



Vietnam's Financial Markets in an Evolving Regulatory Framework

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Market scandals and the evolution of the regulatory regime for the financial markets have been among the most discussed topics in Vietnam in 2022 and early 2023. Regulators have issued new regulations in 2022 and are considering draft regulations to further adjust the market, protect investors, and simplify administrative procedures.

This article provides an overview of the current legislative changes that are impacting the financial markets in Vietnam.

Highlights

1. In September 2022, the Government issued Decree 65 on corporate bonds to tighten the eligibility criteria for natural persons to be considered “professional securities investors” and to increase

transparency in the bond market by adding more detailed requirements for the offering dossier, offering plan, and public disclosure. However, a draft regulation is currently being considered to postpone the effective date of some of the requirements under Decree 65 until the end of 2023.

2. In September 2022, the State Bank of Vietnam (SBV) issued Circular 10 and Circular 12 to replace existing regulations on foreign exchange requirements for foreign currency bond transactions and offshore borrowing transactions. These circulars simplify procedural requirements by providing exemptions for amendment registrations in certain circumstances. Circular 12 also extends the grace period for the registration requirement for short-term borrowings from 10 days to 30 days from

1. the expiration of the initial one-year tenor. Additionally, a new section on security transactions is introduced, outlining a foreign exchange regime for security enforcement in connection with offshore borrowings. The only aspect where there is an increase in administrative requirements is the monthly submission of reports on foreign borrowing performance status to the SBV by borrowers, instead of quarterly reports as required in the past.
2. The SBV is considering a draft circular to modify the conditions for offshore borrowings. Several drafts have been developed, and the latest draft being considered is somewhat more relaxing than earlier versions. Prominent changes include revisions to the conditions for refinancing and the addition of a hedging requirement.

Discussion

New and Draft Regulations on Corporate Bonds

In September 2022, the Vietnamese government issued Decree 65/2022/ND-CP (Decree 65) to amend and supplement certain articles of Decree 153/2020/ND-CP on corporate bonds.

Decree 65 tightened the eligibility for natural persons to be treated as “professional securities investors” and added more detailed requirements for the offering dossier, offering plan, and public disclosure to increase transparency in the bond market.

After Decree 65 was issued and several high-profile arrests were made for corporate bond fraud in Vietnam during the second half of 2022, the domestic bond market has significantly contracted. VNDIRECT reports that the total size of VND corporate bonds

issued in the fourth quarter of 2022 was only VND3,619 billion, which is 94.5% lower than the third quarter of 2022 and 98.8% lower than the fourth quarter of 2021. Prior to mid-2022, VND bonds had been the primary alternative source of funding for real estate development in Vietnam, with the total VND bond debt balance of VND419,000 billion, compared to a total bank debt balance of VND825,000 billion, according to data from the SBV.

To address this impact on the market, the Ministry of Finance is considering a draft decree on corporate bonds (the Draft Bond Decree) to amend Decree 65 by postponing the effective date of some of the requirements.

Below are the prominent changes introduced by Decree 65 and the Draft Bond Decree.

Funding purposes

Decree 65 removes “*increasing the operating capital scale*” from the permissible funding purposes of a bond offering. The following funding purposes are retained:

1. funding investment projects or investment plans;
2. restructuring existing debts of the issuer; or
3. other purposes permitted under the laws governing the business sector of the issuer.

Professional securities investors

As a background, under the laws, only professional securities investors (PSIs) may purchase and trade in VND corporate bonds (except investors who qualify as “strategic investors” with respect to convertible bonds and bonds with warrants).

THE INTENTION OF THE DRAFT BOND DECREE IS TO DELAY THE IMPLEMENTATION OF THE REVISED PSI RULES FOR NATURAL PERSON INVESTORS UNTIL THE END OF 2023

Decree 65 does not change the definition of PSIs. However, it supplements the identification of natural person PSIs. A natural person must hold listed securities with the minimum value of VND2 billion as determined by the daily average market value of the securities portfolio (excluding the value of margin trading payables and repo transactions) for a period of at least 180 consecutive days immediately prior to the date of determining the PSI status. Additionally, the PSI status of a natural person once determined is valid for only three months. The above new rule is more stringent than the prior rule which followed the standard PSI rules of the securities laws. Note that the above new rule does not apply to institutional investors.

The intention of the Draft Bond Decree is to delay the implementation of the revised PSI rules for natural person investors until the end of 2023. This implies that, until the end of 2023, the definition of PSI as per the current securities laws will continue to be applicable for all purposes. According to the securities laws, in the definition of a PSI being a natural person, the 180 consecutive days criterion is not mandatory, and once the PSI status is established, it is valid for one year instead of three months.

Credit rating

Decree 65 requires that the issuer, with respect to a bond private placement with a

size exceeding specified thresholds, must obtain credit rating pursuant to relevant laws. The Draft Bond Decree intends to postpone the application of the above credit rating requirement to the end of 2023.

Additional requirements on the contents of the bond offering plan

Decree 65 introduces additional requirements on the bond offering plan, but it is uncertain whether they only pertain to VND bonds or also extend to foreign currency bonds. While the State Securities Commission holds discretionary power to interpret the regulation, it is probable that the requirements do not apply to foreign currency bonds.

The new regulation mandates public disclosure of various details, such as the bank account designated to receive the bond proceeds, information about secured assets and their value if the bond is secured, the issuer's financial parameters, and a report on the status of the issuance and use of capital of any outstanding bonds of the issuer.

Other notable changes

Decree 65 increases the par value of VND bond from VND100,000 to VND100,000,000 or multiples of VND100,000,000.

Decree 65 reduces the VND bond distribution period from 90 days to 30 days from the disclosure date, and the aggregate VND bond offering period for a multiple tranche offering from 12 months to 6 months. The Draft Bond Decree postpones the application of these restrictions to the end of 2023.

Extension of the tenor of previously issued bonds

Under Decree 65, the extension of the tenor of VND bonds issued before 16 September 2022 (the effective date of Decree 65) is prohibited. However, the Draft Bond Decree seeks to modify this restriction by allowing an extension of up to 2 years, subject to approval by at least 65% of the bondholders.

Repayment in kind

The Draft Bond Decree allows the issuer to negotiate with bondholders to swap the outstanding bond debt into loans or other types of assets. Any such swap must:

- comply with applicable laws;
- be approved by at least 65% of the bondholders; and
- be publicly disclosed by the issuer.

New Circular on Foreign Currency Bond Foreign exchange Requirements

In September 2022, the SBV issued Circular 10/2022/TT-NHNN (Circular 10) on the requirements and procedures for registration of foreign currency bond transactions with the SBV.

Circular 10 aims to simplify procedural requirements for registration of foreign currency bond transactions with the SBV. It introduces exemption cases for amendment registrations that are consistent with those for foreign borrowing transactions.

Cases which are exempt from the amendment registration requirement include changes to the disbursement or repayment schedule within 10 working days from the previously registered schedule, change of the issuer's address or trade name of the onshore account bank serving bond



settlements, changes in the plan for payment of interests and fees without changing the determination of the interests and fees under the bond terms and conditions, changes in the payment amount within 100 units of the bond currency, changes in the principal amount resulting from a conversion or swap of the bond to equity (applicable only to issuers being public companies, securities companies or investment management companies), and cases of actual disbursement or payment amount during a specific period being smaller than the registered amount for that period.

In those registration exemption cases, the borrower is only required to file a report of the changes with the SBV.

New Circular on Offshore Borrowing Foreign Exchange Requirements

In September 2022, the SBV issued Circular 12/2022/TT-NHNN (Circular 12) to replace the prior regulations on foreign exchange requirements for offshore borrowings. Note that offshore borrowings include both loan borrowings and foreign currency bond issues and Circular 12 applies to all such offshore borrowings except that the requirements and procedures for registration of foreign currency bond transactions with the SBV will be governed by Circular 10 instead of Circular 12.

Exemption of registration amendments

Circular 12, much like Circular 10 regarding foreign currency bonds, does not modify the primary procedures for registering offshore borrowings with the SBV. Its focus is on simplifying procedural requirements by providing for cases where amendment registrations are exempt. In particular, the borrower is not obligated to conduct an

amendment registration with the SBV, but rather must only submit a written report of changes to the SBV through its web portal in the following circumstances:

- Changes in the disbursement or repayment schedule that occur within 10 working days from the previously registered schedule;
- Changes in the borrower's address within the same province;
- Changes in the lender or its information in the case of a syndicated loan where lenders have designated an agent/representative, and no change has been made to such an agent/representative as previously registered;
- Changes in the trade name of the onshore account bank or the bank serving security transactions of the loan facility;
- Changes in the plan for payment of interests and fees, without altering the determination of the interests and fees under the loan terms and conditions;
- Changes in the payment amount within 100 units of the loan currency;
- Actual disbursement or payment amount during a specific period being smaller than the registered amount for that period.

Registration of extended or defaulted short-term borrowings

Circular 12 introduces a modification to the registration requirement for short-term borrowings. Short-term borrowings are now exempt from the registration requirement if they are fully repaid within 30 days (as opposed to the previous laws' 10-day requirement) after the expiration of the initial one-year tenor.

Foreign exchange regime for security enforcement

Circular 12 adds a full new section on security transactions for offshore borrowings to provide an explicit legal foreign exchange regime for security enforcement. This regime also applies to foreign currency bonds.

Circular 12 states that the transfer of the security enforcement proceeds to the lender or the lender's representative must be done through a single bank serving security transactions for the subject foreign borrowing, which can be the same or a different bank from the debt service account bank serving the subject foreign borrowing. Circular 12 imposes on the bank serving security transactions certain obligations to collect and document the evidentiary records about the foreign borrowing, the security transactions, and the related enforcement.

The borrower may reimburse the guarantor or third-party security provider by presenting to the debt service account bank the following documents:

- The loan agreements and security agreements related to the loan;
- Reimbursement agreement between the guarantor/security provider and the borrower;
- Documents proving that the guarantor/security provider has performed the obligation related to the foreign loan on behalf of the borrower (e.g. copy of money transfer document); and
- Other vouchers and related documents (if any).

Such reimbursement must be made through the debt service account bank.

Report frequency

Circular 12 has revised the frequency of filing foreign borrowing performance status reports required of the borrowers. Previously, reports were required to be submitted to the SBV on a quarterly basis. However, under the new regulation introduced by Circular 12, borrowers are now required to submit reports to the SBV on a monthly basis.

Draft Circular on Offshore Borrowing Conditions

The SBV has been considering a new circular (Draft Offshore Borrowing Circular) to replace current Circular 12/2014/TT-NHNN on foreign borrowing conditions. Several drafts have been developed. We summarise below the status of the Draft Offshore Borrowing Circular.

Borrowing purposes on non-credit institution borrowers

Under the Draft Offshore Borrowing Circular, the borrower may borrow short-term and medium-to-long term foreign loans to serve the following purposes:

- a) to implement the borrower's investment projects;
- b) to carry out production and business plans that are not investment projects; and
- c) to refinance the borrower's foreign debts.

It appears that the borrower can borrow foreign loans to fund the implementation of its own investment projects, but not investment projects of its affiliates or subsidiaries. Accordingly, if the borrower wishes to push down borrowed capital to its subsidiaries, it appears that it can only rely on purpose (b) (carrying out production and business plans).



The Draft Offshore Borrowing Circular removes the restriction on borrowing short-term offshore loans to fund medium or long-term purposes. Instead, the Draft Offshore Borrowing Circular requires that short-term offshore loan proceeds be used only to settle short-term payables as recorded in its latest financial statements prior to the first disbursement date.

Cap on total borrowings to fund general business

There have been discussions since last year about imposing a cap on the total borrowings for increasing capital to fund general business activities. The proposed cap is three times the borrower's equity or, if the equity is lower than the charter capital, the charter capital. However, in the latest development, the SBV intends to exclude this requirement from the Draft Offshore Borrowing Circular.

Refinancing

Under current laws, if the borrowing is to refinance the borrower's foreign debts (purpose (c) above), the refinancing must not increase

the borrowing costs. The Draft Offshore Borrowing Circular replaces the above condition with the new condition that the total amount of the new borrowing must not exceed (the aggregate of) the principal, interest and fee of the existing debt and fee of the new borrowing (if any) as determined at the time of the refinancing.

Borrowing purposes on credit institution borrowers

With respect to borrowers being credit institutions, the Draft Offshore Borrowing Circular permits a credit institution to borrow short-term and medium-to-long term foreign loans for the following purposes:

- to supplement its sources of capital to provide credit to customers; and
- to refinance the borrower's existing foreign debts.

When borrowing short-term foreign loans, the borrower must ensure that as of 31 December of each year, the maximum ratio of total short-term foreign debt to owner capital (on a separate basis) shall be as follows:

1. 30% for commercial banks;
2. 150% for non-bank credit institutions, branches of foreign banks, agricultural cooperatives, and policy banks.

Hedging requirements

The Draft Offshore Borrowing Circular introduces a foreign exchange hedging requirement, but the latest draft has slightly reduced the requirement. The requirement applies to each principal repayment instalment in foreign currency equivalent to VND15 billion or more, and the hedging must be conducted at least 30 days before the respective principal repayment due date. The value of the hedging transaction must be the foreign currency amount at least equal to 20% of the principal amount due to be repaid in the respective repayment instalment.

This requirement does not apply to credit institutions and those borrowers that prove to have readily available foreign currency for repayment within 30 days before the repayment date. Short-term foreign loans with a tenor of no more than 30 days are also exempt from this hedging requirement.

The issuance of the Draft Bond Decree may provide some relief to the domestic bond market, particularly in addressing the VND272,853 billion of corporate bond balances set to mature in 2023, of which 37.6% are from the real estate sector. However, the domestic financial market will likely need more comprehensive support from the government to recover. As the domestic bond market continues to contract awaiting further regulatory policy actions, developers with stronger financial capabilities and profiles may turn to alternative financing and refinancing sources. Against this backdrop, it is likely that the Vietnam market will see an increasing flow of foreign currency bond transactions,

offshore borrowing transactions and preferred share transactions from overseas lenders in 2023 and 2024.



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