

## New Decree on Private Placement of Bonds in Vietnam

Keigo Sawayama

Ngoc Hoang

Bond issuance, especially bond issuance through private placement (i.e., bond issuance to professional securities investors, or to both professional securities investors and less than 100 strategic investors), is a method to raise capital that is being employed by large domestic enterprises in Vietnam. It is estimated that, by the end of 2021, the value of outstanding bonds amounted to 18% of the total GDP of Vietnam.<sup>1</sup>

Currently, certain enterprises have disclosed incorrect information about their financial capacity and investment projects in order to induce investors to purchase their bonds, which places investors in a risky situation. For example, from July 2021 to March 2022, Tan Hoang Minh Group - a large real estate group - illegally issued nine rounds of bonds through its three subsidiaries to raise more than VND 10 trillion from investors. The issuers of the bonds disclosed incorrect information in their audited financial reports and did not use the proceeds for business activities in accordance with the commitments made in their bond issuance plans. In order to circumvent the legal regulation stipulating that only professional securities investors or strategic investors may purchase bonds issued through private placement, Tan Hoang Minh Group acquired bonds issued by its subsidiaries and then resold them to investors under investment cooperation contracts. In April 2022, the State Securities Commission cancelled all nine rounds of bond issuance, and the case is currently being investigated.

In order to enhance transparency in the bond market and better protect investors, the Government issued Decree 65/2022/ND-CP ("**Decree 65**"), which took effect from 16 September 2022, to substantially amend Decree 153/2020/ND-CP on the private placement of bonds issued in Vietnam and abroad ("**Decree 153**"). Decree 65 tightens the conditions applicable to bond issuance via private placement<sup>2</sup> and imposes additional obligations for bonds issuers in terms of information disclosure and reporting. Below are the important amendments.

### Bonds issuance purposes

State authorities such as the Ministry of Finance ("**MOF**"), Ministry of Police, and Ministry of Construction have remarked that certain bond issuers, especially those doing business in the real estate sector, do not use the proceeds raised from the bond issuance for their own operations but for the operations or projects of their related enterprises. The proceeds take a complex path that goes far beyond the use purposes committed to by the issuers in their bond issuance plans. Therefore, Decree 65 restricts bond issuance to the following purposes: *"The purposes of bond issuance are to implement programs and investment projects, or restructure debts of the issuing enterprise itself and other purposes specified in specialized laws."*

The foregoing wording of Decree 65 is rather ambiguous. From a conservative view, it is likely that the issuer cannot issue bonds to finance a project, investment plan, or debt of any third parties, including its subsidiaries. Guidance and an explanation from the MOF on this point is necessary.

To prevent the enterprise from using proceeds obtained from bond issuance for other purposes, Decree 65 requires the issuer to specify the issuance purposes in its issuance plan and information disclosure materials.

### Eligible individual investors

In order to minimize the losses incurred by individual investors who do not have sufficient knowledge and financial capacity with respect to bond investment, Decree 65 limits the scope of eligible individual investors by introducing additional conditions. Regarding individual investors, Article 11.1(d) and (dd) of the Law on Securities simply requires an individual investor to hold a portfolio of securities listed or registered that totals at least VND 2 billion

<sup>1</sup><https://nhandan.vn/tang-cuong-tinh-minh-bach-cho-thi-truong-trai-phieu-doanh-nghiep-post701242.html>

<sup>2</sup> Decree 65, Art.8.1.

or to have paid at least VND 1 billion in personal income tax in the latest year, without specifying the minimum holding period of such a portfolio. In fact, in years past, it was easy for an unqualified individual to use various ploys to prove his/her satisfaction of such conditions on the date of certification. To deal with this situation, Decree 65 further requires that an individual professional securities investor must maintain a portfolio of securities listed or registered for trading that has an average daily market value of at least VND 2 billion for at least 180 days prior to his/her date of certification. The certificate issued to individual investors is valid for 3 months only. The agents certifying the investor status (i.e., strategic investor, professional securities investor) must issue the investor's written certification prior to their purchase and take responsibility for their certification. In addition, the MOF firmly states that the state authorities will closely monitor the operations of the agents that take part in the bond issuance procedure, such as certifying agents, issuance consultancy agents, underwriters, and audit companies, in order to detect wrongdoing in the early stages of the investigation. Thus, the possibility for an individual to obtain a "fraudulent professional securities investor certificate" is quite low.

The eligible investors are not permitted to sell bonds to or cooperate with non-professional securities investors in any form for investment in bonds.

### **Reporting regime**

Decree 65 imposes a heightened reporting burden on issuers in shorter timeframes in comparison with Decree 153, in particular:

- (i) within 5 working days upon the completion of the private placement of bonds, the issuer must disclose the result of the bond issuance to investors and send the disclosure notice to the Stock Exchange;
- (ii) within 5 working days from the expiration of the bond distribution period, the issuer must disclose the fact that the private placement was unsuccessful or cancelled and send the disclosure notice to the Stock Exchange;
- (iii) the issuer must periodically submit reports in accordance with the guidance from the MOF, including:
  - (i) semi-annual and annual financial reports;
  - (ii) reports on its payment of bond interest and principal;
  - (iii) audited semi-annual and annual reports on the use of proceeds raised from the bond issuance;
  - (iv) reports on the fulfillment of the issuer's commitments to investors. Regarding green bonds (i.e., bonds issued for projects for environmental protection or benefits), the audited report on accounting and management is also required.

The Stock Exchange must summarize and disclose the information that it receives from bond issuers on its website.

**Other matters**

Decree 65 also introduces the following changes in comparison with Decree 153:

	<b>Decree 65</b>	<b>Decree 153</b>
<i>Changes to terms and conditions</i>	An issuer of bonds issued in Vietnam may change their terms and conditions only if such change has been approved by the investors representing at least 65% of total outstanding bonds in the same category.	N/A
<i>Minimum par value</i>	A bond must have a par value of VND 100,000,000 or multiples of VND 100,000,000	A bond must have a par value of VND 100,000 or multiples of VND 100,000
<i>Bond distribution period</i>	The total period of issuance of a multiple-tranche offer must not exceed 6 months from the date of issuance of the first tranche. The issuance period of each tranche must not exceed 30 days from the date of information disclosure.	The total period of issuance of a multiple-tranche offer must not exceed 12 months from the date of issuance of the first tranche. The issuance period of each tranche must not exceed 90 days from the date of information disclosure.
<i>Bond registration</i>	Bonds distributed via private placement in Vietnam must be registered and deposited with the Vietnam Securities Depository.	The bonds must be registered and deposited with a registration and depository organization. Decree 153 does not require such organization to be the Vietnam Securities Depository.
<i>Bond trading</i>	The issuer must register for trading of its issued bonds on the bond trading system of the Stock Exchange. Bond transactions must be conducted through trading members.	N/A

End

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[www.noandt.com](http://www.noandt.com)

## NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan  
 Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: info@noandt.com



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### Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road #40-06  
 Singapore 049909  
 Tel: +65-6654-1760 (general)  
 Fax: +65-6654-1770 (general)  
 Email: info-singapore@noandt.com

### Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhiraj Tower at EmQuartier  
 689 Sukhumvit Road, Klongton Nuea  
 Vadhana, Bangkok 10110, Thailand  
 Tel: +66-2-302-4800 (general)  
 Fax: +66-2-302-4899 (general)  
 Email: info-bangkok@noandt.com

### HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower  
 29 Le Duan Street, District 1  
 Ho Chi Minh City, Vietnam  
 Tel: +84-28-3521-8800 (general)  
 Fax: +84-28-3521-8877 (general)  
 Email: info-hcmc@noandt.com

### Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building  
 16 Phan Chu Trinh, Hoan Kiem District  
 Ha Noi City, Vietnam  
 Tel: +84-24-3266-8140 (general)  
 Fax: +84-24-3266-8141 (general)  
 Email: info-hanoi@noandt.com

### Shanghai Office

(Nagashima Ohno & Tsunematsu  
 Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road  
 Xuhui District, Shanghai 200031, China  
 Tel: +86-21-2415-2000 (general)  
 Fax: +86-21-6403-5059 (general)  
 Email: info-shanghai@noandt.com

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