

# LegalNews

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Vol 12 Issue November 2022

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**DECREE No.  
65/2022/ND-CP  
SEPTEMBER 16, 2022  
AMENDMENTS TO  
GOVERNMENT'S  
DECREE NO.  
153/2020/ND-CP  
DATED DECEMBER 31,  
2020 PRESCRIBING  
PRIVATE PLACEMENT  
AND TRADING OF  
PRIVATELY PLACED  
CORPORATE BONDS IN  
DOMESTIC MARKET  
AND OFFERING OF  
CORPORATE BONDS IN  
INTERNATIONAL  
MARKET**



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Decree 153/2020/ND-CP prescribing private placement and trading of privately placed corporate bonds in domestic market and offering of corporate bonds in international market, issued on December 31, 2020, effective into force on January 1, 2021. After 18 months implemented of the decree, before signs of "hot" growth accompanied by many potential risks, state management agencies have issued consecutive warnings to issuers and investors, especially individual investors. However, the reality shows that there is still a deliberate violation to offer secondary sale to individual investors to buy individual corporate bonds or contribute capital through investment cooperation contracts with securities investors under Civil Code. The law observance of the bond issuer is not strict and in compliance with the legal framework, many serious violations have occurred.

To the corporate bond market, the Prime Minister and the Minister of Finance have issued guiding documents on the management, especially stepping up the inspection of issuance,

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investment, and service providing services in the corporate bond market <sup>1</sup>.

In the face of the fast-growing corporate bond market and many risks, the Government has issued a new legal framework that is safe for investors, promotes a transparent market and enhances the supervisory responsibility of investors in state agencies.

**The most notable aspects of the New Decree 65/2022/ND-CP amendments to Government's Decree NO. 153/2020/ND-CP dated December 31, 2020 prescribing private placement and trading of privately placed corporate bonds in domestic market and offering of corporate bonds in international market.**

## **1. Purpose of issuing bonds**

Decree 65/2022/ND-CP amending regulations on bond issuance purposes in order to strengthen the responsibilities and obligations of issuers in using proceeds from bond issuance for the right purposes.

According to, bonds are issued for executing investment projects/programs, restructuring the issuer's debts or serving other purposes as prescribed in specialized laws. The

issuer is required to clearly indicate purposes of the bond issue in its bond issuance plan, and disclose the same to investors to serve their subscription for the bond issue. The funds raised from a bond issue shall be used for the purposes which have been defined in the issuer's bond issuance plan and notified to investors<sup>2</sup>.

Decree 65/2022 allows issuers to issue corporate bonds for the purpose of debt restructuring. This is one of the key points in the direction of easing to help businesses with the purpose of debt restructuring (by regulations) still have access to the corporate bond issuance channel.

## **2. Increase the par value of domestic bonds to 100 million**

The New Decree has increased the par value of bonds from VND 100,000 (about US\$4.20) (and a multiple of VND 100,000 or about US\$4.20) to VND 100 million (about US\$4,200) (and a multiple of VND 100 million or about US\$4,200). This increase also limits the scope of eligible investors and seems designed to exclude small retail investors. Specifically, Decree 65/2022/ND-CP states: "*Face value of a bond offered in the domestic market is VND 100.000.000 (one hundred million) or a multiple of VND 100.000.000 (one hundred million)*"<sup>3</sup>.

<sup>1</sup> Directive No. 01/CT-BTC dated April 25, 2022 of the Ministry of Finance

<sup>2</sup> Clause 2 Article 5 of Decree 65/2022/ND-CP

<sup>3</sup> Point a Clause 4 Article 6 of Decree 65/2022/ND-CP

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### 3. Bond buyers

Decree 65/2022/ND-CP also stipulates specifically about Bond buyers. Accordingly, Buyers of non-convertible bonds without warrant are professional investors as defined in the Law on securities.

An individual that is identified as a professional investor as prescribed in Point d Clause 1 Article 11 of the Law on Securities shall be eligible to buy privately placed bonds if he/she holds a quantity of listed or registered securities, excluding securities borrowed to conduct margin transactions and those of REPO\* transactions, of which the daily average price determined in a minimum period of 180 consecutive days preceding the date on which he/she is identified as a professional investor shall not be lower than VND 02 billion. The certification of a professional investor status as prescribed in this Point shall be valid for 03 months from the date of certification.

The New Decree guides on requirements for eligible investors, as well as documentation as evidence for such eligibility, accordingly confirms the responsibilities of both issuers and securities companies in the determination and certification of investor eligibility with respect to participation in private bond issuances.

Decree 65/2022/ND-CP adds responsibilities of bond buyers *"Conduct bond transactions according to the provisions of Article 16 Bond trading of Decree 65/2022/ND-CP; **not sell bonds to or make joint investment in bonds with investors who are not professional investors in any forms.** Capital mobilization and purchase/investment in corporate bonds by credit institutions, FBBs and fund management companies shall comply with specialized laws"*<sup>4</sup>.

Buyers of convertible bonds and warrant-linked bonds are professional investors and strategic investors of which the number of strategic investors of an issue is limited to 100<sup>5</sup>.

### 4. Supplementing the principle of private corporate bond issuance

Bond issuance conditions comply with the Law on Securities and the Law on Enterprises. The Decree supplements regulations on bond offering documents including: (i) credit rating results according to cases and implementation schedule as prescribed for bond offering to the public, from January 1st, 2023; (ii) the contract signed with the representative of the bondholder in case of offering to individual professional securities investors and (iii) the commercial bank's

<sup>4</sup> Point dd Clause 2 Article 8 of Decree 65/2022/ND-CP

<sup>5</sup> Point b Clause 1 Article 8 of Decree 65/2022/ND-CP

confirmation on the opening of an account to receive money for purchase bonds.

Upon completion of the offering, bonds must be (i) registered and deposited with the Vietnam Securities Depository (VSD) and (ii) registered for trading with the Stock Exchange. Previously, there was no particular guidance on these requirements, private issued bonds could be registered with a depository member of the VSD. These new provisions should increase secondary trading and create a more transparent secondary market.

The bond exchange will need to be set up within nine months after issuance of Decree 65/2022. The VSD's bond registration and depository and the bond trading system of the Stock Exchange are targeted to come into operation in June 2023. Pending the setting up of the bond exchange, privately-issued bonds could continue to be traded under Decree 153/2020.

Decree 65/2022/ND-CP provides: With regard to bonds issued in the domestic market, their terms and conditions as prescribed in Article 6 of this Decree may be changed if the change is approved by <sup>6</sup>:

a) The issuer's competent authority; and

b) A number of bondholders that represents at least 65% of total outstanding bonds of the same type

Information on the change of conditions and terms of bonds must be unusually disclosed by the issuing enterprise <sup>7</sup>.

## **5. Representative of bondholders**

The Decree adds regulations on the representative of bondholders to strengthen the supervision of the purpose of using the bond capital of the issuer as well as strengthen the supervision of the implementation of other commitments of the issuer.

The representative of bondholders strengthens the supervision of the purpose of using the bond capital of the issuer, as well as strengthens the supervision of the implementation of other commitments of the issuer.

Where bonds are offered to professional investors that are individuals, the bond offering dossier must include the contract signed with the representative of bondholders as prescribed in Clause 7 Article 14 of this Decree and the Law on securities <sup>8</sup>.

<sup>6</sup> Clause 4 Article 5 of Decree 65/2022/ND-CP

<sup>7</sup> Point c clause 1 Article 22 of the Decree 65/2022/ND-CP

<sup>8</sup> Point dd clause 2 Article 12 of the Decree 65/2022/ND-CP

In addition, the representative of bondholders shall report to the State Securities Commission and the Stock Exchange on a quarterly and annual basis and report in case the issuer is found to violations affect the interests of bondholders<sup>9</sup>.

## **6. Modify time of bonds offered in each wave**

Decree 153/2020/ND-CP stipulates that bonds offered in each wave must be distributed within 90 days from the date of disclosure of information before offering. Total duration for offering of bonds in multiple waves shall not exceed 12 months from the issue date of the first offering wave

According to Decree 65/2022/ND-CP, Bonds offered in each offering wave must be distributed within 30 days from the date of disclosure of information before offering. Total duration for a multiple-wave offering shall not exceed 06 months from the issue date of the first offering wave.

A bond issuer must sign a contract with a bond issuance consultant which is securities company in all cases. Before Decree 65/2022, a bond issuer being a securities company is exempted from engaging a bond issuance consultant.

A private bond issuer must obtain a credit rating from a rating agency (1) if the total par value of issued bonds of such issuer in each 12-month period prior to the issuance date is greater than VND500 billion and 50% equity recorded on its latest financial statements; or (2) the total par value of outstanding bonds of such issuer as at the time of registration for issuance is greater than 100% equity recorded on its latest financial statement. Before Decree 65/2022, this requirement only applies to public issuance of corporate bonds.

Decree 65/2022 now requires the bond issuance agent (or the underwriter) to certify that the bond issuer has received the bond proceeds into its account.

## **7. Enhanced Responsibilities of bidding, underwriting and brokerage services:**

The New Decree provides that (i) only securities companies are permitted to provide services of auction, guarantee and agency, and (ii) commercial banks and branches of foreign banks are permitted to provide agency services if approved by the State Bank of Vietnam and licensed to engage in depository service by the State Securities Commission<sup>10</sup>. These “intermediaries” must not be related parties of

<sup>9</sup> Clause 2 Article 33 of Decree 65/2022/ND-CP

<sup>10</sup> Clause 4 Article 14 of Decree 65/2022/ND-CP

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the issuer and enter into a service contract with the relevant issuer, in which rights and responsibilities of each party must be specified.

The New Decree also imposes additional responsibilities of these intermediaries to provide true and accurate information on the bond issuance to the investors and ensure distribution of bonds only to eligible investors. This is a clear step towards promoting more responsibility on the part of these intermediaries.

## **8. Cases in which bonds are redeemed before maturity <sup>11</sup>:**

This is a completely new regulation compared to Decree 153/2020/ND-CP, whereby Decree 65/2022/ND-CP requires the responsibility of the issuer. Additional Decree stipulates that Bonds must be compulsorily redeemed before maturity when the issuer fails to comply with the bond issuance plan (including the capital use plan), and that violation cannot be rectified or violate the law; Before and after the bond issuance, there must be a disclosure of information on solvency, an audit report on the financial position and an audit of the use of capital for the bond issuance purpose.

Cases in which bonds are redeemed before maturity:

a) The redemption is made under an agreement between the issuer and bondholder.

b) Bonds shall be compulsorily redeemed at the request of investors in the following cases:

- The issuer commits violations against regulations of law on offering and trading of corporate bonds according to decision issued by a competent authority, and such violations cannot be rectified or a number of bondholders that represents at least 65% of total outstanding bonds of the same type refuses to give approval for remedial measures for such violations.
- The issuer fails to comply with the bond issuance plan, and that violation cannot be rectified or a number of bondholders that represents at least 65% of total outstanding bonds of the same type refuses to give approval for remedial measures for that violation.
- Other cases defined in the bond issuance plan which is prepared according to Article 13 of Decree 65/2022/ND-CP (if any).

Note: The case of compulsory redemption at the request of the investor does not apply to the case where the bonds are

<sup>11</sup> Clause 3 Article 7 of Decree 65/2022/ND-CP



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withdrawn under the decision of the competent authority<sup>12</sup>.

## Recognize

With the bond issuance of new regulations on the issuance and trading of privately placed corporate bonds, it will promote the formation of professional long-term investment institutions in a transparent and sustainable market. Strengthen coordination between Ministries and sectors in operating, managing and supervising the stock market, bond market, money market, bank credit and proactively informing, propagating and orienting the market. Establish an organized trading market and complete regulations on management and supervision mechanisms.

These represent a key step in ensuring transparency and investor protection in the bond market which industry experts have considered to be lacking.

Market participants, in addition to learning about corporate bonds, need to comply

with the law before and during the transaction. Bond issuer must ensure the truthfulness of bond offering documents, use capital for the right purposes, and be responsible for explaining to investors information related to the issuance plan and legal risks management, investment risks, capital use risks, rights, interests and liabilities of the parties when issuing and investing corporate bonds.

\* *Repo is a generic name for both repurchase transactions and buy/sell-backs. Repos are sometimes known as 'sale-and-repurchase agreements' or just 'repurchase agreements'. In some markets, the name 'repo' can be taken to imply repurchase transactions only and not buy/sell-backs. Repurchase transactions are also known as 'classic repo'. Under EU regulation --- along with securities lending, commodities lending and margin lending --- repurchase transactions and buy/sell-backs are types of 'securities financing transaction' (SFT)*

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<sup>12</sup> Clause 4 Article 7 of Decree 65/2022/ND-CP

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Nếu bạn có vấn đề nào cần tư vấn, hãy liên hệ với chúng tôi hoặc yêu cầu luật sư của bạn tư vấn về vấn đề đó cho bạn.

Tất cả các quyền, bao gồm cả quyền sở hữu, quyền tác giả, quyền liên quan và các quyền sở hữu công nghiệp đối với nội dung thông tin, thiết kế, trình bày mỹ thuật của bản tin này thuộc chúng tôi và được bảo vệ theo Luật Sở hữu Trí tuệ Việt nam, các hiệp định, hiệp ước quốc tế mà Việt nam đã ký kết.

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