

Technical Update

December 2023

NEW PROVISIONS ON CORPORATE BONDS AMID FINANCIAL DISTRESS

The Government issued Decree 08/2023/ND-CP (“**Decree 08**”) amending, supplementing, and postponing a number of articles in the decrees on offering and trading of privately issued corporate bonds in the domestic market and the offering for sale of corporate bonds in the international market (i.e., Decree 153/2020/ND-CP (“**Decree 153**”) and Decree 65/2022/ND-CP (“**Decree 65**”). Decree 08 took effect immediately as from its issuance date, namely 5 March 2023.

The importance of Decree 08

In the context of the global economic slowdown, Vietnam has confronted several difficulties, especially in areas of banking and investment, and the domestic real estate business has been affected negatively. In the end of 2022, there occurred severe fluctuations in the real estate bond market, remarkably is the collapse of Tan Hoang Minh Group and Van Thinh Phat. Those incidents led to credit tightening policies and stricter control of the real estate market. Since then, the State has imposed limit on the real estate speculation, and conducted the review and inspection on unfinished real estate projects. As a result, domestic real estate businesses experienced tight cash flow pressure. The issuance of Decree 08 is a band-aid solution to bond issuers’ cash deficit, giving them space to balance between the inflows required for operating projects and the outflows for due bond payment obligations, while the interest of bondholders remained ensured.

The notable points in Decree 08

The most notable points of Decree 08 include (i) the changes to bond terms and conditions, (ii) in-kind payment for bonds issued on the domestic market, and (iii) the postponement of certain provisions in Decree 65.

- For (i), while Decree 65 stipulates that for bonds issued before 16 September 2022 (i.e., the effective date of Decree 65), the issuers cannot adjust the bond term, now, thanks to Decree 08, the bond term could be extended for a period of up to 2 (two) years. In addition, the bond terms and conditions could be amended if approved by (a) the relevant decision-making body of the issuers (e.g., GSM or BOM); and (b) holders representing at least 65% of total bonds of the relevant type. Be that as it may, Decree 08 also sets forth a right for bondholders who do not agree with changes to the bond terms and conditions (including those who are not among the 65% approved bondholders), of which the issuers must honour the initial bond terms and conditions announced to the bondholders.
- For (ii), Decree 08 allows bond issuers to negotiate and reach agreements with bondholders on the payment of bond principals and interests due by assets other than cash, if (a) such payment is agreed by the relevant bondholder, and (b) the issuer has made extraordinary disclosure on the relevant changes, and is fully responsible for the legal status of the assets being used for payment of bond principals and interests. Looking into the previous provisions, where the bond issuers must make full and timely payments of bond principal and coupon when they become due, the new provisions in Decree 08 is a method to save the real estate market since in the current crisis, the issuers are under extreme cash flow shortage.
- For (iii), the following provisions of Decree 65 shall be suspended until 31 December 2023 inclusively:

- the provisions on the criteria determining individual professional securities investors is postponed from 16 September 2022 to 1 January 2024, which are “professional investors are eligible to buy privately placed bonds if he/she holds a quantity of listed or registered securities, excluding securities borrowed to conduct margin transactions and those of repo transactions, of which the daily average price determined in a minimum period of 180 consecutive days preceding the date on which he/she is identified as a professional investor shall not be lower than VND 02 billion. The certification of such professional investor status shall be valid for 03 months from the date of certification”;
- the provisions on distribution period in multiple-tranche issuance (i.e., 30-day distribution period) are postponed from 16 September 2022 to 1 January 2024; and
- the provisions on credit rating of the issuers in required cases is postponed from 1 January 2023 to 1 January 2024.

Generally speaking, Decree 08 has provided solutions to help the bond market in real estate businesses recover from heavy injury. However, such decree appears to be a provisional mechanism, which is subject to further changes to adapt with the unpredictability of the market. Yet the risk for bondholders remains in case the financial health of the bond issuers is not recovered within the agreed term or do not have any appropriate assets to replace cash payments.

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