

LEGAL REPORT

Issue of December 2021

INDEX

	Page
I. ILLEGAL ISSUANCE OF BONDS	2
II. CORPORATE BONDS PURCHASED BY CREDIT INSTITUTIONS	5

* * * * *

I. ILLEGAL ISSUANCE OF BONDS

1. APEC GROUP

On 6 December 2021, the State Securities Commission of Vietnam (SSC) issued decision No. 837/QĐ-XPVPHC on penalty for administrative offence as committed by Apec Group Joint Stock Company ("**Apec Group**") because this company did not register for the issuance of bonds with the SSC as required by law.

Particularly, in 2020, Apec Group issued bonds (marked as Happybond.H.20.25.001) at the value of VND 8.1 billion. During the period from 18 January 2021 to 6 August 2021, Apec Group continued to issue certain series of bonds (marked as Happybond.H.21.23, Happybond.H.21.24, ABOND.AG.H.21.23 and ABOND.AG.H.21.24) at a total value of VND 499.707 billion to public through mass media and to unidentified investors.

It should be noted that Apec Group did not register for issuance of the said bonds with the SSC as required by law (Article 13 of the 2006 Law on Securities and Article 16.1 of the 2019 Law on Securities).

As a consequence, Apec Group was subject to the following sanctions (based on Decree No. 156/2020/ND-CP):

- (a) Fine: VND 600 million.
- (b) Compulsory remedy: Apec Group (as the offender) was forced to —
 - (i) revoke the offered (sold) securities; and
 - (ii) refund a sum of (A) the money to buy securities or deposits (if any) plus (+) (B) an interest at a rate of demand deposit as imposed by the bank (where Apec Group opened the account for the purpose of gathering proceeds earned from issuance of bonds), to the investors.

(Source of news: portal of the SSC — section named Inspection and Supervision — article named "Penalty for administrative offence in the sector of securities and stock exchanges applicable to Apex Group" dated 6 December 2021)

2. VSETGROUP

Similar to the aforementioned case, the SSC issued decision No. 814/QĐ-XPVPHC on penalty for administrative offence as committed by VSETGROUP Group joint stock company ("**VsetGroup**") because this company did not register for the issuance of bonds with the SSC as required by law.

In particular, VsetGroup offered for sale of securities to public via mass media and to unidentified investors during the period from 01 January 2020 to 27 October 2021. However, this company did not register for the issuance of bonds with the SSC. Therefore, this company was subject to the similar sanctions (as mentioned above).

Remarkably, based on the results of the inspection made by the SSC, there is an extraordinary indication which contains risks to the investors. VsetGroup reported that it has entered into more than 670 contracts for sale and purchase of bonds to finance its working capital to be used for business operations. Nevertheless, this company failed to provide documents evidencing the use of proceeds earned from sale of bonds. Furthermore, this company did NOT follow up, record [the said money] into accounting books and show it on the [annual] financial statement dated 31 December 2020 and the [semi-annual] financial statement dated 30 June 2021.

It should be noted that the proceeds earned from sale of bonds was withdrawn by certain individuals of this company from the corporate bank account without being followed up or recorded into accounting books.

At present, the SSC is now coordinating with the police department of investigation of crimes regarding corruption, economic affairs and smuggling [known as "*Cục Cảnh sát điều tra tội phạm về tham nhũng, kinh tế, buôn lậu (C03)*" in Vietnamese] to deal with this case.

(Source of news: portal of the SSC — section named Inspection and Supervision — article named "Issuance of bonds by VsetGroup" dated 10 December 2021)

3. Noteworthy issues

- (a) Via the aforementioned facts, it may be understood that there exist high risks to individual investors purchasing corporate bonds from the issuers who fail to comply with the law.
- (b) In the event that a bond issuer commits the aforementioned offence (which is the failure to register for issuance of bonds with the SSC), the bond interest rate as formerly agreed between the issuer and the

purchaser may become invalid and unenforceable.

Instead, the individual investors may then receive the principal and a new interest which is computed at the rate of demand deposit (as required by the decision on penalty for administrative offence) from the bond issuers who are now acting as the offenders.

In other words, the new interest in such scenario shall be counted at a very low rate, as compared to the former one as agreed in the contract.

- (c) In comparison of the same matter on purchase of corporate bonds between purchasers being individuals and purchasers being credit institutions, it is obvious that individual purchasers shall take possible risks much more than the credit-institution purchasers. Please find our writing on "corporate bonds purchased by credit institutions" for further details.

II. CORPORATE BONDS PURCHASED BY CREDIT INSTITUTIONS

On 10 November 2021, the State Bank of Vietnam (SBV) issued circular No. 16/2021/TT-NHNN providing regulations on the sale and purchase of corporate bonds (collectively, "**bond(s)**") made by credit institutions and/or foreign bank branches. This new circular shall take effect from 15 January 2021 and replace the former one on the same matter (which is circular No. 22/2016/TT-NHNN of SBV dated 30 June 2016, as amended by circular No. 15/2018/TT-NHNN of SBV dated 18 June 2018).

The following presents certain noteworthy issues derived from the new circular.

1. Number of principles for purchase of bonds

The former circular provided six (6) principles while new Circular 16 regulates thirteen (13) principles. The said principles inherit almost the ones under the former circular and include new restrictions as well.

2. Conditions for bonds [to be purchased or sold]

As compared to the former circular, the following conditions were added to Circular 16:

- (a) The bonds must be issued in Vietnamese currency;
- (b) They must be attributed to the lawful ownership of the seller; not be due for payment of the principal and the interest; and be permitted by law for being transacted; and
- (c) The seller must undertake that the bonds are not either in dispute or subject to [the transactions on] sale and purchase of bonds with a definite term (or known as forward contracts), or [bond] discounting, or [bond] re-discounting (unless the credit institution purchases bonds issued for initial sale.

3. Conditions for credit institutions to purchase bonds

Circular 16 provides five (5) conditions for credit institutions to purchase bonds in which the following conditions should be noted:

- (a) The bond issuer must undertake to early redeem the bonds in the following circumstances: (A) the issuer makes any change to the purpose of using proceeds earned from issuance of bonds while the bonds are held by the credit institution(s); (B) the issuer violates the

law regarding issuance of bonds; or (C) the issuer infringes upon the plan(s) [for issuance of bonds or use of proceeds].

- (b) The issuer must have no bad debt with the credit institution within the most-recent 12 months before the date of purchase [of bonds].
- (c) In the event that the issuer changes the purpose of using proceeds earned from issuance of bonds before the credit institution purchases bonds, the credit institution shall be permitted to purchase bonds ONLY IF the issuer is ranked at the highest grade pursuant to the latest internal rules of the said credit institution on credit ranking.

4. Prohibited conducts

- (a) The credit institution is not allowed to **purchase** bonds issued for the following purposes:
 - (i) To restructure [or reorganize] the debts of the bond issuer (among other purposes);
 - (ii) To make capital contribution to and/or purchase shares in other corporates; and/or
 - (iii) To increase the scale of capital for [business] operations (which may be also known as working capital).
- (b) In addition, foreign bank branches shall NOT be permitted to buy convertible bonds and bonds with warrants.
- (c) In comparison between the former circular and Circular 16 on the same issue, the following points should be noted:
 - (i) The last two items (ii) and (iii) (as mentioned in sub-section (a) above) are new regulations under Circular 16. In other words, the former circular only provided one (1) prohibited conduct applicable to credit institutions while new Circular 16 regulates three (3) prohibited conducts in total.
 - (ii) In addition to the former restriction on [purchase of] convertible bonds, foreign bank branches shall be also subject to a new restriction on bonds with warrants.
- (d) Furthermore, any credit institution shall NOT be authorized to sell bonds to its own subsidiary unless such credit institution acts as a mandatory transferee who sells bonds to a commercial bank which is subject to the mandatory transfer.

In the context of the Law on Credit Institution, "mandatory transfer" means the case where the owner, capital contributing members and/or shareholders of a commercial bank which is under special control must transfer all of their shares or capital contribution portions to a transferee. The transferee in this scenario can be either a local or foreign credit institution or an investor who petitions the relevant State authority to act as the transferee and such petition is approved by the relevant State authority.

5. Other restrictions

- (a) In the event that the bond issuer has not yet been listed in the stock exchange or not yet registered for the transaction [on sale of bonds] with the Unlisted Public Company Market (UPCOM) system within twelve (12) months after sale of bonds, then:
 - (i) the issued bonds shall be treated as bonds of unlisted corporate [which may be also called as "unlisted bonds" or construed as bonds traded over the counter (OTC)].
 - (ii) the credit institution shall NOT be allowed to purchase unlisted bonds which is formerly sold by the credit institution and/or which is [formerly] issued in the same installment (tranche) of the unlisted bonds.

After the said period, the purchase of unlisted bonds by the credit institution shall be subject to the satisfaction of certain conditions as stipulated by law.

- (b) Circular 16 also provides regulations on the responsibilities of credit institutions for purchase of bonds. It appears that based on the said regulations, the credit institutions are empowered to take certain actions towards the bond issuer, i.e. to make an assessment of the bond issuer at least once every six (6) months; or to deal with the bond issuer and recover the principal and the bond interest in the event that the issuer becomes unable to pay the outstanding principal and the bond interest when they are due, or in case where the issuer fails to early redeem the bonds as undertaken.

Remarks:

- 1. Any wording contained within square brackets "[]" is not a part of text of the regulations by law but it is inserted as an aid to the reader.
-

2. In this writing, any underlined wording in blue means a part of text of new legislation added to former legislation; and any strikethrough wording in red means a part of text of former legislation which is removed from new legislation.

Legal disclaimer:

1. *The information provided on this writing does not, and is not intended to, constitute legal advice. Instead, all information, content, and materials available on this writing are for general informational purposes only. Information on this writing may not constitute the most up-to-date legal or other information.*
2. *Readers of this writing should contact our attorney to obtain proper advice with respect to any particular legal matter. Neither reader nor user of this writing should act or refrain from acting on the basis of information on this writing without first seeking legal advice from counsel in Vietnam. Only your individual attorney can provide assurance(s) that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation.*
3. *Any and all liability with respect to actions taken or not taken based on the information on this writing are hereby expressly disclaimed. The content of this writing is provided on "as-is" [or "as it is"] basis. No representations are made that the content is error-free.*