

Decree on Issuance of Corporate Bonds

On 14 October 2011, the Vietnamese Government issued Decree No. 90/2011/ND-CP on issuance of corporate bonds (“**Decree 90**”). Decree 90 consolidates issuance of both international and domestic corporate bonds into a single decree instead of two as previously. In other words, it replaces Decree 52/2006/ND-CP of the Government dated 19 May 2006 on issuance of corporate bonds, and the provisions on issuance of corporate bonds on the international capital market in Decree 53/2009-ND-CP of the Government dated 4 June 2009 on issuance of international bonds.

Of note, Decree 90 provides two additional principles governing bond issues: (i) if bonds are issued to finance programmes or projects, the issuer must maintain a minimum equity ratio of 20 per cent of the total investment capital of such programme or project; and (ii) for international bond issues, the issuer must comply with the law on foreign loans and their repayment.

Some salient provisions of Decree 90 are discussed below.

Governing scope

Decree 90 provides for private bond placements by enterprises in Vietnam and bond issues by enterprises on the international market.

Enterprises within the governing scope of Decree 90 are (i) shareholding companies and (ii) limited liability companies.

Bond issues by enterprises in the banking and securities sectors must also comply with specialised branch laws. In the case of any difference between

Decree 90 and the specialised branch law, the issuer must comply with the specialised branch law.

Types and forms of bonds

Bonds are of two types: convertible bonds and non-convertible bonds. They may be secured or unsecured, with or without warrants. Convertible bonds are issued by joint stock companies. Non-convertible bonds may be issued by either a joint stock company or a limited liability company.

Bonds are issued in the form of certificates, book-entry or electronic data.

Term of bonds

Corporate bonds have a term of one year or more.

Issuance and payment currency

The currency of a bond issue on the domestic market is VND. The currency of a bond issue on the international market is a freely convertible foreign currency. The currency used to pay bond principal and interest must be the same type of currency used in issuance.

Transfer of bonds

Convertible bonds and detachable warrants are subject to a lock-up period of at least one year as from the date of completion of the issue tranche, except for a transfer to a professional securities investor or a transfer between professional investors.

Domestic issuance of bonds

- **Par value of bonds**

The minimum par value of bonds must be VND

100,000. Other par values must be multiples of VND 100,000.

- **Bonds purchasers**

Bonds purchasers are Vietnamese organisations, individuals and foreign organisations and individuals. Vietnamese organisations are prohibited from using 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.

- **Conditions for issuance**

As for non-convertible bonds, these conditions must include:

- » the enterprise has been operational for no less than one year and must have been profitable during the year prior to issue, as shown in audited financial statements;
- » as for an enterprise operating in conditional business lines, it must satisfy the required capital prudential ratios and other restrictions ensuring safety during its operation; and
- » the bond issue plan must be approved by the competent authorities.

As for convertible bonds or bonds with detachable warrants, the enterprise must further satisfy the following conditions:

- » the enterprise must be permitted to issue such bonds;
- » the enterprise must ensure the foreign shareholding restrictions; and
- » there must be at least a 6 month interval between 2 tranches of convertible bonds.

- **Bond issue plan**

A bond issue plan must include:

- » general information about the business line and sector, financial status and business operational results of the enterprise;
- » objective of the issue and plan on utilisation of bond proceeds;
- » proposed volume, type, term and coupon interest rate of the bonds to be issued;
- » in the case of convertible bonds, the conversion ratio, time for conversion, conversion price and share price fluctuation range (if any); and in the case of bonds with detachable warrants, the price and time for purchasing shares;
- » method of issuing the bonds and the organisations participating as underwriters, payment guarantors, issuing agents, and paying agents; and
- » plan on arranging funds for, and method of payment of bond principal and interest.

- **Issue file**

The bond issue file must include:

- » bond issue plan and the decision approving it issued by the relevant authorities;
- » data and legal documents proving the issuer satisfies the conditions for eligibility to issue bonds;
- » credit rating provided by a credit rating company;
- » contracts underwriting the issue, providing the payment guarantee, the agency contract and other relevant data (if any);
- » in the case of a bond issue to implement investment programmes or projects of the issuer, a legal document proving that the projects which will utilise capital raised from the issue have completed investment procedures and have an investment decision from the authorised level.

- **Methods of bond issue**

Bonds may be issued by the following methods:

- » bond bidding;
- » underwriting the bond issue;
- » bond issue agency; and
- » direct sale to bonds investors (applicable to the issuer being a credit institution).

- **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.

Bond issues on the international market

- **Conditions for issuance**

As for non-convertible bonds, these conditions must include:

- » the enterprise has been operating for at least three years and must have been profitable prior to issue as shown by audited financial statements with unqualified opinions;
- » as for an enterprise operating in conditional business lines, it must satisfy the required capital prudential ratios and other restrictions ensuring safety during its operation;
- » the State Bank of Vietnam (“**SBV**”) must certify that the value of the international bond issue is within the annual quota on foreign commercial borrowing approved by the Prime Minister (“**PM**”);
- » the enterprise must meet international market requirements on credit rating in order to conduct the issue, and a State enterprise must have a credit rating at least equal to the national credit rating;
- » the bond issue plan must be approved by the competent authorities; and
- » the enterprise must have completed the issue file under the law of the issuing market applicable to each issue, for each type of issue.

As for convertible bonds or bonds with detachable warrants, the enterprise must further satisfy the following conditions:

- » the enterprise must be permitted to issue such bonds;
- » the enterprise must ensure the ratios of foreign party participation; and
- » there must be at least 6 months between issue tranches of convertible bonds.

- **Issue plan**

In addition to those particulars required of an issue plan of domestic bonds, the issue plan of international bonds must include:

- » proposed currency for the issue and payment of the bonds;
- » proposed issuing market, and an analysis of the issuing market conditions and how those conditions have been met;
- » proposed underwriters, legal consultants and relevant agents to be selected; and
- » plan on arranging funding for, and method of payment of bond principal and interest and plan on dealing with financial risks.

- **Certification and registration of a foreign loan**

An enterprise issuing bonds on the international market must register its foreign loan with the SBV. The file for such registration must comprise a letter of request and the bond issue plan approved by the relevant authorities.

- **Issue file**

The issue file must include:

- » the approved bond issue plan;
- » prospectus;
- » underwriting contract, contract guaranteeing payment, and agency contract for payment (if any);
- » legal consultancy contract;
- » legal opinion;
- » agency agreements;
- » in the case of a bond issue to implement investment programmes or projects of the issuer, a legal document proving that the

projects which will utilise capital raised from the issue have completed investment procedures and have investment decisions from the authorised level;

- » credit rating provided by a credit rating company;
- » certification from the SBV that the issuer has registered the value of corporate bonds to be issued on the international market and that such value is within the annual national quota on foreign commercial borrowing approved by the PM;
- » other data required by the law of the issuing market.

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Effectiveness

Decree 90 will be effective as from 1 December 2011.

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