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## Recent Legal Developments in Vietnam

### **New Decree providing regulations on corporate bond issuance**

On 4 December 2018, the Government issued Decree No. 163/2018/ND-CP ("Decree 163") regarding the issuance of corporate bonds. Decree 163 will replace Decree 90/2011/ND-CP ("Decree 90") and take effect on 01 February 2019. Notable points are as follows:

**(i) Scope of application:**

Besides bond issuing enterprises such as joint stock companies and liability limited companies, objectives of Decree 163 is extended to organizations and individuals related to bond issuance activities by enterprises.<sup>1</sup>

**(ii) Bonds transaction:**

Decree 163 restricts transactions to less than 100 investors, excluding professional securities investors within 1 year of completing the issuance instalment, except in case of any decision by the Court or inheritance in accordance with law. After the said term, corporate bonds are traded without restriction on the number of investors unless otherwise decided by the issuing enterprise.<sup>2</sup>

**(iii) TimeLine of publicity of the bonds swap and redemption:**

Decree 163 further regulate that the issuing enterprises must public the plan to redeem or swap bonds as approved by competent authorities, within at least 15 days.<sup>3</sup>

**(iv) Conditions for issuance of onshore bonds:**

- a. Decree 163 has rejected the bond issuance condition stipulated in Decree 90 that the results of production and business activities of the adjoining preceding of the issuing year must be profitable.
- b. In addition, Decree 163 supplements the condition for completing the obligation of full principal and interest payment of all bonds that were issued for 03 consecutive years prior to the issuance period.<sup>4</sup>

**(v) Conditions for issuance of offshore bonds:**

- a. Decree 163 abolished the two following conditions of the Decree 90 as follows:
  - the minimum operating time of an issuing enterprise is 03 years and

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<sup>1</sup> Decree 163/2018/ND-CP, Article 2.2

<sup>2</sup> Decree 163/2018/ND-CP, Article 6.8

<sup>3</sup> Decree 163/2018/ND-CP, Article 7.3

<sup>4</sup> Decree 163/2018/ND-CP, Article 10.1.e

- the production and business results of 03 consecutive years adjoining preceding the issuing year must be profitable according to the audited financial statements
- b. Decree 163 also supplements the condition that issuing enterprises must meet the conditions prescribed by the issuing market.<sup>5</sup>

**(vi) Specific provisions on domestic bond issuance dossier**

Decree 163 has further specified the bond issuance dossier in several instalments.<sup>6</sup>

## **New Decree prescribing electronic transactions in financial activities**

On 24 December 2018, the Government passed the Decree No. 165/2018/ND-CP (Decree 165) detailing the guidelines for e-transactions in financial activities. This Decree will replace Decree No. 27/2007/ND-CP amended by Decree No. 156/2016/ND-CP and come into effect on 10 February 2019, indicating some focal points as follows:

- (i) Electronic source documents are validated as originals through the following ways<sup>7</sup>:
  - a. Electronic source documents to be signed digitally by the issuance and relevant parties;
  - b. The information system to be equipped with a security measure to maintain the integrity of electronic source documents; and
  - c. Other measures which are selected mutually, in accordance with the Law on electronic transactions, by the parties in the transaction to ensure the integrity of data, its authenticity and deniability.
- (ii) Method for converting paper source documents to electronic ones as follows<sup>8</sup>:
  - a. Paper source documents to be converted into electronic ones by scanning into computer files which are then saved in the information system, or
  - b. Contents of paper source documents to be converted into electronic data which are then saved in the information system.

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<sup>5</sup> Decree 163/2018/ND-CP, Article 18.1.c

<sup>6</sup> Decree 163/2018/ND-CP, Article 13.2

<sup>7</sup> Decree 165/2018/ND-CP, Article 5.2

<sup>8</sup> Decree 165/2018/ND-CP, Article 6.1

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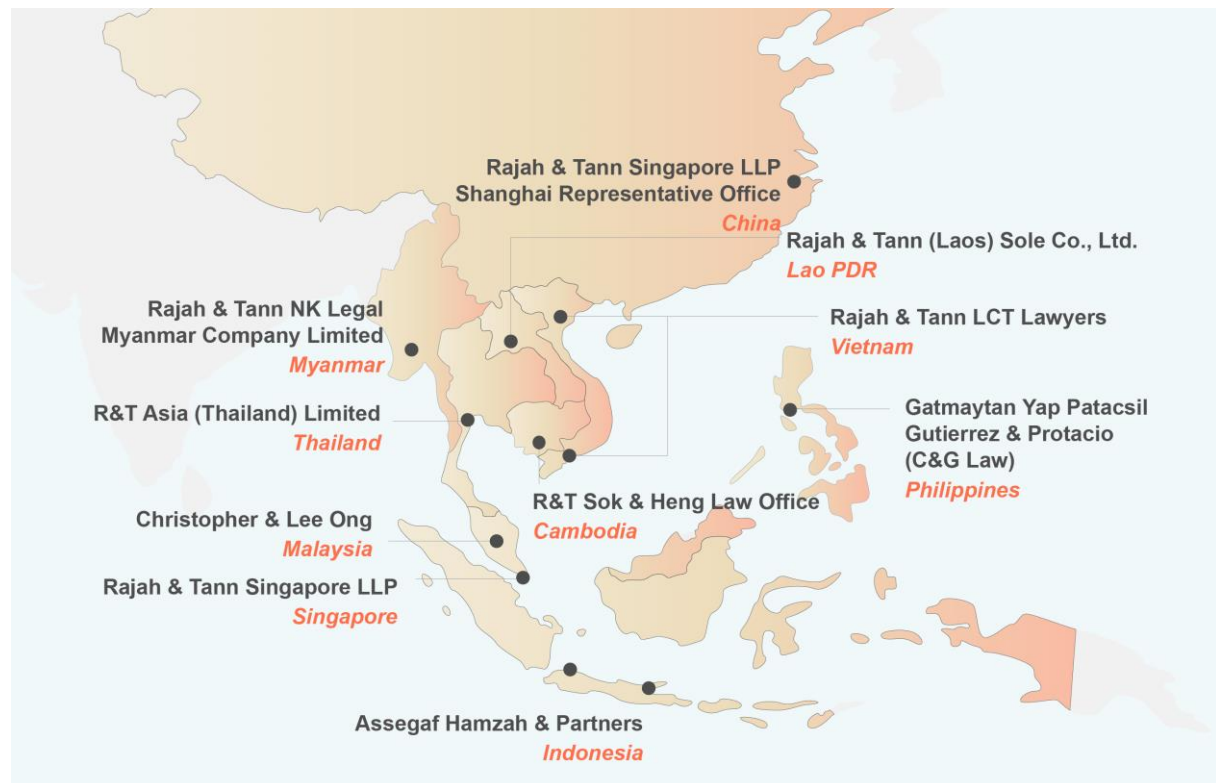
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