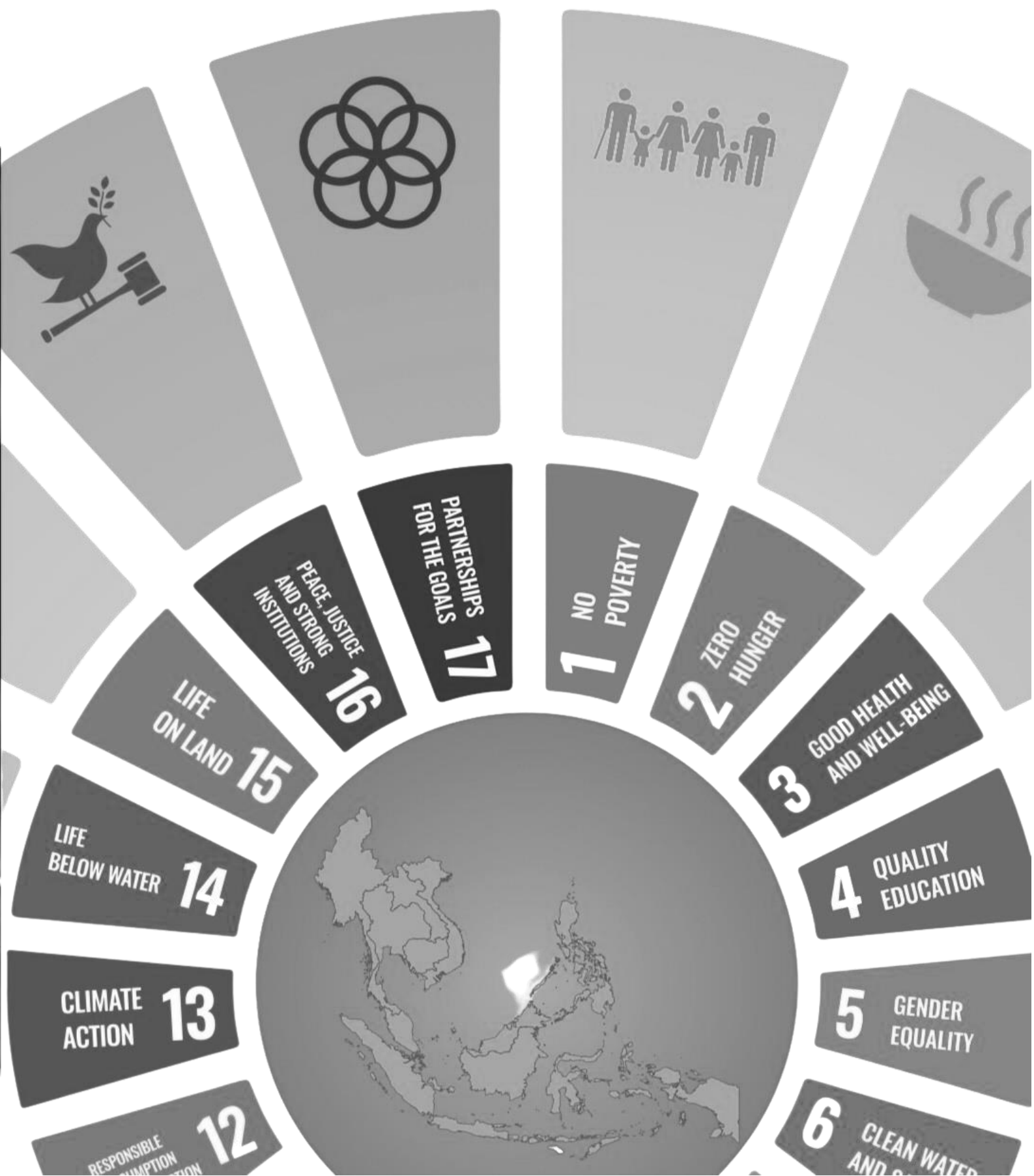


ASEAN SDG Bond Toolkit

Supplement: Legal and Regulatory Aspects for Vietnam



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Introduction

Vietnam's bond market was established in the 1990s and started to develop in 2000. In the period from 2011 up till now, the bond market has developed strongly to satisfy the need of capital mobilisation of the States and other entities. The legal framework, accordingly, has been synchronously promulgated on many levels, expanding from the directives of prime ministers and laws, to guiding decrees and circulars. With the adoption of the Paris Agreement and the net-zero commitment made at COP26, the Vietnam Government and other governmental authorities have set out the national strategy for promoting policies and tools for mobilisation of resources for green growth, including the green credit.

Executive Summary

Vietnam issuers

Both private entity and public sector Vietnam issuers are allowed to issue Green Bonds. There are specific requirements for the issuance of Green Bonds under Vietnamese Laws.

Green bond issuers and investors are entitled to reduction of services fees imposed by stock exchanges and depository corporation, and (with respect to public sector issuers) priority in State capital allocation.

Vietnam investors

Vietnamese investors are allowed to invest in Green Bonds in the same way as non-Green Bonds.

Offers of Green Bonds have specific requirements that they must comply with. While a prospectus is required for a public offer, a prospectus is not required for private placements.

A. Information for Issuers in Vietnam

1. Are there any regulations around issuances of GSS and SDG Bonds¹?

Yes. The issuance of green bonds shall be in compliance with certain regulations depending on the type of bond offerings and the nature of the bond issuers, including:

- Law No. 20/2017/QH14 of the National Assembly, dated 23 November 2017, entitled Law on Public Debt Management ("**Law on Public Debt Management**");
- Law No. 59/2020/QH14 of the National Assembly, dated 17 June 2020, entitled law on enterprises ("**Law on Enterprises**");
- Law No. 54/2019/QH14 of the National Assembly, dated 26 November 2019, entitled law on securities ("**Law on Securities**"); and
- Law No. 72/2020/QH14 of the National Assembly, dated 17 November 2020, entitled law on environmental protection ("**Law on Environmental Protection**"),

And their instruments, including without limitation to:

- Decree No. 93/2018/ND-CP of the Government of Vietnam, dated 30 June 2018, regulating provincial-government debt management ("**Decree 93**");
- Decree No. 95/2018/ND-CP of the Government of Vietnam, dated 30 June 2018, regulating the issuance, registration, listing and trading of government debt instruments on securities market ("**Decree 95**");
- Decree No. 153/2020/ND-CP of the Government of Vietnam, dated 31 December 2020, regulating the offering and trading privately placed enterprise bonds on the domestic market, and offering corporate bonds on the international market, as amended and supplemented by Decree No. 65/2022/ND-CP dated 16 September 2022 ("**Decree 153**");
- Decree No. 155/2020/ND-CP of the Government of Vietnam, dated 31 December 2020, regarding the elaboration of several articles of the Law on Securities ("**Decree 155**"); and
- Decree No. 08/2022/ND-CP of the Government of Vietnam, dated 10 January 2022, regarding the elaboration of several articles of the Law on Environmental Protection ("**Decree 08**").²

Under the Law on Environmental Protection, "green bonds" is defined as bonds issued by the Government, local authorities, enterprises for the mobilisation capital for projects in the field of green taxonomy. The proceeds from issuance of green bonds shall be used to execute investment projects involving environmental protection and investment projects offering environmental benefits, including:³

- (a) Renovation and upgrading of environmental protection works;
- (b) Replacement of technologies towards application of best available techniques;
- (c) Application of circular economy and green economy, and reduction of carbon emissions;
- (d) Prevention and reduction of environmental pollution;
- (e) Environmental remediation after environmental emergency;
- (f) Efficient usage of natural resources, soil resources, energy saving and development of renewable energy;
- (g) Construction of multi-purpose and environmentally friendly infrastructure;
- (h) Efficient management of water and treatment of wastewater;
- (i) Climate change adaptation and investment in development of natural capital; and
- (j) Other investment projects.

Under Decree 153, "green enterprise bonds" is defined as enterprise bonds issued to invest in an environmental protection project or a project conferring environmental benefits in accordance with the law on environmental protection.

Under Decree 95, "green bonds" is defined as a type of Government bond which is issued to invest in a project relating to environmental protection activities in accordance with the Law on Environmental Protection (green

¹ "SDG Bonds" means sustainable development goal bonds.

² Article 157.2 of Decree 08.

³ Article 157 of Decree 08; Article 150.2 of the Law on Environmental Protection.





project) and included on the list of projects to which public investment capital is allocated in accordance with the Law on Public Investment and the Law on State Budget.⁴

Green taxonomy

In terms of a local green taxonomy, Vietnam has not yet finished the development of its own national version. The Ministry of Natural Resources and Environment is assigned to lead and cooperate with other relevant ministries and ministerial agencies in establishing and submitting to the Prime Minister the green taxonomy for promulgation of before 31 December 2022.⁵

The confirmation of whether a project is included in the list of green taxonomy shall be carried out at the request of the project owner and issuer of green bonds that wishes to seek confirmation to receive the State's green bond incentives and assistance.⁶

2. Can bonds be issued by private and public sector entities in Vietnam?

	Private Placement <i>Offers not made to the general public</i>	Public Placement⁷ <i>Offers made to the public</i>
Private Entity Issuers <i>Private companies and other entities</i>	 Yes, subject to the conditions under Question 3 of Part A.	 Yes, subject to the conditions under Question 3 of Part A.
Public Sector Issuers <i>Government bodies and agencies</i>	 Yes, subject to the conditions under Question 3 of Part A.	 Yes, subject to the conditions under Question 3 of Part A.

3. What key requirements must issuers in Vietnam fulfil to issue GSS and SDG Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Currency	The par value of bond issued in the territory of Vietnam shall be denominated in VND. Par value of bonds in a public offer is VND100,000,000 and multiples of VND100,000,000. ⁸	The par value of bond issued in the territory of Vietnam shall be denominated in VND. Par value of bonds in a public offer is VND100,000 and multiples of VND100,000. ⁹
Key conditions for the issuance of bonds by private sector issuers	For an offer of non-convertible bonds without warrants attached (including an offer made by a securities company or securities investment fund management company), the issuer must satisfy the following conditions: ¹⁰ <ul style="list-style-type: none"> (a) Be a shareholding company or limited liability established and operating in accordance with the laws of Vietnam; (b) Have fully paid principal and interest on issued bonds (if any) or having fully paid out debts on maturity within the three (3) years immediately preceding the issue tranche, except in the case of an offer of 	The conditions for a public offer of bonds are as follows: ¹¹ <ul style="list-style-type: none"> (a) The enterprise must have, at the time of registration of the offer, a minimum amount of paid-up charter capital of thirty (30) billion dong calculated at the value recorded in the accounting books; (b) Business operations in the year immediately preceding the year of registration of the offer must have been profitable, and there must not be accumulated losses calculated up to the year of registration of the offer;

⁴ Article 21.1 of Decree 95.

⁵ Article 154.2 of Decree 08.

⁶ Article 154.3 of Decree 08.

⁷ In this wrapper, this refers to public offers.

⁸ Article 6 of Decree 153 (as amended).

⁹ Article 13 of Law on Securities.

¹⁰ Article 9.1 of Decree 153 (as amended)

¹¹ Article 15.3 of Law on Securities.

	<p>bonds to creditors being selected finance institutions;</p> <p>(c) Satisfying financial prudential ratios and other ratios ensuring operational safety as prescribed by specialised laws;</p> <p>(d) Have an issue plan approved and consented to by the competent authority of such company as required by laws;</p> <p>(e) Have financial statements of the year immediately preceding the year of the issue which have been audited by an auditor satisfying the conditions prescribed by laws; and</p> <p>(f) Bond purchasers must be entities eligible to purchase bonds in the offer tranche.</p> <p>For an offer of non-convertible bonds without warrants attached by a securities company or by a securities investment fund management fund which is not a public company, such issuer must satisfy the conditions prescribed in items (a), (c), (d), (e) and (f) above.</p>	<p>(c) There must not be any debts payable which are overdue for more than one (1) year;</p> <p>(d) There must be an issue plan and a plan for utilisation of and repayment of the proceeds earned from the offer tranche, passed by the general meeting of shareholders or the board of management or the members' council or the company owner;</p> <p>(e) There must be an undertaking from the issuing organisation to discharge obligations to investors regarding conditions of the issue and conditions for payment, ensuring the lawful rights and interests of investors and ensuring other conditions;</p> <p>(f) There must be a securities company which provides consultancy on the application file to register the public offer of bonds, except for the case where the issuing organisation is a securities company;</p> <p>(g) The issuing organisation is not an entity which is subject to criminal prosecution or was convicted of any one of the crimes of violation of economic management order for which the police record has not yet been expunged;</p> <p>(h) The enterprise must provide the results of credit rating applicable to bond issuers in accordance with Government regulations on cases where credit rating must be conducted and on the applicable time;</p> <p>(i) The issuing organisation must open an escrow account to receive payments for purchase of bonds in the offer tranche; and</p> <p>(j) The issuing organisation must commit to conduct and must conduct listing of bonds on the securities trading system upon completion of the offer tranche.</p>
Issuances in the domestic market	<p>One of the restrictions, among others, is that the bondholders must be:¹²</p> <ul style="list-style-type: none"> For non-convertible bonds without warrants attached, entities eligible to purchase bonds shall be professional securities investors as prescribed in the Law on Securities; For convertible bonds and bonds with warrants attached, entities eligible to purchase bonds shall be professional securities investors and strategic investors, where the number of strategic 	<p>Issuers must have a credit rating provided by a credit rating organisation which was issued by the Ministry of Finance (“MOF”) with a certificate of satisfaction of business conditions in the following cases:¹³</p> <p>(a) Where the total value of bonds at par value to be raised in each twelve (12) months is more than five hundred (500) billion dong and more than fifty (50) per cent of the owner's equity based on the financial statements for the most recent period among the following financial statements: the most recent annual financial</p>

¹² Article 8 of Decree 153 (as amended).

¹³ Article 19 of Decree 155.

	<p>investors shall be less than one hundred (100);</p> <ul style="list-style-type: none"> Professional securities investors shall be investors with financial capability or professional qualifications on securities as prescribed in the Law on Securities. The identification of a professional securities investor as an individual under the Law on Securities to purchase privately placed corporate bonds shall ensure that the list of securities listed and registered for trading held by such investor has a value of at least VND2 billion, determined by the daily average market value of the securities portfolio, for at least 180 consecutive days prior to the date of determination of the professional securities investors status, excluding the value of loans for margin trading and the value of securities for redemption. The identification of professional securities investors specified herein shall be valid within 3 months from the date of confirmation. 	<p>statements audited by or the most recent six (6) monthly financial statements (if the issuer is required to publish the reviewed six (6) monthly financial statements) reviewed by the approved auditing organization; or</p> <p>(b) Where the total outstanding balance of bonds at par value as at the time of registration of the offer is more than one hundred (100) per cent of the owner's equity based on the financial statements for the most recent period among the following financial statements: the most recent annual financial statements audited by or the most recent six monthly financial statements (if the issuer is required to publish the reviewed six monthly financial statements) reviewed by the approved auditing organisation.</p>
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Specific requirements for public sector issuers

Sovereign bonds (issued by the Vietnamese government for raising funds for state budget¹⁴) may be issued through bidding, underwriting or private placement.¹⁵ The purpose of issuance of the sovereign bonds, as a form of government's loan, must fall into the following purposes:¹⁶

- (a) To offset the central budget deficit for development investment, but not for current expenditures;
- (b) To offset temporary deficits of the central budget and ensure the liquidity of the government bond market;
- (c) To pay principals of due debts and restructure government debts;
- (d) To on-lend ODA loans and foreign concessional loans to provincial-level People's Committees, public non-business units and enterprises.

The followings terms and conditions applied to sovereign bonds:

- (a) Terms of sovereign bonds: The standard terms of sovereign bonds are three (3), five (5), seven (7), ten (10), fifteen (15), twenty (20), thirty (30) and fifty (50) years; Other terms of sovereign bonds shall be decided by the Minister of Finance from time to time;
- (b) Par value for issue: The par value of sovereign bonds shall be one hundred thousand (100,000) dong or its multiple;
- (c) The currency to be used for issue and payment shall be Vietnamese dong. In the case of issue of sovereign bonds in the domestic market in foreign currency, the currency to be used for issue and payment shall be the freely convertible foreign currency;
- (d) Forms of sovereign bonds: Sovereign bonds may be issued in the form of certificates, book entries or e-data depending on the issuing methods; The issuer shall make a specific decision on the form of sovereign bonds in each issue tranche;
- (e) Interest rate on sovereign bonds: Bonds may be issued at the fixed interest rate, floating interest rate or discount interest rate as notified by the State Treasury; The interest rate applicable to issue of sovereign bonds shall be decided by the State Treasury within the interest rate frame stipulated by the Ministry of Finance;

¹⁴ Article 3.10 of Law on Public Debt Management.

¹⁵ Article 27 of Law on Public Debt Management.

¹⁶ Article 25 of Law on Public Debt Management.

	<p>(f) Methods of payment of interest and principal on sovereign bonds: Interest shall be paid once every six (6) months, once every twelve (12) months or on an one-off basis on the due date at the same time as principal is paid. The issuer shall provide a specific notice of the method of payment of interest on bonds in each issue tranche; Principal shall be paid on an one-off basis on the due date or be paid early as notified by the issuer in each issue tranche;</p> <p>(g) Issuing methods: sovereign bonds may be issued by the method of issue bidding, underwriting issue or private placement in accordance with the laws.</p> <p>Provincial bonds (issued by a People's Committee of province for raising funds for local budget¹⁷) may be issued through bidding or underwriting.¹⁸ Based on budget estimates, the annual borrowing and repayment plan, the policy for issuance of municipal bonds of the provincial government as approved by the Provincial People's Council and the provincial government's borrowing plan, the Provincial People's Committee shall complete the scheme for issuance of municipal bonds and submit it to the Ministry of Finance for giving opinions about bond terms and conditions under the Law on public debt management.¹⁹ The issuance of provincial green bonds must conform with the regulations on issuance of provincial regular bonds, and Provincial People's Committee must report the list of projects using funds from issuance of municipal green bonds as regulated by the Ministry of Finance.</p>
Specific requirements for foreign issuers	<p>The conditions for a public offer of bonds in Vietnam by an enterprise established and operation pursuant to foreign law are as follows:²⁰</p> <p>(a) Business activities in the year preceding the year of registration of the offer must have been profitable and there must not be accumulated losses up to the year of registration of the offer; there must be no overdue debt for more than one (1) year (in the case of offer for sale of non-convertible bonds or bonds with no warrant attached) in accordance with the international accounting standards.</p> <p>(b) There must be the decision of a competent level approving the issue plan and/or the plan for utilization of capital obtained from the public offer tranche of securities to invest in a project in Vietnam, and/or approving the plan for repayment of capital (in the case of bond issue).</p> <p>(c) There must be an investment project in Vietnam approved by a competent authority in Vietnam. The total amount of money raised from the offer tranche in Vietnam must not exceed thirty (30) per cent of the total investment capital of the project.</p> <p>(d) The foreign issuing organization must not transfer the mobilized capital abroad; and must not withdraw reciprocal equity within the approved project duration.</p> <p>(e) There must be an undertaking to underwrite the issue in the form of a commitment to accept to purchase all of the securities for re-sale or to purchase the amount of the remaining undistributed securities with at least one securities company licensed to underwrite issues of securities in Vietnam.</p> <p>(f) The issuer must open an escrow account to receive payments for purchase of securities in the offer tranche.</p> <p>(g) There must be a bank which supervises the utilization of capital obtained from the offer tranche.</p> <p>(h) There must be a securities company which advises on the formulation of the application file for registration of a public offer of securities.</p> <p>(i) There must be an undertaking to conduct listing or registration for trading of the shares or listing of the bonds on the securities trading system upon completion of the offer tranche.</p> <p>(j) There must be an undertaking to perform the obligations of the issuer with respect to investors in terms of the conditions for issue, payment, guarantee of lawful rights and interests of investors and other conditions in the case of offer for sale of bonds.</p>

¹⁷ Article 3.11 of Law on Public Debt Management.

¹⁸ Article 8.4 of Decree 93.

¹⁹ Article 8.1 of Decree 93.

²⁰ Article 36 of Decree 155/2020/ND-CP.

4. Are there any incentives for issuers of GSS Bonds or SDG Bonds?

Currently there are no incentives specifically provided for GSS Bonds²¹ or SDG Bonds under the Law on Securities, Law on Environmental Protection and its instruments. With respect to “green bonds” under Decree 08, issuers are entitled to the following:

- (a) the reduction by 50% of certain service fees for the public issuance applied in Stock Exchanges and Vietnam Securities Depository and Clearing Corporation;²² and
- (b) in terms of investment projects using capital raised from issuance of green bonds issued by the Government and local governments, be entitled to receive sufficient capital according to the project progress in the medium-term and annual investment public plans.

5. Other comments

None.

²¹ "GSS Bonds" means green, social and sustainability bonds.





²² Article 3.6 of Circular No. 101/2021/TT-BTC.

B. Information for Investors in Vietnam

1. Are there any regulations around offers of GSS and SDG Bonds to investors in Vietnam?

There are no mandatory requirements for the offer of for GSS or SDG Bonds to investors in Vietnam. Please see the key requirements for issuances (Question 3 of Part A) and key prospectus exemptions (Question 4 of Part B).

2. Can investors in Vietnam subscribe for SDG and GSS Bonds?

	Private Placement <i>Offers not made to the general public</i>	Public Placement <i>Offers made to the public</i>
Private Entity Issuers <i>Private companies and other entities</i>	Yes. 	Yes. 
Public Sector Issuers <i>Government bodies and agencies</i>	Yes. For private issuances of government bonds, the buyers for each issuance must be identified in the issuance plan by the State Treasury for the approval of the Ministry of Finance. (Article 17 Decree 95/2018/ND-CP). 	Yes. Domestic and foreign organizations and individuals may purchase government debt instruments issued in the domestic market in an unlimited amount, unless otherwise provided for by law. ²³ 

3. Are there any incentives for investors investing in GSS Bonds or SDG Bonds?

No. There are no specific incentives for GSS or SDG bonds. With respect to “green bonds” under Decree 08, investors are entitled to the reduction by 50% of certain service fees applied in Stock Exchanges and Vietnam Securities Depository and Clearing Corporation.

4. When can an offer be made to investors in Vietnam without a prospectus?

Private Placement: There is no requirement for submission of prospectus for private issuances.²⁴

Public Placement: A prospectus is required as an essential item of the application dossier for public issuances and there is no exemption framework under the laws.²⁵

C. Notable developments

- At the end of 2020, the National Assembly passed the Law on Environmental Protection which supplements the definition, general requirements for green bonds and the incentives to be applied to the issuers.
- According to the ASEAN Sustainable Finance – State of the Market 2021 report recently released by Climate Bonds Initiatives (CBI) and HSBC, the total value of Vietnam’s GSS Bonds hit 1.5 billion USD in 2021, nearly five times higher than 0.3 billion USD in 2020. The majority of green bonds and loans in Vietnam in 2021 came from the transportation and energy sectors.²⁶
- On 01 October 2021, the Prime Minister issued Decision No. 1658/QĐ-TTg approving for the National Green Growth Strategy for the period of 2021 – 2030, with a vision towards 2050, accordingly assigned the ministries and relevant ministers to develop specific solutions to implement the strategy by which focuses on, among others, revising policies and tools for mobilisation of resources for green growth, and focuses on policies on financial support and incentives, and policies on development of capital market, green credit and insurance markets, and carbon market, towards synchronous development of market mechanism-based emissions trading system.
- In the same year 2021, the State Securities Commission, in collaboration with the International Finance Corporation, the Climate Bonds Initiative and the Swiss State Secretariat for Economic Affairs, issued the How-to Issue Guide for Green Bonds, Social Bonds and Sustainability Bonds.²⁷ This handbook provides guidance in applying the global and ASEAN standards as well as national regulations of GSS bonds, and

²³ Clause 1 of Article 6 Decree 95/2018/ND-CP.

²⁴ Article 12 of Decree 153.

²⁵ Articles 18 and 19 of the Law on Securities.

²⁶ <https://www.vietnamplus.vn/viet-nam-dung-thu-2-ve-phat-hanh-trai-phieu-xanh-o-khu-vuc-asean/799722.vnp>

²⁷ https://www.ifc.org/wps/wcm/connect/region_ext_content/ifc_external_corporate_site/east+asia+and+the+pacific/resources/how+to+issue+green+bonds%2C+social+bonds+and+sustainability+bonds

therefore supports the corporate bond issuers and other relevant institutions to participate in the capital mobilisation for socio-environmentally friendly and sustainable projects.²⁸

- (e) As per assignment of the Government under Decree 08, the Ministry of Natural Resources and environment is preparing the green taxonomy for the purpose of green credit and green bond issuance. Recently, the Institute of Strategy and Policy on Natural Resources and Environment, in collaboration with the German Corporation for International Cooperation, held a seminar to seek support and opinions from different authorities, institutions and professionals on the green taxonomy.²⁹ The green taxonomy is expected to be issued within this year.

²⁸http://www.ssc.gov.vn/ubck/faces/prinpage?dDocName=APPSSCGOVVN162138791&_afLoop=179011269725000&_afWindowMode=0&_afWindowId=null#%40%3F_afrWindowId%3Dnull%26_afrLoop%3D179011269725000%26dDocName%3DAPPSSCGOVVN162138791%26_afrWindowMode%3D0%26_adf.ctrl-state%3Ddrj0x5l2w_4

²⁹<https://monre.gov.vn/Pages/tham-van-tieu-chi-moi-truong-doi-voi-cac-du-an-duoc-cap-tin-dung-xanh-va-phat-hanh-trai-phieu-xanh.aspx>



About Ashurst

Ashurst is a leading international law firm with 30 offices in 20 countries and regions, and offers the reach and insight of a global network, combined with the knowledge and understanding of local markets. With over 450 partners and a further 2,000 lawyers working across 11 different time zones, the firm is able to respond to clients wherever and whenever required.

In Singapore, through our Formal Law Alliance, known as Ashurst ADT Law, we are able to provide the full breadth of Singapore and international law services from one integrated platform.

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About Fraser's Law Company

Fraser's Law Company (Fraser's) is the leading international law firm in Vietnam. Fraser's is highly active in the renewable energy development space, having extensive experience in clean development mechanisms (CDM) and certified emission reductions (CER) transactions and have been extremely involved in the fledgling stages of Vietnam's foray into public-private partnership (PPP) initiatives.

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