonds and the provisions on issuance of Government bonds in the international market in Decree 53/2009/ND-CP dated 4 June 2009 regarding the issuance of international bonds (Decree 53).

For information about Decree 53, see Mayer Brown JSM's Legal Update on "Decree 53 on Issuance of International Bonds and its Draft Implementing Circular" of 28 January 2010.

Some salient provisions of Decree 01 are discussed below.

Governing scope

Decree 01 provides for the issuance of Government bonds, Government-guaranteed bonds and local administration bonds.

Government bonds mean bonds issued by the Ministry of Finance (MOF) to raise funds for the State budget or to raise funds for a specific investment programme or project within the investment scope of the State.

Government-guaranteed bonds mean bonds that are issued by an enterprise, a financial or credit institution or a policy bank of the State (collectively called "beneficiaries of Government guarantee") and the payment of which are guaranteed by the Government.

The beneficiaries of the Government guarantee comprise:

- Enterprises implementing programmes and projects eligible for Government guarantee
- Policy banks of the State and financial and credit institutions implementing the State's credit programmes

Local administration bonds mean bonds issued by the People's Committee of a province or a city under central authority (provincial People's Committee) to raise funds for construction works or an investment project of the relevant locality.

Programs and projects eligible for Government guarantee

Government-guaranteed bonds are issued for investment into the following programmes and projects:

- Investment programmes and projects in which investment is decided by the NA or the PM, including plans for loan restructuring under these programmes and projects
- Programmes and projects applying high technologies and projects in energy, mineral exploitation and processing, or export production or provision of export services decided by the PM in conformity with national socio-economic development orientations
- Programmes and projects in the domains or localities eligible for State investment incentives as decided by the PM
- Credit programmes with State targets implemented by Vietnam Development Bank, Vietnam Bank for Social Policies or financial or credit institutions pursuant to decisions by the PM

Conditions for issuance by enterprises of Government-guaranteed bonds

To obtain permission to issue domestic Government-guaranteed bonds, enterprises must satisfy the following conditions:

- Issuing bonds to invest in programmes and projects described in Decree 01
- Having completed investment procedures for their programmes and projects as stipulated in investment legislation and related regulations
- Meeting the conditions to obtain Government guarantee
- Satisfying requirements of legislation on corporate bond issuance
- Having bond issuance plans evaluated by the MOF and approved by the PM
- Complying with other rules on granting and managing Government guarantees

The conditions to obtain Government guarantee mentioned above are:

- Ensuring that at least 20% of the total investment capital is own capital, for enterprises implementing investment projects
- Having a healthy financial status, making no losses in the last three years, except losses incurred from the policy implementation; at the time of requesting guarantee, owing no overdue debts to financial and credit institutions; and having no overdue debts related to guaranteed loans, loans borrowed from the Government's foreign loans and the State budget. For an enterprise which has operated for less than full three years, commitment on payment of guaranteed loans by the owner or parent company is required
- Observing remedies applied by the guarantee grantor
- Committing no violations of regulations on public debt management in the last three years from the time the guarantee is requested

For key projects and works and major projects of urgency and particular importance to national socio-economic development, if enterprises fail to meet the condition on owner capital, the PM may consider and decide to waive this condition on a case-by-case basis.

To obtain permission to issue Government-guaranteed bonds in the international market, in addition to the above conditions, enterprises must satisfy the following conditions:

- The value of issued international bonds must be USD100 million equivalent or higher and be within the Government's annual commercial loan limits and foreign borrowing guarantee; the issuance conditions must conform with market conditions and international practice
- The financial statements of three consecutive years must be audited by the State Audit of Vietnam or an independent auditing organisation licensed to operate in Vietnam and must reflect no losses or overdue debts during those years
- Having a credit rating accepted by the international market which must not be one level lower than the national credit rating

Bond terms and conditions

- **Volume of issued bonds**

The volume of bonds in each issuance will be decided by the bond issuer.

- **Issuance and payment currency**

Government bonds, Government-guaranteed bonds and local administration bonds are issued domestically in Vietnamese Dong. Where approved by the PM, Government bonds may be issued domestically in a freely convertible foreign currency. The currency used in the issuance of Government bonds or Government-guaranteed bonds in the international market will be the foreign currency specified in the issuance plan approved by the competent authority.

The currency used for payment of bonds is the currency used in issuance.

- **Forms of issuance**

Bonds are issued in the form of certificates, book-entry or electronic data. The bond issuer may decide a specific form for each issuance.

- **Face value of bonds**

The bond issuer may decide the face value of bonds. In the case of listing on a stock exchange, the face value of bonds must comply with the relevant listing rules.

- **Bond buyback and swapping**

The bond issuer may buy back bonds prior to their due date to reduce its debt obligation or to restructure its debts.

Issued Government bonds may be swapped for debt restructuring.

Bonds purchasers

Bonds purchasers are Vietnamese organisations, individuals and foreign organisations and individuals. Vietnamese organisations are not permitted to use the State Budget to purchase bonds.

Rights of bondholders

Bondholders are guaranteed by the bond issuer of the full and timely payment of the principal and interests upon their maturity.

Bondholders may assign, donate, bequeath, discount and pledge their bonds in credit and civil relations as stipulated by law.

State regulators

The State regulators include the MOF, the State Bank of Vietnam, the Ministry of Planning and Investment, the Ministry of Justice and the provincial People's Committee issuing local administration bonds.

Effectiveness

Decree 01 will take effect as from 20 February 2011.

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