

REGULATIONS ON THE ISSUANCE OF BONDS TO THE INTERNATIONAL MARKET BY ENTERPRISES THAT ARE NOT GUARANTEED BY THE GOVERNMENT

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On July 29, 2022, the State Bank of Vietnam (**SBV**) promulgated Circular 10/2022/TT-NHNN guiding the foreign exchange management for the issuance of bonds to international markets by enterprises that are not guaranteed by the Government (**Circular 10**), which replaces Circular 17/2013/TT-NHNN (**Circular 17**). The following demonstrates several noteworthy contents in Circular 10:

Firstly, simplifying procedures when organizations issue international bonds. According to Circular 17, the procedures vary depending on the organization issuing international bonds, for example, the procedures to confirm international bond issuance limit for State commercial banks, procedures to confirm international bond issuance limit for enterprises not being State commercial banks and procedures for registering international bond issuance of enterprises that are not guaranteed by the Government. Circular 10 has simplified these procedures and stipulates to apply only the procedures for registering international bond issuance of enterprises that are not guaranteed by the Government to all organizations demanding to issue international bonds. At the same time, regarding the procedures for registering international bond issuance of enterprises that are not guaranteed by the Government, Circular 10 supplements the component of the application dossier registering international issuance in Article 6, and stipulates the implementation thereof in 2 stages:

- *Before offering bonds*, the issuing organization must apply for approval of the international bond issuance plan and submit the approved issuance plan to the State Bank (Foreign Exchange Management Department) for confirmation of the issuance limit as prescribed in Clause 1, Article 7



of Circular 10.

- *During the offering of bonds*, in the case where the issuance value meets the conditions on the issuance limit, the issuing organization shall submit an application for registration of the international bond issuance to the State Bank in accordance with the provisions of Clause 2, Article 7 of Circular 10. The issuing organization can submit the application in one of the following three methods: online submission via the National public service portal or the SBV's public service portal; direct submission at the SBV's one-stop section; or submission by post.

Secondly, supplementing the grounds for considering and certifying the registration of international bond issuance. In detail, when registering international bond issuance, the issuing organization must meet the following conditions:

- (i) The value of the international bond issuance must not exceed the total annual limit of external commercial loans by the mode of self-borrowing and self-payment approved by the Prime Minister;
- (ii) The issuing organization must fully comply with and satisfy the applicable regulations on conditions for foreign loans, foreign exchange management for foreign borrowing and payment without governmental guarantee, and applicable laws on offering of corporate bonds to international market.

Thirdly, supplementing cases that the issuing organization does not need to register changes in international bond issuance but only needs to notify in writing to the State Bank. Circular 10 stipulates that the issuing organization only makes a written notice (by post or directly) to the State Bank (Foreign Exchange Management Department) and

does not need to register the changes in the following 07 cases:

- (i)** Changing the time of capital withdrawal, and principal payment within 10 working days compared to the plan approved by the State Bank;
- (ii)** Changing the address of the issuing organization;
- (iii)** Changing the commercial transaction name of the bank providing account services where the issuing organization opens foreign loan or payment accounts;
- (iv)** Changing the schedule to pay interest and fees of the international bond issuance compared to the plan certified by the State Bank in several written documents stipulated in point d, clause 2, Article 9 of Circular 10;
- (v)** Changing (increasing or decreasing) the amount of capital withdrawal, payment of principal, interest, and fees within 100 currency units of the foreign loan currency, compared to the amount stated in several written documents stipulated in point dd, clause 2, Article 9 of Circular 10;
- (vi)** Changing the amount of principal payment due to the converted or swapped bonds into shares for international bond issuance with elements of conversion or swap of public companies, securities companies, and securities investment fund management companies;
- (vii)** Changing the actual amount of capital withdrawal and principal payment of a specific period that is less than the amount stated in the schedule for capital withdrawal and debt repayment.

COMMENTS AND RECOMMENDATIONS

The promulgation of Circular 10 has contributed to synchronizing the legal system on management of foreign loan borrowing and repayment when the applicable regulations on corporate bond issuance have undergone many changes. In addition, Circular 10 has simplified related administrative procedures, provided flexible regulations and expanded the manners to carry out procedures (adding online method). Circular 10 takes effect from September 15, 2022 (except for the regulations on submitting online dossiers which will be effective from January 1, 2023). Enterprises wishing to register for the issuance of international bonds without guarantee by the Government should pay attention to updating the provisions of Circular 10 and other relevant legal documents to carry out their activities in compliance with laws.