

# NEW REGULATIONS ON PRIVATE PLACEMENT AND TRADING OF PRIVATELY PLACED CORPORATE BONDS IN DOMESTIC MARKET

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On May 3, 2023, the Government issued Decree 08/2023/ND-CP (**Decree 08**) amending and supplementing Decree 153/2020/ND-CP (**Decree 153**) and Decree 65/2022/ND-CP (**Decree 65**) and suspending the effectiveness of a number of articles in Decree 65 related to private placement and trading of corporate bonds in domestic market and offering of corporate bonds in international market. Decree 08 comes into force from the time of issuance with some outstanding contents as follows:



*Firstly*, supplementing the method of payment by assets for bonds placed in the domestic market upon the due date. Accordingly, in the case where an issuer is unable to make full and due payment of bond principal/interests in Viet Nam Dong according to the issue plan disclosed to investors, the issuer may make an agreement with bondholders on payment of bond principal/interests *in assets* with the following principles: (i) The payment must comply with the provisions of the civil law and relevant laws (in respect of conditional business lines); (ii) The payment must be approved by bondholders; (iii) The issuer must make extra-ordinary information disclosure and assume full responsibility for the legal status of the assets used for paying bond principal/interests in accordance with regulations of law. Previously, Decree 153 and Decree 65 only allowed payment for bonds placed in the domestic market *in Viet Nam Dong*.

*Secondly*, allowing the issuer that issues bonds before the effective date of Decree 65 and has outstanding loans until the effective date of Decree 65 (September 16, 2022) *to change the terms and conditions of bonds*. Previously, Decree 65 did not allow the issuer issuing bonds before its effective date to change the term of bonds. Decree 08, however, allows such change but requires the compliance with the following principles:

- In respect of corporate bonds placed in the domestic market, the change in terms and conditions of bonds must be approved by the issuer's competent authority and the number of bondholders that represents at least 65% of total outstanding bonds of the same type; information about any change in terms and conditions of bonds must be disclosed by the issuer as extra-ordinary information according to Article 22, Decree 153 as amended and supplemented by Decree 65;
- The initial due date of bonds, as defined in the issue plan disclosed to investors, may be extended by up to 2 years;
- In the event that any bondholder does not accept the changes in terms and conditions of the bond, the issuer shall negotiate to ensure the investor's interests. If the bondholder refuses negotiation, the issuer must perform the issue plan disclosed to investors (even if the changes in terms and conditions of bonds have been accepted by the bondholders representing at least 65% of the total bonds).

*Thirdly*, suspending the effectiveness of a number of provisions on (i) Determination of professional investors that are individuals under Decree 153 and Decree 65; (ii) Time limits for distribution of bonds of each issuance; (iii) Reports on credit rating of issuers. Accordingly, these provisions will be suspended until the end of December 31, 2023.

## Comments and recommendations

The provisions of Decree 08 are believed to have positive impacts on the current economy, lessen liquidity pressure and reduce non-performing loans for enterprises. Issuers are entitled to use their assets for payment of bonds and are entitled to extend the bonds' due date up to 2 years. They are also entitled to negotiate with bondholders to change terms and conditions of the bonds placed. In addition, Decree 08 supports issuers with temporary suspension from credit ratings until the end of the year so that they can improve themselves and increase their own value. The issuers can take advantage of these provisions to change their financial structure, assets, and business strategies to recreate financial flows, meet liquidity for the avoidance of risk of insolvency and bankruptcy, and improve the level of credibility. Therefore, the issuers need to update and study the provisions of Decree 08 to ensure their compliance with the private placement and trading of bonds in the future.