

Research on Standardizing and Guiding the Healthy Development of Chinese Capital According to Law

-- From the Perspective of Improving the Management System of China's Bond Market

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Abstract: This paper starts from the perspective of improving the management system of China's bond market, takes the steady promotion of the management reform of local government special bonds as the foothold, and provides some suggestions for improving the basic system of China's capital market and better regulating and guiding capital development.

1. Introduction

In April 2022, General Secretary Xi Jinping delivered keynote at the thirty-eighth collective study of the Political Bureau of the CPC Central Committee, which provided fundamental guidelines for regulating and guiding the healthy development of capital under the conditions of a socialist market economy. In his speech, he emphasized that the market should play a decisive role in resource allocation, the government should play a better role, and create a more favorable market environment and legal environment for the development of various types of capital. To regulate and guide the development of capital, it is necessary to set up "traffic lights", improve the legal system of capital development, and form a rule system with a complete framework, clear logic and complete system. The capital market includes the stock market, bond market, fund market and medium and long-term credit market. The place where stocks, bonds, investment funds and other valuable securities are issued and traded is the bond market, which is the main part and typical form of the capital market. The bond market is an important channel for direct financing of enterprises, and has played an important role in serving the real economy, optimizing resource allocation, and supporting macro-control [1].

In April 2022, the remarks came after the Communist Party of China Central Committee and the State Council jointly released a guideline on April 10 on accelerating the establishment of a national unified market. In promoting the development of the bond market, the "Opinions" clearly proposed that promoting the interconnection of bond market infrastructure and realize the free flow of bond market factors. This paper starts from the perspective of improving the management system of China's bond market, and takes the steady promotion of the management reform of local government special bonds as the foothold, and provides some suggestions for improving the basic system of China's capital market and better regulating and guiding capital development [2].

2. Continuously Improving the Management System of China's Bond Market

According to data released by the People's Bank of China,

the size of China's bond market grew steadily in 2021, issued 61.9 trillion yuan of bonds totally, increased by 8% over the previous year. The issuance of national debt was 6.7 trillion yuan, the issuance of local government bonds was 7.5 trillion yuan, the issuance of financial bonds was 9.6 trillion yuan, and the issuance of corporate credit bonds was 14.8 trillion yuan. In recent years, a series of legal systems, departmental rules, and industry self-discipline rules have been introduced to provide policy and legal basis for improving the bond issuance management mechanism and improving issuance efficiency, a legal and regulatory framework covering the entire process from issuance to management of the bond market was built, the basic pattern of managing the bond market in accordance with laws and regulations has been formed, and the bond market has entered into the track of legalized development.

(1) The bond issuance review implements a unified registration and filing system. The full implementation of the security issuance registration system is one of the important institutional reforms in the revision of the Securities Law. Article 9 of the "Securities Law" (Order No. 37 of the President of the People's Republic of China) revised and adopted on December 28, 2019 provides: "the public issuance of bond must meet the conditions provided by laws and administrative regulations, and registered in the bond regulatory authority of the State Council or a department authorized by the State Council in accordance with the law. No unit or individual shall publicly issue bond without registration in accordance with the law. The specific scope and implementation steps of the security issuance registration system are provided by the State Council." Therefore, the review of security issuance including bond implements the registration system, it is not only a requirement of market economy transparency, but also a legal requirement, each regulator should revise the relevant normative documents mad by itself, the registration system is implemented for bond issuance that need to be reviewed by government regulators.

On March 1, 2020, the China Securities Regulatory Commission issued the "Notice of the General Office of the China Securities Regulatory Commission on the Implementation of the Registration System in Public Issuance of Corporate Bond" (Compiled and issued by China Securities Regulatory Commission [2020] No. 14), from the date of issuance of the notice, the public issuance of corporate

bonds implement registration system. On the same day, the National Development and Reform Commission also issued the "Notice on Relative Items of the Implementation of the Registration System for the Issuance of Enterprise Bonds" (National Development and Reform Commission [2020] No.298), the issuance of enterprise bond was changed from the approval system to the registration system, the National Development and Reform Commission is the statutory registration authority of enterprise bond, and the issuance of enterprise bonds should be registered by the National Development and Reform Commission in accordance with the law. The National Development and Reform Commission designate relevant institutions to be responsible for the acceptance and review of enterprise bonds. China Central Depository & Clearing Co., Ltd. is the acceptance institution, and China Central Depository & Clearing Co., Ltd. and the National Association of Financial Market Institutional Investors are the review institutions. The two institutions should formulate relevant business processes, acceptance review standards and other supporting systems as soon as possible, and complete the acceptance and review work within the specified time limit. In addition, according to the needs of the registration system reform, the provincial-level forwarding link in the declaration of enterprise bond has been cancelled [3].

To sum up, except that government bonds are approved by the Ministry of Finance, and financial bonds with the effect of currency issuance are approved by the People's Bank of China, the People's Bank of China, the National Development and Reform Commission, and the China Securities Regulatory Commission have all begun to implement the registration system for each bond issuance review. The bond issuance activities reviewed by the China Association of Financial Market Institutional Investors, the Stock exchange, the OTC market, and the China Small and Medium Enterprises Share Transfer System all implement filing system.

(2) Increase the intensity of information disclosure. With the further development of the bond market, the market has put forward higher requirements for risk identification, in order to reduce abnormal transactions caused by the low transparency of transaction information in the bond market and regulate bond transactions, in recent years, the regulator has introduced a series of measures to strengthen information disclosure, and reduce information asymmetry between issuers and investors. The newly revised "Securities Law" in 2019 newly set "Information Disclosure" in Chapter 5, which further strengthens information disclosure requirements in the form of special chapter regulations, and highlights the importance of information disclosure more systematically and clearly. The information disclosure system is the essence of securities law and can be called the soul of securities law.

In order to regulate the information disclosure of the corporate credit bond market, maintain the order of the corporate credit bond market, and protect the legitimate rights and interests of market participants, on December 25, 2020, the People's Bank of China, together with the National Development and Reform Commission and the China Securities Regulatory Commission, formulated the "Regulations of Information Disclosure of Corporate Credit Bonds", target the issuance and duration of corporate credit bonds, including enterprise bond, corporate bond and non-financial corporate debt financing instruments, the requirements for information disclosure are unified for bond

issuer enterprise and intermediaries.

In April 2021, the Shanghai and Shenzhen Stock Exchanges issued business guidelines for the review of the issuance and listing of corporate bonds, and officially announced the key issues of corporate bond review and related information disclosure requirements. Combined with the "Regulations of Information Disclosure of Corporate Credit Bonds", the information disclosure as the starting point, the standardization, transparency and predictability of review will be further improved, and the efficiency of regulatory services will be improved. In September 2021, the China Foreign Exchange Trade System, namely National Interbank Funding Center, issued "National Interbank Funding Center Bond Transaction Circulation Rules", specially provided the information disclosure of major events during the transaction circulation period and the information disclosure requirements of specific trading behaviors. The bond market is an important part of China's multi-level capital market system, the information disclosure system and mechanism need to be further improved, innovate disclosure methods, enrich disclosure contents, and build an honest and effective information disclosure system in order to better promote the high-quality development of the bond market.

(3) Strengthen the protection of the legitimate rights and interests of investors. In February 2020, the General Office of the State Council's "Notice on the Work Related to Implement the Revised Securities Law" requires relevant departments to conscientiously implement the revised Securities Law, take effective and effective measures to protect the legitimate rights and interests of investors, especially small and medium investors. It is necessary to actively cooperate with judicial organs, steadily promote the system of filing civil securities compensation lawsuits by investor protection institutions on behalf of investors, and promote the improvement of relevant judicial interpretations. Strictly implement information disclosure regulations, improve relevant rules, define the conditions to disclose information to media, make transition and connections before and after the revision of the rules, and protect investors' right to know in accordance with the law. It is necessary to strengthen the punishment mechanism for violations of information disclosure in the bond market, encourage issuers to disclose information voluntarily, and make agreement in the issuance terms. Issuers and other information disclosure obligors must truthfully, accurately, completely, timely and fairly disclose important information that may affect investors' decision-making, including but not limited to the issuer's financial information, default events, default disposal plans, and bondholders' meeting resolutions, litigation and arbitration progress, improve the quality of information disclosure, and protect investors' right to know. Increase administrative penalties for violations of information disclosure entities, improve the exit mechanism of the bond market, increase the cost of information disclosure violations by issuers, and urge them to improve the quality of bond information disclosure.

(4) Improve the supporting mechanism of bond default disposal. In order to build and improve the risk prevention and resolution mechanism in the bond market and promote the healthy development of the corporate credit bond market, in June 2020, the People's Bank of China, the National Development and Reform Commission, and the China Securities Regulatory Commission issued the "Notice on Matters Concerning the Default Disposal of Corporate Credit Bonds", proposed to give full play to the central role of the

trustee and bondholders' meeting system in the disposal of bond defaults. Build and improve the trustee system. The bond issuer should hire a trustee or an institution that performs the same duties (hereinafter collectively referred to as the trustee), and define the duties, rights and obligations of the trustee and the responsibility for breaching the trustee agreement in the bond prospectus and other issuance documents. Institutions that are familiar with bond market business and have good risk disposal experience or legal expertise are encouraged to serve as trustees. If the trustee fails to perform its duties and causes losses to the bondholders, they should bear the corresponding liability for compensation. Improve the bondholders' meeting system. The issuer should agree on the voting matters, convening, convening, effective conditions and decision-making procedures of the resolutions in the bond collection documents, and the effective scope of the resolutions, etc. The bondholders' meeting can be held off-site. Encourage the establishment of a hierarchical voting mechanism in accordance with the degree of impact of bondholders' meeting proposals on bondholders' rights and interests, and improve the decision-making efficiency of bondholders' meetings.

In order to correctly try contract, tort and bankruptcy civil and commercial cases caused by the issuance and exchange of corporate bonds, enterprise bonds, and debt financing instruments of non-financial enterprises, and unify the application of laws, in July 2020, the Supreme People's Court formulated and issued the "Summary of the Bond Dispute Cases Symposium of National Court Trial". "Summary of the Bond Dispute Cases Symposium of National Court Trial" pointed out that the current rule system of r bond issuance and trading markets is mainly composed of laws, administrative regulations, departmental rules, and administrative normative documents. When trying such cases, the people's court should, in accordance with the basic principles provided by laws and administrative regulations, apply the same legal standards to corporate bonds, enterprise bonds, and debt financing instruments of non-financial enterprises that have the common attribute of repayment of principal and interest. Summary of the Bond Dispute Cases Symposium of National Court Trial defined for the first time at the judicial level, it is necessary to ensure that the trustee and other bond representatives can perform their duties entrusted by bondholders' meetings, for example, participation in litigation, debt restructuring, bankruptcy reorganization, reconciliation, and liquidation.

3. The Local Government Special Bond System Should Conform to the Requirements and Reform Trends of China's Bond Market Management System

Since 2015, local government bonds have been continuously used as an important innovative tool for active fiscal policy in China, by the end of 2021, it has become the third largest bond type in the Chinese bond market after national debt and policy financial bonds. According to data released by the Ministry of Finance, in 2021, China will issue a total of 7,489.8 billion yuan of local government bonds, of which 4,922.9 billion yuan will be special bonds, accounting for 65.73%, and the scale will expand year-on-year. In order to steadily promote the management reform of local government special bonds, since 2018, the policy support for

special bonds has been continuously increased. However, compared to credit bonds, the comprehensiveness of information disclosure needs to be further improved; from market transactions, most of the special bonds are held by large state-owned banks, mainly circulated in the inter-bank market, and the investment subject is slightly single, increasing the systemic risk to a certain extent. Furthermore, the liquidity of the secondary market is poor, which is not conducive to the diversification of risks. Special bond is an important part of China's fiscal policy, and its system construction should conform to the requirements and reform trends of China's bond market management system.

(1) Further improve the special bond information disclosure system. The disclosure principle is the principle that most embodies the characteristics and core of the securities law, and the information disclosure system is the most important embodiment of implementing the principle of disclosure in the securities law, which can be called the soul of the securities law.

Improving the special bond information disclosure system is the key to promoting the sustainable issuance of special bonds. Detailed information disclosure can not only make investors to make correct investment decisions, but also reduce the risk compensation that investors demand for facing less uncertainty, thereby reducing the financing cost of local governments. In order to further improve the information disclosure of special bond projects, in January 2020, the General Office of the Ministry of Finance issued the "Notice on Using the Information Disclosure Template of Newly Added Special Bond Projects by Local Governments", required that from April 1, 2020, when issuing new local government special bonds, localities must add the disclosure template for the project information disclosure of local government new special bonds, show the core information of the project in tabular form; during the duration of the newly issued special bonds, all localities should disclose the information in accordance with the template format every year, the actual project income, the latest expected project income and other information. If the newly disclosed information is significantly different from the last disclosed information, explanations should be made.

Although the information disclosure template discloses the basic elements of bonds that investors are most concerned about, project financing sources, yearly financing plans, yearly expected returns, income/financing coverage multiples and other core project core information in a unified format, however, it only requires newly issued special bonds of the new type, and does not involve existing special bonds, nor does it involve refinancing bonds and replacement bonds, therefore, the comprehensiveness of information disclosure still needs to be further improved.

One of the important measures to promote the improvement of the special bond information disclosure system is to improve the construction of China's local government bond information disclosure platform, the Ministry of Finance issued the "Regulations of Local Government Bond Information Disclosure Platform" on February 9, 2021, this regulation defines the work contents and responsibilities of various departments in information disclosure activities, and also provides the new addition and duration of special bonds, and the information content that should be disclosed on major events, it requires timely, accurate, and comprehensive disclosure of the entire process from bond declaration to use and later management, it

suggests that China's local debt information disclosure mechanism is improving, and the level of openness and transparency is getting higher and higher. Moreover, the regulation also provides that local financial departments at all levels should include the disclosure of local government debt information into the scope of local government debt performance evaluation, and strengthen the application of performance evaluation results. However, the evaluation indexes, evaluation standards, and implementation procedures have not yet been unified and defined, and relevant rules of disclosure requirements have yet to be issued.

(2) Further enhance the marketization level of local government bonds. The bond market has a large scale, various and a wide range of participants, it is necessary to deepen the opening of the bond market, the risk of China's local currency bond market is low, which can play a positive role in attracting some long-term investors with high safety preferences, which is conducive to the formation of long-term capital. Judging from the current bond trading market in China, more than 99% of bond transactions are concluded in the inter-bank market, because financial institutions such as banks, funds, and insurance companies engaged in large-scale transactions have absolute capital advantages and bond holding advantages in the inter-bank treasury bond market, so it will affect other investors to participate in its transactions, and the structure of fundraisers needs to be optimized. In addition, compared to national debt, the turnover rate of local government bonds is much lower than that of national debt, this is mainly because the types of local government bonds issued are relatively simple, the issuance methods are single, and it is difficult to promote the arrangement of the market mechanism. Furthermore, the issuance scale of some local government bonds is relatively fragmented, the stock of single bonds is small, which is not conducive to large-scale transactions, so the overall liquidity of special bonds is relatively poor.

Under the premise of further improving the construction of the information disclosure system, the special bond system

can learn from the development experience of mature government bonds, financial bonds or credit bonds, and by improving the market-oriented pricing level of special bonds, promote variety innovation, and enrich the structure of investors, for example, consider increasing the liquidity of special bonds for the same project through additional issuance and renewal, and further improve the marketization of special bonds. In particular, the relatively high yields in the Chinese bond market, the expectation of RMB appreciation, and the record of no default of Chinese government bonds, which increases the enthusiasm of overseas investors to subscribe for local government bonds.

Accelerate the improvement of the information disclosure system of special bonds, and improve the marketization level of special bonds by improving market infrastructure, etc., which will contribute to activate the level of market transactions, give full play to their positive functions of investment and financing, do a good job in financial services for the real economy, driving social capital to invest in more efficient regions and fields, better improve the efficiency of capital allocation, it will also help the country establish a transparent and perfect bond market with free capital flow, and build the important foundation for developing China's unified capital market.

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