

## **Legislative Decree 817 of 2020 gives the possibility for simplified stock companies to issue debt securities and carry a public offer addressed to qualified institutional buyers in what is known in Colombian capital market as the second market.**

With the declaration of the state of economic, social and ecological emergency established for the second time by Decree 637 of 2020 and in accordance with the measures adopted by the National Government to ward off the crisis and address the negative economic effects, and to provide alternative financing mechanisms for Colombian companies, the Ministry of Finance and Public Credit established on June 4, 2020, through Legislative Decree 817 of 2020 (the "Decree"), special conditions for simplified stock companies ("SAS") to issue debt securities (bonds and commercial papers) in the second market, addressed to qualified institutional buyers (pension and severance funds, insurance companies, and other institutional investors authorized by Colombian law). Possibility that the SAS did not have before the Decree, since regulation had expressly forbidden the possibility to SAS to register securities in the National Registry of Securities and Issuers ("RNVE").

The Decree, through its 4 articles, creates a two-year temporary exception for SAS to finance their operations through the Colombian capital market with the possibility to register debt securities in the RNVE and issue and publicly offer such securities that

additionally may be negotiated through the Colombian Stock Exchange (*Bolsa de Valores de Colombia SA*).

The opportunity for SAS to obtain debt through the public market in accordance with the Decree, is limited by the following particular characteristics: (i) the securities issued and publicly offered may not have a term of more than five (5) years; (ii) the securities may be guaranteed by the *Fondo Nacional de Garantías S.A.* in the terms established in the statutes and regulations applicable to said entity; and (iii) the issuance and placement of the securities must conclude no later than June 4, 2022.

The Decree gives the possibility to SAS to raise debt through the capital market, addressed to qualified institutional buyers, in addition to the customary of financing through credit establishments.

For the measure to be effective, it is necessary and convenient that the National Government issues the necessary regulations to establish the terms and conditions on which the Fondo Nacional de Garantías S.A. will offer the guarantees to the SAS that will access to the possibility established by the Decree. Likewise, the National Government must validate if the possibility to issue granted debt by the

Fondo Nacional de Garantías S.A. is an opportunity exclusively for the SAS or if, on the contrary, all Colombian issuers may access to such guarantees.

After reading the Decree, it is inferred that the issuance must comply with all current regulations established for public offers addressed to qualified institutional buyers in the second market, which is why whoever intends to issue securities must obtain prior authorization from the Colombian Financial Superintendency (the “Superintendency” or the “CFS”).

To obtain said authorization from the Superintendency, the SAS must file the corresponding corporate authorizations, the necessary forms to carry out the registration in the RNVE and a offering memorandum addressed to qualified institutional buyers that includes the financial conditions, offer and placement terms and conditions, general information and corporate structure of the issuer. It is important to note that unlike an offering memorandum addressed to the general public in the unsophisticated market, targeting the qualified institutional buyers will require less detailed information.

The authorization term that the CFS has is also an advantage, since it is a shorter term than the unsophisticated market. In the second market, the Superintendency has ten (10) business days from the date of filing of the documents to verify and issue their final response regarding the automatic registration in the RNVE and the authorization for the public offer.

It is worth taking into account that in accordance with the applicable regulations, the registration in the RNVE of the securities in the second market does not require a rating issued by a risk rating company. In any case, as we will note below, it is important to harmonize this exception with the provisions on admissible investments of pension and severance funds and insurance companies, since these companies are the potential target of the qualified investors who may be interested in the acquisition of the securities to be issued by the SAS.

Another positive feature of the possibility of issuing in the second market is related to the costs associated with the offering and issuance of the securities, since the costs for registering securities in the RNVE are lower and the issuers will not have the obligation to engage a representative of the bondholders.

The SAS that decides to issue in the second market must, in accordance with applicable regulations, submit the year-end financial statements to the Superintendency, audited by an external auditor, for the complete term of the securities. Likewise, the issuer must prove to the CFS that all the securities’ holders have received the correct disclosure of all the relevant information, which in accordance with Colombian regulation, should be taken into account by any securities holder in an investment decision to keep, buy or sell their investment.

**1 Relevant Information, per article 5.2.4.1.5 of Decree 2555 of 2010.**



Although we consider convenient and attractive the possibility for SAS to raise debt through public market, that may also result in a necessary boost for the capital market, we identify regulatory challenges that must be taken into account, including:

1. The Superintendence must decide whether to fully apply the current regulation and procedures for the issuance of securities in the Colombian second market, or if, instead, new procedures for the SAS will be introduced, bearing in mind that the SAS in Colombia include large companies and micro businesses;
2. The National Government must consider whether it modifies the allowed investments framework of the pension and severance funds and the technical reserves of the insurance companies (which are the main qualified institutional buyers in Colombia), to allow the investment in this type of securities, even if they are not rated by a recognized securities rating agency in Colombia;
3. Likewise, it must consider whether it will be a requirement for the issuer to have a structuring agent and legal advisor as required today for issuance in the second market;
4. Finally, the National Government must resolve how the current requirements of corporate governance and disclosure of information will be enforced to the current regulation of the SAS, eliminating burdens that today are quite demanding for issuers, which go as far as having to build up a team dedicated to attend the fulfilment of such requirements and which has become an important discourage when stock corporations and limited liability companies consider the possibility of accessing the Colombian capital market.



## CONTACT:

**Mariana Posse**  
[mariana.posse@phrlegal.com](mailto:mariana.posse@phrlegal.com)