

## Amending the regulations on issuance of corporate bonds

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**Document:** Decree 81/2020/ND-CP providing amendments and supplements to Decree 163/2018/ND-CP on issuance of corporate bonds (Decree 81)

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- **Key contents:**

In the context of brisk bond issuance activities, Decree 81 was passed to strictly control the issuance of corporate bonds through private placement with some of the following main contents:

*Firstly*, supplementing conditions for issuing non-convertible corporate bonds or bonds without warrants<sup>1</sup>, specifically:

- (i) Total outstanding debt of corporate bonds issued through private placement at the time of issuance (including the planned amount of bonds to be issued) does not exceed 5 times as high as the owner's equity stated in the financial statements of the latest quarter preceding the time of issuance as approved by a competent authority, unless the corporate bond issuer is a credit institution;
- (ii) The interval between two placements must be at least 6 months; and each placement must be completed within 90 days from the date of information publication; unless the issuer is a credit institution;
- (iii) It is compulsory to have a service contract with an organization (Securities companies, credit institutions and other financial institutions)<sup>2</sup> providing consultancy on dossiers for bond issuance, unless the issuer is licensed to provide consultancy on bond issuance dossiers.

*Secondly*, adding the requirements for corporate bond issuance dossiers<sup>3</sup>:

- (i) A bond issuance plan must clarify the purpose for bond issuance, such as information of the investment programs and projects, production and business activities requiring additional capital, etc.
- (ii) The audited financial statements in the issuance dossiers must be fully accepted; in the case where the acceptance is partial, there must be reasonable explanatory

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<sup>1</sup> Decree 81, Article 1, clause 3

<sup>2</sup> Decree 81, Article 1, clause 7

<sup>3</sup> Decree 81, Article 1, clause 5

documents and auditors' confirmation that the exception does not affect the issuance conditions;

- (iii) Bond purchase agreement must state the investors' commitment about their full access to the information disclosed prior to the issuance and acceptance of the risks in purchasing bonds.

*Thirdly*, supplementing the sanctions for violations in corporate bond issuance. Accordingly, violations committed by relevant organizations and individuals during private placement of bonds shall be sanctioned in accordance with the regulations on penalties for administrative violations in securities, securities market and relevant legislation<sup>4</sup>.

- **Comment and recommendation:**

The entities mostly impacted by the enactment of Decree 81 include bond issuers whose financial records are not transparent, especially those that "abuse the gap of laws" to issue bonds at the value many times higher than their equity capital or to continuously mobilize capital through splitting the capital amount required into multiple issuances. Meanwhile, credit institutions are not significantly affected by such regulations, except for the obligation to announce the purpose of bond issuance.<sup>5</sup>

With the current regulations on tightening private placement of corporate bonds, enterprise should take a long hard look and formulate detailed plans for raising capital through private placement so as to meet the statutory conditions; and thus, to avoid being sanctioned for administrative violations. Enterprises can refer to Decree 108/2013/ND-CP providing for the sanction of administrative violations in securities and securities market and Decree 45/2016/ND-CP providing amendment to Decree 108/2013/ND-CP providing for the sanction against administrative violations in securities and securities market.

In addition, bond issuers and bond investors should notice that in respect of corporate bonds issued before Decree 81's effectiveness, their terms and conditions as stated in the bond issuance plan provided to investors shall remain valid<sup>6</sup>. However, bond issuers must periodically deposit, report, publish information and comply with the new regulations of Decree 81 and Circular 77/2020/TT-BTC providing guidelines for some contents of Decree 81.

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<sup>4</sup> Decree 81, Article 1, clause 1

<sup>5</sup> Hang Kim, *How does Decree 81 impact enterprises, banks and the market?*, Review of Finance, July 19, 2020. See further at <http://tapchitaichinh.vn/nguyen-cuu-trao-doi/nghe-dinh-81-tac-dong-the-nao-toi-doanh-nghiep-ngan-hang-va-thi-truong-325702.html>

<sup>6</sup> Decree 81, Article 2, clause 2

Besides, bond investors should consider that according to Decree 81, the bond purchase agreement must include the content of "investors' commitment to fully access the information disclosed prior to the issuance and accept the risks in purchasing bonds"<sup>7</sup>. Hence, investors need to capture relevant information before trading and be careful when signing the agreement in order to reduce any risk and dispute arising from purchasing and selling bonds.

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<sup>7</sup> Decree 81, Article 1, clause 5