

## LEGAL UPDATE (November 29<sup>th</sup>, 2021)

In this issue, we would like to bring to your attention to the following:

- The Circular No. 16/2021/TT-NHNN on the purchase and sale of corporate bonds by credit institutions and branches of foreign banks.
- The Circular No. 09/2021/TT-BKHĐT guiding on the selection of investors to implement investment projects in the form of public-private partnerships and investment projects utilizing land.

### 1. **The Circular No. 16/2021/TT-NHNN on the purchase and sale of corporate bonds by credit institutions and branches of foreign banks**

On November 10<sup>th</sup>, 2021, the Governor of the State Bank has promulgated the Circular No. 16/2021/TT-NHNN to replace the Circular No. 22/2016/TT-NHNN and the Circular No. 15/2018/TT-NHNN (hereinafter referred to as “**Circular No. 16/2021**”) regulating the purchase and sale of corporate bonds by credit institutions and branches of foreign banks with the following noteworthy points:

#### a. **Conditions for corporate bonds to be traded in transactions**

The Circular No. 16/2021/TT-NHNN sets forth a new provision on the conditions that corporate bonds must satisfy before being sold or purchased in transactions as follows:

- The corporate bonds must be issued in accordance with the laws of Vietnam;
- The corporate bonds must be issued in Vietnam Dongs;
- The corporate bonds must be legally owned by the seller, must not have matured for full payment of principal and interest and must be committed by the seller to be undisputed, allowed for transactions by law and not be involved in any forward trading, discount, re-discount (except cases where credit institutions purchase corporate bonds being issued for sale for the first time).

In addition, Circular No. 16/2021/TT-NHNN also supplements some principles that credit institutions and branches of foreign banks (hereinafter referred to as “**credit institutions**”) should take into consideration before purchasing corporate bonds, such as ensuring that the issuing enterprise commits to buy back the bonds prior to maturity when changing the purpose of using the money earned from the

issuance of such bonds while those bonds are in the possession of the credit institution and the issuing enterprise does not have bad debt at any credit institutions within the last 12 months before the credit institution purchases the corporate bonds.

**b. Credit institutions are only allowed to purchase corporate bonds if their bad debt ratio is below 3%**

When the Circular No. 16/2021 takes effect, credit institutions are only allowed to purchase corporate bonds if their bad debt ratio is below 3% according to the most recent classification period as regulated by the State Bank of Vietnam on the classification of current assets, deduction rate, method of setting up plans for risk prevention and the use of prevention to handle operational risks of credit institutions prior to the time of purchasing corporate bonds.

Furthermore, Circular No. 16/2021 also stipulates certain cases where credit institutions are not allowed to purchase corporate bonds as follows:

- The corporate bonds issued for the purpose of restructuring the issuing enterprise's debts;
- The corporate bonds issued for the purpose of contributing capital, acquire shares at other enterprises;
- The corporate bonds issued for the purpose of increasing the scale of operational capital.

Circular No. 16/2021/TT-NHNN will take effect from January 15<sup>th</sup>, 2022, enterprises should pay attention to the aforementioned new points to comply with provisions of law.

**2. The Circular No. 09/2021/TT-BKHDT guiding on the selection of investors to implement investment projects in the form of public-private partnerships and investment projects utilizing land**

On November 16<sup>th</sup>, 2021, the Ministry of Planning and Investment has promulgated the Circular No. 09/2021/TT-BKHDT guiding on the selection of investors to implement investment projects in the form of public-private partnerships and investment projects utilizing land (hereinafter referred to as “**Circular No. 09/2021**”) detailing and guiding the implementation of certain provisions of the Decree No. 35/2021/ND-CP and the Decree No. 25/2020/ND-CP, as well as replacing the former Circular No. 06/2020/TT-BKHDT. The highlight of this Circular is that it adds urban areas, headquarters buildings

and work offices construction projects into the guidance on identifying investment projects utilizing land.

Accordingly, the identification of investment projects utilizing land as prescribed by Article 11.1 of the Decree No. 25/2020/ND-CP (amended by Article 108.4 of the Decree No. 31/2021/ND-CP) will be conducted as follows:

- Urban areas shall be identified in accordance with Clause 1, Section VII about Construction investment projects with mixed service function in Appendix IX attached to the Decree No. 15/2021/ND-CP, including:
  - Investment projects to construct housing-included urban areas that are projects invested to construct synchronous technical and social infrastructure systems, formed from one or more residential unit according to the approved zoning plans or projects with the land use scale of 20 hectares or more in case the zoning plans don't identify specific residential units;
  - Investment projects to construct non-housing urban areas that are projects invested to construct synchronous technical and social infrastructure systems with other construction works having the land use scale of 20 hectares or more.
- Commercial housings shall be identified in accordance with Article 3.4 of the Law on Housing No. 65/2014/QH13. Correspondingly, Commercial housing is any house invested to construct for sale, lease, lease purchase according to market mechanisms.
- Headquarters buildings and work offices including buildings used as offices combined with accommodations shall be identified in accordance with Point h, Clause 2, Section I of Appendix I attached to the Decree No. 06/2021/ND-CP, including:
  - Buildings used as headquarters, work offices of State agencies and political, socio – political organizations;
  - Buildings used as headquarters, work offices of socio – occupational organizations, service providers, enterprises and other organizations, individuals;
  - Building used as offices combined with accommodations.
- Commercial constructions including shopping malls, supermarkets, markets, stores; restaurants, food and beverage shops and other commercial constructions as prescribed in Point e, Clause 2, Section I of Appendix I attached to the Decree No. 06/2021/ND-CP;

- Service constructions including hotels, guest houses, motels; resorts; rental villas, rental apartments and other accommodation service facilities as prescribed in Point g, Clause 2, Section I of Appendix I attached to the Decree No. 06/2021/ND-CP, in particular:
  - Hotels, guest houses, motels; resorts; rental villas, rental apartments and other accommodation service facilities;
  - Standalone billboards; post offices, post bureaus, other post and telecommunications service providers.

The Circular No. 09/2021/TT-BKHDT replacing the Circular No. 06/2020/TT-BKHDT will start to take effect from January 1<sup>st</sup>, 2022.

We hope this Monthly Newsletter will bring you useful information.

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