

# Decree 163/2018: New legal regime for corporate bonds

Decree No.163/2018/ND-CP on issue of corporate bonds was introduced by the Government of Vietnam on 4 December 2018 (“Decree 163”). It will take full effect on 1 February 2019, and replace Decree No.90/2011/ND-CP, dated 14 October 2011, of the Government of Vietnam, on the same subject (“Decree 90”). Decree 163 continues regulating private issue by onshore issuers of corporate bonds (including convertible bonds) inside and outside Vietnam, but excludes public issues from its regulations. “Green” bond concept is firstly introduced under Decree 163, with certain exceptional requirements.

This paper briefs only key changes brought about by Decree 163 in comparison with Decree 90, in relation only to private issue of corporate bonds inside Vietnam, in which not only onshore bond issuers and relevant advisors (sell side) but also investors (buy side) may be interested:

## **Issue condition**

Issuer’s profitability in the year ahead of the issue is no longer required by Decree 163. In addition, there is a flexibility where “full acceptance” by auditors of audited financial statements is no longer required.

However, requirement that auditors must be ones qualified to do audit financial statements of ones having public interests (e.g. public companies), may create difficulties in the context where the number of such qualified auditors is limited. Full payment of principals and interest of bonds (if any) having been issued in the past 3 years ahead of the issue, is another additional condition. It is argued that this is a repetition of the similar condition as provided by the Law on Enterprises 2014 which is only applicable to joint

stock companies when issue bonds, but may create difficulties for other types of issues being limited liability companies.

In addition to general conditions applicable to corporate bonds, corporate convertible bonds are subject further to specific conditions.

In respect of bonds issued for a specific (investment) project or program, requirement that shareholders must hold at least 20% of the total (investment) capital for the project or program, is no longer in existence.

### **Issue tranche**

Corporate bonds can be issued in multiple tranches, provided that all tranches must be completed with 12 months from the first tranche, and the time for completion of each tranche must not exceed 90 days.

### **Direct issue**

For the first time, Decree 163 permits bonds to be directly sold to investors (which in the past was permissible only to bonds issued by credit institutions), in addition to other permissible methods such as tender, agent and underwriting.

Only securities companies, banks and other financial institutions having relevant licenses are permitted to provide issuers with advisory services in relation to the issue dossier, and tender, agent and/or under underwriting services in relation to the issue.

### **Issue step**

For the first time, all key issue steps are provided by Decree 163. In order, they include:

1. Preparation of an issue dossier.
2. Publicity of the issue (at least 10 business days in ahead of the issue).

3. Issue of bonds.
4. Publicity and report on results of the issue (within 5 business days after completion of the issue).
5. Registration and deposit of issued bonds (within 10 business days after completion of the issue).
6. Payment of principals and interest of issued bonds.
7. Publicity and report during the term of issued bonds (including ordinary publicity and report on a 6 month and annual basis, and extra-ordinary public and report within 24 hours).

## **Publicity**

All standards and quality of publicity and reports that all issuers must satisfy, still remain under Decree 163, but they tend to be stricter and closer to the standard of publicity applicable to public companies. Instead of making publicity or report generally to the Ministry of Finance as provided by Decree 90, they will be made specifically to relevant stock exchanges (e.g. Hanoi and HCMC Stock Exchanges, which are under the control of the Ministry of Finance), which are responsible for creating a portal for handling information relating to corporate bond issues and market. As the said portal is not in existence, it would need a guidance to be made by the Ministry of Finance to temporarily handle publicity and reports of bonds issued during the transitional period (as further noted below) and bonds to be issued immediately after 1 February 2019.

For the purpose of publicity, Decree 163 provides for the first time 2 standard templates of publicity document, one for issuer to make in ahead of the issue and the other for issuer to report results after completion of the issue.

24-hour extra-ordinary publicity is for the first time required by Decree 163, in occurrence of such circumstance as (i) suspension, revocation of licence, restructuring or conversion of the issuer; (ii) changes to announced

information leading to the issuer's failure to meet the issuance conditions or affecting its ability to repay the bond principal and interest; and (iii) changes to the plan for the use of bond proceeds.

### **Deposit**

Unlike Decree 90, Decree 163 requires that all issued bonds must be registered and deposited with the Vietnam Securities Depository (VSD) or through its member being a custody organisation (e.g. a securities company), within 10 business days from completion of the issue. The key purpose thereof is to help controlling (i) the number of investors and (ii) the secondary sale. A type of bonds is only permitted to register and deposit with one custody organisation.

### **Secondary sale**

In the first year from completion of the issue, only transfer of issued bonds among less than 100 investors (excluding professional investors being e.g. banks, investment funds, etc.) is permitted. After the said 1-year period, the said restriction in number of investors may be removed.

### **Transitional period**

Depository, publicity and report must be made under the provision of Decree 163 in respect of all bonds issued under Decree 90, but still not repaid before 1 February 2019.