

Bonds Issuance Legal Framework

Roger Gladei
Partner,
Turcan & Turcan



Bond – Legal Definition

- debt title (security)
- negotiable
- attests the right of the creditor (bondholder) to receive from the debtor (issuer) the reimbursement of capital and the payment of agreed interest.

Legal Sources



- Civil Code, no. 1107/2002
- Law on Securities Market, no. 199/1998
- Law on Joint-Stock Companies, no. 1134/1997
- Regulation on issuance and state registration of corporate bonds, no.72-1/1997

Issuers:

Corporate Bonds:

- **Joint-Stock Companies**
 - banks
 - non banking financial institutions (leasing companies, micro financing organizations, insurance companies)
 - other corporations
 - Join-Stock Companies with state participation (decisions on issuance and contracts with foreign investors should be registered with the Ministry of Finance, under nullity sanction)
- **Cooperatives ?**

State Bonds:

(public debt):

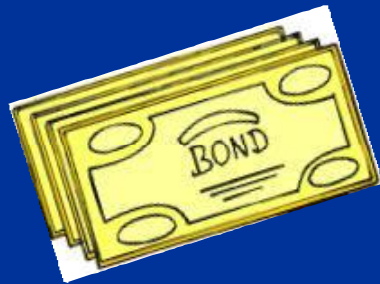
- **Government** (through the Ministry of Finance)
- **Municipalities and other local public authorities** (rayons, ATU Gagauzia)



Types of Bonds:

Upon form:

- materialized – on hard copy
- non materialized – book entry form



Upon procedure of redemption:

- non convertible – are paid off
- convertible – the right of conversion into shares (of additional issuance or treasury shares)



Bond Issuance – Conditions on the Merits

- **purpose** – unspecified (e.g. investments, working capital), except **replenishing** of statutory capital
- **aggregate amount** \leq statutory capital
- **maturity** \geq 1 year
- **nominal value** – divisible to 100 lei
- **income** – interest or δ
- **requirements to issuer** – net assets \geq share capital, paid-in share capital, lack of arrears to the public budget
- **execution guarantees** –
 - real (pledge, mortgage),
 - personal (suretyship, bank guarantee);
 - insurance policy.



Bonds Issuance – Conditions on the Form

- **Public offer** – unlimited number of subscribers
- **Competent body:**
 - BoD – non-convertible bonds
 - GMS – convertible bonds
- **Procedure of issuance:**
 1. **Passing the issuance resolution/decision:**
 - number, form and face value of issued bonds,
 - description of rights on bonds,
 - term of placement and circulation,
 - procedure of calculation and payment of interest,
 - cases and procedure of anticipated redemption, if any,
 - guarantees, if any.

Bonds Issue – Conditions on the Form (continued)

2. Approval of issuance prospectus (includes accessible and easy to analyze information allowing investors to make an informed evaluation of the issuer, guarantees and rights on bonds):

- general information on the issuer,
- financial situation (including evaluation of pledge),
- data on the issuance (including interest, procedure of conversion, publicity requirements, issuer's or creditor's right to request anticipated redemption),
- investment statement (scope of monies utilizations),
- risk factors.

Bonds Issue – Conditions on the Form (continued)

3. Contracting an underwriter, as the case may be,
4. Registration of the issuance and the prospectus with the NCFM (30 days),
5. Opening of a temporary account (banks – with the NBM),
6. Publication of the announcement on the placement, disclosure of information from the issuance prospectus,
7. Placement through concluding the subscription contracts between the issuer and subscriber and, as the case may be, registration of the pledge,

Bonds Issue – Conditions on the Form (continued)

8. Passing and registration with the NCFM of the report on the issuance results (15 working days),
9. Transfer of money from the temporary account to the current account,
10. Entering the subscribers into the Registry of bondholders.

Bonds Redemption

- At maturity
- Before maturity:
 - upon the agreement of parties (including cases indicated in the Prospectus),
 - in case of interest payment delay,
 - in case of change of the circumstances (“which influenced or can influence the activity of the issuer in the future”), with the Prospectus amendment.



Bondholders Rights

- right to redemption by the issuer (anticipated or at maturity) and payment of income (interest or δ)
- free transfer of titles on the secondary market (stock exchange or OTC),
- right to information, including to corporate documentation and decisions (GMS, BoD), to financial reports.

Shareholders and employees holding bonds have no additional rights as to other bondholders.



Guarantees to Creditors

- **In case of statutory capital reduction:**
 - right to request (i) guarantees, or (ii) anticipated redemption and damage-interests, *“upon company’s choice”*
- **In case of reorganization:**
 - right to request guarantees *“to the extent to what they can’t require satisfaction of their claims, if they prove that reorganization will jeopardize the satisfaction of their claims”*
- **In case of liquidation:**
 - right to be paid by priority as to shareholders (including the convertible bonds which have not yet been converted).

Guarantees to Creditors (continued)

- In case of judicial insolvency:
 - secured creditors (priority rank, art. 61 Law on insolvency),
 - unsecured creditors (fourth rank, art. 54 idem).

Starting the insolvency procedure accelerates the maturity of the claim.



Topics for discussion



- **Securitization of claims**
 - banks, mortgage lending companies *ancile* - MBS,
 - leasing companies – ABS
 - standardization of claims (assets)
- **Collective Investment Schemes**
 - at the legislative concept stage
 - private investors access
- **Bonds secondary market**
 - stock exchange (the rule)
 - directs transfers (exception, e.g. equity contribution, donation)
- **Bondholders meeting**
 - ensuring the adequate protection
 - representation (e.g. art.171-174 of Romanian Law on Capital Market).

