Special Alert

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Recent Legislative Developments for the Vietnam Bond Market

The State Bank of Vietnam (the "**SBV**") has previously issued regulations on prudential ratios and limits over banking activities while recently the ability of businesses to pay loans and interest has been severely affected by the Covid-19 epidemic. As a result of these twinned developments, commercial banks have become more and more cautious in granting credit. Many companies have directed their attention to bonds as a substitute channel to raise capital for long-term business plans. The procedure for issuing corporate bonds is much less complicated than satisfying conditions and procedures to obtain loans from commercial banks.

The latest report from the Vietnam Bond Market Association (the “**VBMA**”) shows that in the first nine months of 2021, the total value of domestically placed corporate bonds reached 385 trillion VND. However, this overheating of the corporate bond market in a short time period comes with many risks, as some Vietnamese bond issuers are not sufficiently creditworthy and the market is flooded with "3 NOs" bonds: no credit rating, no collateral, and no repayment guarantee.

In order to preserve the development of Vietnam's bond market at a safe and sustainable rate, governmental authorities have issued specific regulations on bond issuance activities and have opened up opportunities for development of this financial market.

Regulations to mitigate short-term risks on the bond market

To ensure the operation of the banking system remains immune from recent waves of bond issuance, the SBV has issued Circular No. 16/2021/TT-NHNN dated 10 November 2021 on trading of corporate bonds of credit institutions ("**Circular 16**"). Therein, the SBV has set requirements and restrictions on the purchase, sale and management of corporate bonds of credit institutions, and most notably, enumerated cases where credit institutions are not allowed to buy corporate bonds from enterprises that:

- issue bonds with the purpose of restructuring their debts;
- issue bonds with the purpose of making capital contribution or acquisition of shares of other enterprises;
- issue bonds with the purpose of increasing their working capital.

With a lurking risk of bad debt, the ability of businesses to repay credit loans is significantly impaired due to Covid-19, Circular 16 also restricts credit institutions with non-performing loan ratios, according to the most recent classification period of the SBV, from 3% or more from participating in buying corporate bonds.

The SBV has banned credit institutions from repurchasing sold corporate bonds within 12 months from the date of sale of such corporate bonds. This regulation will technically prevent commercial banks from using inter-bank repo transactions to temporarily satisfy the SBV's operational management tools – specifically to adjust their capital adequacy ratio – since investing in a corporate bond is also a form of credit extension, which is similar to granting a loan to the issuing corporation, and as such capital adequacy ratios will also need to be secured when it comes to bond investing.

Specific rules for trading privately-placed corporate bonds

Recently, the Ministry of Finance has released a draft circular elaborating Decree No. 153/2020/ND-CP dated 31 December 2020 on trading of privately placed corporate bonds ("**PPCBs**") in domestic market ("**Decree 153**"). Although regulations on listing and trading of bonds was already introduced to the securities legal system, the lack of elaborating regulations and mechanisms makes PPCBs practically impossible to list and trade officially on exchanges in the same manner as publicly offered bonds. Most recently, Decree No. 163/2018/ND-CP only stipulates that PPCBs shall be deposited at and traded via the Vietnam Securities Depository and Clearing Corporation, while being subject to a lock-up period for any transfer of the bonds.

Of the 385 trillion VND in corporate bonds issued in the first nine months of 2021, PPCBs totaled approximately 97%. While this is a remarkable development in the Vietnamese corporate bond market, in terms of scale to GDP, Vietnam's corporate bond market is still relatively much smaller than that of other countries in the Southeast Asian region such as Thailand, Singapore, and Malaysia. Therefore, Vietnam's bond market is still expected to have room for growth, and may yet become the preferred capital mobilization channel in the near future.

As such, this draft circular is expected to provide a transparent mechanism for PPCBs to be officially listed and traded on the Hanoi Stock Exchange pursuant to the schedule set out in Circular No. 57/2021/TT-BTC (dated 12 July 2021 on roadmap of restructuring the stock trading market), and to boost the liquidity of this type of securities. However, quite a few conditions and standards for investors and PPCBs to qualify for participation in trading are set forth:

(i) Participants: only professional securities investors (as defined in applicable laws on securities) are permitted to participate in trading of PPCBs;

(ii) Conditions for PPCBs to be put into trading:

- Subject to conditions and process of offering for sale as prescribed in Decree 153;
- Being a non-convertible bond, without warrants;
- Being issued by an enterprise that has, according to the most recent year's audited financial statements: (i) contributed charter capital at the time its bond is put into trading is at least VND30 billion, and (ii) profitable business activities, without accumulated losses, for the year immediately preceding the year its bond is put into trading; and
- In case of PPCBs issued by a non-public company such bonds must be collateralized, or guaranteed to pay all principal and interest upon maturity.

These two legal developments will hopefully provide a means for monitoring and containing uncontrolled growth in Vietnam’s corporate bond markets. With luck, they will also allow for corporations to efficiently and sustainably pursue this alternate corporate funding route.

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