



Special Alert

July 2020

www.indochinecounsel.com

Rules for Issuance of Corporate Bonds Tightened

In compliance with Resolution No. 35/NQ-CP dated 16 May 2016 on enterprise development policy to 2020, the Government has promulgated Decree No. 163/2018/ND-CP on 4 December 2018 on issuance of corporate bonds (“**Decree 163**”). For the last two and a half years since its promulgation, Decree 163 has supported enterprises in capital mobilization to develop business activities. According to the Ministry of Finance, from 1 February 2019 to the end of 2019, enterprises nationwide have conducted 848 issue tranches of corporate bonds with the total raised capital of VND259.377 billion. The implementation of Decree 163, however, has shown certain limitations affecting the publicity and transparency of capital mobilization through corporate bonds, the stable development of a corporate bonds market, and rights and benefits of investors.

To remedy such, on 9 July 2020, the Government of Vietnam has issued a new Decree No. 81/2020/ND-CP (“**Decree 81**”) on amending and supplementing some articles of Decree 163. Decree 81, which takes effect on 1 September 2020, is expected to increase the transparency and publicity in capital mobilization through corporate bonds and to protect the rights and benefits of investors for the purpose of stabilizing the development of the corporate bonds market in Vietnam. The key changes under Decree 81 are summarized below..

Basic Conditions for Issuance of Corporate Bonds

Decree 81 in general retains restrictions on the lock-up period and the number of investors allowed to trade in each issue tranche as stipulated in Decree 163. Under Article 1.2, however corporate bonds issued on the domestic market may, during the first year after issuance, be transferred to less than 100 investors (excluding professional investors), except where a court so rules or there is an inheritance in accordance with law. At the end of the year, corporate bonds may be traded without restrictions on the total number of investors, unless otherwise restricted by the issuing enterprise. For bonds issued in international markets, corporate bonds issued must be subject to the trading

regulations of such market.

Conditions for Eligibility to Issue Bonds

According to the Hanoi Stock Exchange, in 2019 there were 28 enterprises with a volume of bonds issued exceeding 300% of their equity, in which 11 of them issued bonds exceeding 5,000% of their equity and six exceeding 10,000% of their equity. To limit enterprises with small charter capital from issuing a massive number of bonds, Decree 81 introduces additional conditions on the maximum volume of bonds to be issued, the minimum period between issue tranches, and the time limit for completing each issue tranche.

Under Articles 1.3 and 1.4 of Decree 81, the issuing enterprise must ensure that the outstanding balance of privately placed corporate bonds at the time of issuance (including the volume of bonds expected to be issued) does not exceed 500% of their equity in accordance with the most recent financial statements as at the time of issuance.

Each issue tranche must be completed within 90 days after the information disclosure date. Subsequent issuance tranches must be spaced at least six months after the previous tranche issuance. All bonds issued in each tranche must have the same terms and conditions.

Credit institutions are not required to comply with these conditions while conducting the issuance of bonds.

Application for Bond Issuance

Under Article 1.5, Decree 81 requires the issuing enterprise to prepare (i) the contract signed between the issuing enterprise and service providers of services relevant to the bond issuance, and (ii) the bond purchase contract, including an undertaking from the investors stating that they had full access to contents of the information disclosed prior to the bond issuance and that they clearly understand the risks when purchasing bonds.

Bond Issuance Plan

Decree 81 clarifies the contents regarding the purpose of issuing bonds provided in the bond issuance plan. Such plan must state specific information about the investment program or project; the production and/or business activities which require additional capital; and the debts to be structured (giving the name of the debts, their value and repayment term) with capital gained from the bond issuance.

Information Disclosure prior to Bond Issuance

The issuing enterprises must conduct information disclosure to investors at least three working days prior to the expected issuance date of the bonds and submit information disclosure content of such

issuance to the Stock Exchange. If an enterprise issues bonds in a number of tranches, for subsequent tranches, the issuing enterprise must send the additional data to investors subscribing for the bonds and to the Stock Exchange at least three working days prior to the issuance tranche.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com

Phan Anh Vu

Partner
vu.phan@indochinecounsel.com

Le Van Duong

Partner, Head of Hanoi Office
duong.le@indochinecounsel.com

Le Nguyen Huy Thuy

Partner
thuy.le@indochinecounsel.com

Nguyen Thi Hong Anh

Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com

Pham Thi Thanh Lan

Partner
lan.pham@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72 -74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

This Client Alert is designed to provide our clients and contacts with general information of the relevant topic for reference only, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

© 2020 Indochine Counsel. All Rights Reserved.