

# VISION

**Vision & Associates**

ATTORNEYS . PATENT & TRADEMARK AGENTS . INVESTMENT & BUSINESS  
CONSULTANTS

# Legal News

March 2019

---

## Contents

<b>LAW ON ENTERPRISES</b> .....	2
<b>Highlights</b> .....	5
<b>Other sectors:</b> .....	10
Finance.....	10
Trade .....	10
Health.....	10
Education .....	11
Transport.....	11
Land - Real Estate.....	12
Natural Resources - Environment.....	12
Information - Communications .....	12
Administration - Judiciary .....	13
Agriculture - Forestry - Fishery.....	13
Miscellaneous.....	13
<b>Contact details</b> .....	15

This **Legal news** is published solely for our clients and other interested persons. It is intended to be used for general information purpose only and should not be relied upon as legal advice or opinion. Professional advice should be sought for any specific situation. Please direct your inquiries to our offices or persons listed at the end of this Legal news.

This **Legal news** is also available online at [www.vision-associates.com](http://www.vision-associates.com)

© Vision & Associates 2019. All rights reserved

## LAW ON ENTERPRISES

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

*Luu Tien Ngoc*

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 takes effect on 1 February 2019, and replaces Decree No. 90/2011/ND-CP, dated 14 October 2011, of the Government of Vietnam, on the same subject (“**Decree 90**”). Decree 163 regulates private placement of corporate bonds (including convertible bonds) by onshore issuers inside and outside Vietnam, but not public offering. The concept of “Green” bond is firstly introduced in Decree 163, with certain special requirements.

This summarises only the key changes brought about by Decree 163 in comparison with Decree 90, to private placement of corporate bonds inside Vietnam, in which not only onshore bond issuers and relevant advisors (selling party) but also investors (buying party) may be interested:

#### Conditions for placement

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

However, the requirement that auditors must be those qualified to do audit financial statements of entities with public interests (e.g. public companies), may create difficulties to issuers, specially where the number of such qualified auditors is limited in Vietnam. Full payment of principals and interest of bonds (if any) which have been issued for the recent 3 consecutive years before the placement, if any, is another additional condition imposed by Decree 163. It is found that this is a repetition of the similar condition as provided by the Law on Enterprises 2014 which has been applicable only to joint stock companies to issue bonds. However, this may create further difficulties for issuers that are limited liability companies.

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

In respect of bonds issued for a specific (investment) project or program, the requirement that shareholders must hold at least 20% of the total (investment) capital for the project or program, is cancelled by Decree 63.

### **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 corporate bonds to be directly sold to investors (which in the past was permissible only to bonds issued by credit institutions), in addition to other methods allowed by Decree 90, 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 underwriting.

### **Issue process**

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

1. Preparation of an issue dossier.
2. Announcement of the issue (at least 10 business days in ahead of the issue).
3. Issue of bonds.
4. Publication of 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. Information publication and report during the term of issued bonds (including ordinary publication and report every 6 month and yearly, and extra-ordinary publication and report within 24 hours).

### **Publication**

All standards and requirements for information publication that all issuers must satisfy and report, are established by Decree 163, more strictly and closely to those applicable to public companies. Instead of notification or report to the Ministry of Finance as provided by Decree 90, information publication or report under Decree 163 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). Therefore, the stock exchanges are responsible for creating a portal for processing information relating to corporate bond issue and market. In the meanwhile, when the said portal is

not in operation, the Ministry of Finance needs to provide specific guidance on temporarily processing publication and report of issue of bonds (as further noted below) and issues to be made immediately after 1 February 2019.

For the purpose of information publication, Decree 163 provides for the first time 2 standard templates for publication, one before the issue and the other for issuer to report the results of the issue.

24-hour extra-ordinary publication is for the first time required by Decree 163, in the cases, such as (i) suspension, revocation of licence, restructuring or conversion of the issuer; (ii) changes of the published 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 all issued bonds to 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 of this requirement is to help controlling (i) the number of investors and (ii) the secondary sale. A particular 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, e.g. banks, investment funds, etc.) is permitted. After the said 1-year period, no restriction will be imposed on the number of investors.

### **Transitional period**

Deposit, publication and report in respect of all bonds issued under Decree 90, but still not repaid before 1 February 2019 must comply with the provision of Decree 163.

## Highlights

### 1. Decree guiding the Law on Residential Housing

*On 28 March 2019, the Government promulgates Decree No. 30/2019/ND-CP, amending Decree No. 99/2015/ND-CP, providing guidelines for implementation of the Law on Residential Housing 2014.*

Accordingly, a new provision on “Determining the time to arrange the use of the state-owned old residential houses” is added; specifically, in the case that a person who is actually using his/her residential house has a lease contract to which he/she is a party, it shall be determined as follows:

- (a) According to the date specified in the contract, if any;
- (b) According to the date of signing the contract if it is not specified in the contract;
- (c) According to the date specified in the first contract if the lease contract is renewed or extended;
- (d) In the event where a person directly using the residential house has papers proving that they have paid the residential housing rent before signing the contract, it shall be determined as the date when the rent is paid.

In the event where a contract is signed and the competent authority already collected the rent (a written proof thereof is available), it shall be determined as the date of collection.

- (e) In the event where a person directly using the residential house has a decision or document on distribution or arrangement of the use of the residential houses in which he or she is named before the date of signing the contract, it shall be determined as the date written in that decision/document on arranging the use.

If the decision/document on arrangement of the use does not specify the date, then it shall be determined as the issuance date of such decision or document.

This Decree shall come into force on 15 May 2019.

### 2. Evaluation of the minimum dust exposure at workplace once a year

***On 21 March 2019, the Ministry of Health issued Circular No. 02/2019/TT-BYT, promulgating the National technical regulations on dust – the permissible exposure limit value of 05 dust types at workplace.***

According to this Circular, the workplaces in which workers are exposed to dust must periodically monitor the labour environment, evaluate dust exposure at least once a year.

The Vietnam National Technical Regulations QCVN 02: 2019/BYT accompanying Circular 02 include 5 dust types at workplace as follows: asbestos dust, silica dust, non-silica dust, cotton dust and coal dust.

Employers must immediately implement the measures to improve working conditions and protect workers' health if the dust concentration at workplace exceeds the permissible exposure limit values under these National Technical Regulations.

### **3. Additional Decree providing guidelines for the Labour Code 2012.**

***On 20 March 2019, the Government promulgated Decree No. 29/2019/ND-CP, providing guidelines for Clause 3 of Article 54 in the Labour Code 2012.***

Accordingly, the licensing of labour sublease activities, payment on escrow deposits and list of jobs for which labour may be subleased is guided with some highlight contents as follows:

- (a) The maximum validity period of a license for labour sublease activities (License, in short) is 60 months (increased by 24 months compared to that prescribed in the existing regulations);

The license may be extended for multiple times and each extension is a maximum of 60 months instead of no more than twice extensions each of which is at maximum 24 months as currently provided;

The validity period of the reissued license is equal to the remaining validity period of the previous license.

- (b) 02 conditions that enterprises must meet to obtain the license for labour sublease activities are abolished as follows:

- (i) Condition on legal capital;
- (ii) Condition on locations of head offices, branches, representative offices of enterprises.

Labour sublease enterprises must publicly display the original licenses for the labour sublease activities at their head offices instead of its copy as stipulated in Article 11 of Circular No. 01/2014/TT-BLDTBXH dated 08 January 2014.

In the case that enterprises have branches and/or representative offices, the certified copy of license for labour sublease activities must be displayed at these premises.

The new Decree also adds 03 job groups to the list of jobs for which the labour may be subleased compared to the provisions in Decree No.55/2013/ND-CP dated 22 May 2013, specifically including:

- (a) Management, operation, maintenance and service on ships;
- (b) Management, supervision, operation of the repair, maintenance and service on oil and gas rigs;
- (c) Piloting, service on aircraft/Maintenance, repair the aircraft and aircraft equipment/Flight control, flight exploitation/Flight monitoring.

This Decree shall take effect on 5 May 2019.

#### **4. Guidance on payment of Compulsory Social Insurance contribution for workers being foreign citizens.**

*On 18 March 2019, the Ministry of Labour, War Invalids and Social Affairs has issued Notice No. 1064/LDTBXH-BHXX providing clarification on the implementation of Decree No. 143/2018/ND-CP, providing guidelines on the compulsory social insurance for foreign employees (“Decree 143”). Accordingly:*

According to the provisions in Articles 2.1 and 2.2 of Decree 143 and Article 3.1 of Decree No. 11/2016/ND-CP dated 03 February 2016, foreign employees will pay compulsory social insurance (SI) if 04 following requirements are satisfied:

- (a) Having work permits or practice certificates or practice licenses issued by Vietnamese competent authorities;
- (b) Having indefinite-term employment contracts or definite-term employment contracts of 1 year or more term signed with employers in Vietnam;
- (c) Below 60 years of age for male and 55 years of age for female.
- (d) Not being intra-corporate transferees, including: employees being managers, managing directors, experts and technical employees currently working at a foreign enterprise; employees being recruited by foreign enterprises for at least 12 months before and assigned to work at the commercial presences of such foreign enterprises within the territory of Vietnam.

Previously, on 7 March 2019, the Social Insurance of Vietnam has issued Official Letter No. 679/BHXX-BT, providing guidance on collection of compulsory SI paid by employees who are foreign citizens working in

Vietnam. Accordingly, the Social Insurance agencies in provinces and centrally-run cities shall collect compulsory SI as follows:

- (a) Those eligible for participating in the compulsory SI regime are employees prescribed in Article 2 of Decree 143;
- (b) Contribution rates, contribution methods, salary amounts used as a basis for calculation of SI premiums shall be in compliance with provisions in Articles 12, 13 and 14 of Decree 143;
- (c) Files, forms used for managing the collection of SI premiums shall follow the guidance provided in Decision No.595/QD-BHXH dated 14 April 2017 (“**Decision 595**”); the application form for participation in, change of SI and HI information will comply with form No. TK1-TS accompanying Decision No. 888/QD-BHXH dated 16 July 2018;

Notes: Files and forms are available in Vietnamese and English accompanying the Official Letter 679.

- (d) Procedures for collection of SI premiums; granting and management of SI booklets are the same as those applied to Vietnamese employers participating in SI, HI and UI regimes according to the guidance provided in Decision 595.

## **5. Six cases of securities being cancelled for trading registration on UpCom Stock Exchange.**

*On 15 March 2019, the Ministry of Finance promulgated Circular No. 13/2019/TT-BTC, amending Circular No. 180/2015/TT-BTC dated 13 November 2015 (“Circular 180”), providing guidelines on securities trading registration on the trading system of unlisted securities.*

Accordingly, 2 cases in which securities are cancelled for trading registration on UpCom Stock Exchange (increasing the total cases to 06 cases) are added, including:

- (a) Enterprises equitized in the form of public offering of securities that have already registered for trading on UpCom Stock Exchange and have obtained Enterprise Registration Certificate will be cancelled for trading registration after 1 year from the date of failure to meet the following conditions: capital condition or shareholder condition in accordance with Article 25.1.c of Law on Securities or both conditions.
- (b) Equitized enterprises which have already registered for trading on UpCom Stock Exchange and obtained the Enterprise Registration Certificates before 1 May 2019 will be cancelled for trading registration within 1 year from 1 May 2019 if they fail to meet capital

condition or shareholder condition as prescribed in Article 6.1.dd of Circular 180.

This Circular shall enter into force on 1 May 2019.

## **Other sectors:**

### **Finance**

- Decision No. 413/QD-BTC dated 22 March 2019 of the Ministry of Finance, providing the Regulation on coordination between units directly under the Ministry of Finance in provision and management of Government guarantees.
- Decision No. 368/QD-BTC dated 12 March 2019 of the Minister of Finance, providing the Regulation on management, operation and exploitation of the National Database for price in stage 1.

### **Trade**

- Decision No. 822/QD-UBND dated 18 February 2019 of the People's Committee of Hanoi, publishing the list of cancelled administrative procedures in the field of food safety under the jurisdiction of the Department of Industry and Trade, and People's Committees at district and commune levels in Hanoi.
- Decision No. 245/QD-BKHDT dated 12 March 2019 of the Ministry of Planning and Investment, publishing the list of amended administrative procedures in the field of establishment and operations of enterprises and business households within the scope of management functions of the Ministry of Planning and Investment.
- Decision No. 456/QD-BCT dated 1 March 2019 of the Ministry of Industry and Trade, on the Plan of implementing the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) of the Ministry of Industry and Trade.
- Circular No. 06/2019/TT-BCT dated 25 March 2019 of the Minister of Industry and Trade, on border gates for import of passenger cars of less than 16 seats.
- Circular No. 04/2019/TT-BCT dated 4 March 2019 of the Minister of Industry and Trade, on directive principles of import tariff quotas for products of salt and poultry egg in 2019.

### **Health**

- Decision No. 1112/QD-BYT dated 26 March 2019 of the Minister of Health, providing Guidelines for implementing HIV load examination in HIV/AIDS monitoring and treatment.

- Circular No. 01/2019/TT-BYT dated 1 March 2019 of the Minister of Health, regulating day-time inpatient treatment at traditional medical examination and treatment facilities.

**Education**

- Consolidated Document No. 975/VBHN-BLDTBXH dated 12 March 2019 of the Ministry of Labour, War Invalids and Social Affairs, incorporating Decrees on conditions for investment and operation in the field of vocational education.
- Decision No. 758/QD-BGDDT dated 27 March 2019 of the Ministry of Education and Training, publishing the list of business investment conditions for conditional business lines within the scope of management functions of the Ministry of Education and Training.
- Decision No. 391/QD-LDTBXH dated 22 March 2019 of Ministry of Labour, War Invalids and Social Affairs, publishing the administrative procedures, which are amended, supplemented, repealed or removed from the list of administrative procedures in the field of vocational education within the scope of management functions of the Ministry of Labour, War Invalids and Social Affairs.

**Transport**

- Decision No. 16/2019/QD-TTg dated 28 March 2019 of the Prime Minister, promulgating the roadmap for application of emission standards to automobile vehicles and to imported second-hand automobile vehicles.
- Circular No. 12/2019/TT-BGTVT dated 11 March 2019 of the Minister of Transport, on Economic - technical norms of machine consumption for specialized vehicles in the management and maintenance of inland waterways.
- Circular No. 11/2019/TT-BGTVT dated 11 March 2019 of the Minister of Transport, on amendments to Circular No. 24/2018/TT-BGTVT providing for the development of train running diagram and traffic management of railway transport.
- Circular No. 10/2019/TT-BGTVT dated 11 March 2019 of the Minister of Transport, on natural disaster prevention and control in the maritime field.
- Circular No. 09/2019/TT-BGTVT dated 1 March 2019 of the Minister of Transport, on the National Technical Regulations on Marine Pollution Prevention Systems.

**Land - Real Estate**

- Decision No. 06/2019/QD-UBND dated 18 March 2019 of the People's Committee of Hanoi, on land price adjustment coefficient as a basis for determining land prices applicable to uses of land in Hanoi as prescribed by the law.
- Decision No. 05/2019/QD-UBND dated 18 March 2019 of the People's Committee of Hanoi, on land price adjustment coefficient in 2019 as a basis for determining land prices applicable to uses of land in Hanoi as prescribed by the law.

**Natural Resources - Environment**

- Decree No. 27/2019/ND-CP dated 13 March 2019, providing guidelines for Law on Measurement and Cartography.
- Decree No. 25/2019/ND-CP dated 7 March 2019, amending Decree No.13/2011/ND-CP on safety of oil and gas facilities on land.
- Circular No. 01/2019/TT-BTNMT dated 8 March 2019 of the Minister of Natural Resources and Environment, cancelling some provisions of Circular No. 08/2018/TT-BTNMT and Circular No. 09/2018/TT-BTNMT, providing national technical regulations on environment.
- Circular No. 05/2019/TT-BCT dated 11 March 2019 of the Minister of Industry and Trade, on amendments to Circular No. 16/2017/TT-BCT regulating project development and power sale contract template used for solar power projects.

**Information - Communications**

- Decision No. 238/QD-BTTTT dated 1 March 2019 of the Minister of Information and Communications, amending Decision No. 1756/QD-BTTTT on functions, duties, powers and organizational structure of Vietnam Internet Centre.
- Decision No. 239/QD-BTTTT dated 1 March 2019 of the Minister of Information and Communications, promulgating Media Programme for the Scheme to build a set of standards to assess the level of enterprise development on the basic information system until 2020.
- Circular No. 02/2019/TT-BTTTT dated 8 March 2019 of the Minister of Information and Communications, providing guidelines for management of

external information activities of Ministries, Ministry-level bodies, Governmental agencies.

- Circular No. 01/2019/TT-BTTTT dated 5 March 2019 of the Minister of Information and Communications, on criteria for the titles of Director and Deputy Director of Departments of Information and Communications.

### **Administration - Judiciary**

- Decision No. 569/QD-BTP dated 11 March 2019 of the Minister of Justice, on Plan of implementation of Decision No. 28/2018/QD-TTg, on sending, receiving electronic documents between agencies of National administrative system.
- Circular No. 02/2019/TT-BTP dated 15 March 2019 of the Minister of Justice, regulating the obligation to participate in compulsory professional training of lawyers.

### **Agriculture - Forestry - Fishery**

- Decree No. 26/2019/ND-CP dated 8 March 2019, providing guidelines for Law on Fishery.
- Decision No. 988/QD-BNN-TCTS dated 26 March 2019 of the Minister of Agriculture and Rural Development, publishing the list of designated fishing ports to confirm the origin of aquacultural products from fishery.
- Decision No. 751/QD-BNN-QLCL dated 6 March 2019 of the Minister of Agriculture and Rural Development, publishing alternative administrative procedures in the field of quality control of agriculture, forestry and fishery under the management functions of the Ministry of Agriculture and Rural Development.

### **Miscellaneous**

- Decision No. 15/2019/QD-TTg dated 28 March 2019 of the Prime Minister, on implementation of electronic border-guard procedures at border gates under management of the Ministry of National Defence.
- Decision No. 384/QD-BTC dated 19 March 2019 of the Minister of Finance, promulgating the Roadmap for socialization of the task of organizing examination for insurance agent certificates.
- Decision No. 572/QD-BKHCN dated 19 March 2019 of the Minister of Science and Technology, on the Plan of implementation of Decree No. 13/2019/ND-CP, on

science and technology enterprises.

- Circular No. 14/2019/TT-BTC dated 15 March 2019 of the Minister of Finance, on financial management in implementing the Intellectual Property Development Program for period of 2016-2020.

## Contact details

### Hanoi Office

Mr. Pham Nghiem Xuan Bac

*Managing Partner*

Mr. Luu Tien Ngoc

*Director, Business Development*

Ms. Le Quynh Anh

*Executive Partner, Legal Practice*

Ms. Nguyen Nguyet Dzung

*Partner, Intellectual Property Practice*

Unit 308-310, 3<sup>rd</sup> Floor, Hanoi Towers

49 Hai Ba Trung, Hanoi, Vietnam

Tel: 84-24-3934 0629/ 3826 4797 Fax: 84-24-3934 0631

E-mail: [vision@vision-associates.com](mailto:vision@vision-associates.com)

### Ho Chi Minh City Office

Mr. Luu Tien Ngoc

*Director, Business Development*

Mrs. Nguyen Thi Van

*Head of Ho Chi Minh City Office*

Unit 905, 9<sup>th</sup> Floor, CitiLight Tower

45 Vo Thi Sau, District 1, Ho Chi Minh City, Vietnam

Tel: 84-28-3823 6495 Fax: 84-28-3823 6496

E-mail: [hcmvision@vision-associates.com](mailto:hcmvision@vision-associates.com)

[www.vision-associates.com](http://www.vision-associates.com)