

Foreign Exchange Control on Issuance of Non-Government Guaranteed International Bonds

On 24 August 2011 the State Bank of Vietnam (SBV) issued Circular No. 19/2011/TT-NHNN (Circular 19) guiding foreign currency control applicable to issuance of international corporate bonds without government guarantees.

Circular 19 is much awaited because it guides how to register international bonds as foreign loans. For more than two years since the issuance of Decree 53/2009/ND-CP (Decree 53) of the Government on international bond issuance dated 4 June 2009, the SBV did not issue any implementing guidelines for certification and registration of international bonds. As a result, issuers wishing to issue international bonds had to seek approvals from the competent body on a case-by-case basis. Decree 53 was replaced by Decree 90/2011/ND-CP of the Government dated 14 October 2011 on issuance of corporate bonds.

Circular 19 sets out the responsibilities and rights of international bond issuers, the processes of bond certification and registration and guidelines on reporting regimes to be performed by bond issuers.

Scope and applicability

Circular 19 regulates foreign exchange control applicable to enterprises borrowing foreign loans in the form of issuing non-Government guaranteed international bonds on the international finance market.

Circular 19 applies to entities involved in issuing non-Government guaranteed international bonds on the international finance market.

Responsibilities of enterprises that issue bonds

Enterprises issuing international bonds must:

- Open and use one foreign loan servicing account

at an authorised bank for the purpose of receiving proceeds of international bonds issue and paying interest and repaying principal of the bonds;

- Utilise bond proceeds subject to compliance with purposes for the use of bonds proceeds indicated in the relevant issuing plan and approved by the SBV; and
- Accept liability to efficiently use proceeds from the issuing tranche for the objective stipulated in the approved plan and comply with legislation on securities, legislation on forex control, other current regulations of Vietnamese law and international law.

Right to buy foreign currency to pay out international bonds

A bond issuer is entitled to buy foreign currency from an authorised bank to pay out principal and interest on bonds and other fees relating to the issue, by way of presenting documents proving the requirement to make payment as stipulated by the rules of the authorised bank and in accordance with current regulations on forex control.

Certification of international bonds issue quota

International bond issuers must submit an application file to the SBV for certifying that the international bonds they intend to issue fall within the foreign commercial borrowing of Vietnam.

A State owned commercial bank will provide the following:

- A completed application form in prescribed form;
- Report on the bank's compliance with current regulations on prudential ratios as at the date of the request for certification.

An enterprise other than a State owned commercial bank will provide these documents:

- A completed application form in prescribed form;
- Legal file of the enterprise, namely certified copy of the establishment licence of the enterprise or of its business registration certificate or investment certificate issued in accordance with law plus any amendments;
- Copy of the enterprise charter;
- Copy of the international bonds issue plan as approved by the competent authority;
- Copy of the decision approving such plan from the general meeting of shareholders, board of management, members' council or enterprise owner;
- Certified copy of the consent given by the Ministry managing the industry or sector to the enterprise's issue plan (in the case of a State Economic Group or Corporation);
- Certified copy of approvals from authorised levels pursuant to current law of the investment projects, investment plans or business plans of the enterprise which are to be implemented using proceeds from the bonds issue; and
- Report on the credit institution's compliance with current regulations on prudential ratios as at the date of the request for certification (in the case of a credit institution).

An enterprise will directly file with the SBV, or send one set of the file by post. The SBV will, within a maximum 15 working days from receipt of a complete and valid file from an enterprise, co-ordinate with the Ministry of Finance (MOF) to provide certification of the international bonds issue quota.

Registration of bonds

The purpose of registering international bonds is for any payments by the issuer to be converted into foreign currency and remitted to the offshore bondholders pursuant to the registration certificate issued by the SBV.

The SBV stipulates that final drafts of the application file should be forwarded to it after the appointment of the underwriter and advisors but prior to implementing the bond issuance. The required documents include foreign language copies and a Vietnamese translation of the following:

- The underwriting contract or contract for the sale

and purchase of bonds;

- Agency agreements such as payment agent, transfer agent and trustees;
- Representative agreements (if any);
- Consultancy contracts; and
- Any contract where there is an obligation on the issuer to pay a fee.

An application file for registration of an issue must comprise:

- Request for registration of the international bonds issue on the standard form;
- Copy evaluation provided by the MOF (in the case of an issue performed by a State-owned enterprise);
- Certified copy of consent given by the Prime Minister (in the case of an issue by a State-owned enterprise); and
- Copy of the following foreign language documents plus Vietnamese translations:
 - » Contract underwriting the issue or contract for purchase and sale of bonds;
 - » Contract regarding the lenders' representative (if any);
 - » Agency agreements namely financial and payment agency, transfer agency and trustees;
 - » Contracts hiring consultants for the issue.

An enterprise, after selecting the underwriter, agents and consultants, will directly lodge with the SBV, or send to it by post, one set of the file to register the issue.

If an application file needs clarifying or supplementing, then within 10 working days from the date of receipt of the file, the SBV will notify the enterprise to amend such file for registration of the issue.

Once the issuing tranche is actually conducted, the enterprise must complete its application file for registration of the issue with the following data:

- Request for registration of the issue with complete information about the loan; and
- Copy foreign language documents plus Vietnamese translations certified by the enterprise of the data stipulated in Circular 19.

Reporting by enterprises

The relevant enterprise must, immediately after completing an issuing tranche and after receipt of

bond sale proceeds, report the results of the issuing tranche to the very authority which approved it, to the SBV, to the SBV branch in the province or city (provincial SBV branch) where the enterprise has its headquarters, and to the MOF.

Enterprises must, on a quarterly and annual basis, report to the provincial SBV branch where the enterprise has its headquarters, on the status of international bonds issues and send a copy to the SBV.

Enterprises must provide one-off reports on international bonds issues at the request of the SBV.

Effectiveness

Circular 19 came into effect on 15 October 2011.

Any international bonds issue of an enterprise for which the SBV provided certification of registration prior to 15 October 2011 will continue to be implemented pursuant to such written certification provided by the SBV. Enterprises must conduct transactions arising after 15 October 2011 and relating to an issue for which the SBV has already provided certification of registration pursuant to the provisions in Circular 19.

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