

SOME NEW PROVISIONS ON OFFER AND TRADING OF PRIVATELY-PLACED CORPORATE BONDS IN DOMESTIC MARKET

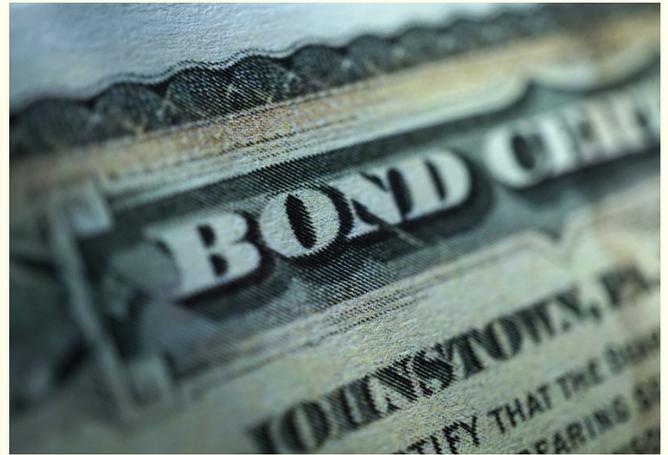
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After more than 1 year of issuance and implementation, Decree 153/2020/ND-CP on offer and trading of privately-placed corporate bonds in domestic market and offer of corporate bonds to international market (**Decree 153**) has revealed certain inadequacies in the context of overheating of the corporate bond market in Viet Nam, with the appearance of unlawful capital mobilization from bond issuance. To enhance the legal framework, strengthen the state management and supervision as a mean to preserve development of Viet Nam's bond market in an effective and sustainable manner, the Ministry of Finance is drafting a Draft Decree for amending and supplementing some articles of Decree 153 (**Draft Decree**) in order to respond to the developments of the market in recent time. In this Newsletter, NHQuang will analyze some outstanding provisions of the Draft Decree uploaded on the Government Portal on December 10, 2021.

Amendment of bond issuance purposes

The Draft Decree revises Article 5 of Decree 153 on bond issuance purposes; accordingly enterprises are prohibited from issuing bonds to contribute capital in other companies in the form of capital contribution or share purchase. In more detail, corporate bond issuance for capital contribution in any form, enterprises' share and bond purchase or capital lending shall be illegal.

Compared with Decree 153, the Draft Decree has narrowed the scope of bond issuance to control the issuance purposes. This originates from enterprises' complex circulation of the capital mobilized from bond issuance among issuers and actual capital users to circumvent strict regulations on lending/investment limits of credit institutions under banking laws; capital raising for transfer among



parent and child companies, which leads to the failure to ensure investors' ability in monitoring enterprises' use purpose of mobilized capital, posing significant risks to investors or possibly causing systematic negative effects to the financial market when such "group" of companies faces problems in their business activities or in the investment project calling for capital mobilization. In the market, it is a common practice that parent companies set up and then raise money to fund their subsidiaries as "project companies" since new businesses have a high level of risk, which makes it very difficult to raise capital. If this new provision of the Draft Decree takes effect, corporations, corporate groups and enterprises which regularly perform M&A activities and investment in the form of leveraged buyouts (LBO), or businesses in the fields accounting for high rate of bond issuance in the market such as real estate, construction should study and reconsider their capital mobilization method and plan to ensure capital mobilization efficiency, objectives and law compliance.

Amendment of regulations on credit rating of some types of bond issuance

Clause 6, Article 1 of the Draft Decree amends point dd, clause 2 of Article 12 Decree 153 in the direction to include credit rating results by credit rating agencies in bond offer dossier in case of: bond issuance to individual investors, unsecured bond issuance (not being backed by collateral or payment guarantee), or in the case when issuers have losses in the previous year or have accumulated losses up to the issuance year. The credit rating shall be performed with both issuers and issued bonds.

It can be seen that the supplement of credit rating results in bond offer dossier will improve publicity

and transparency, the quality of issued bonds as well as help to build the habit of relying on credit rating results to assess bond risk, approaching international practices and reducing risks for investors. However, this stipulation also sets costs (credit rating fee) and obligations for the issuers. Currently, by the promulgation of Decree 88/2014/ND-CP on credit rating service, Decree 153 and Decree 155/2020/ND-CP guiding the Securities Law, the legal framework for the credit rating industry has been formed and developed. It is noteworthy that under the Draft Decree, individual professional stock investors will only be allowed to buy privately-placed corporate bonds with credit rating, except for cases of complying with legal binding judgments or decisions of courts, arbitration decisions or inheritance as prescribed by law (clause 9, Article 1 amending Article 16 Decree 153). It means that once this regulation takes effect, the credit rating shall be "mandatory" and not just for "reference purpose", which should be paid attention for implementation when issuers mobilize capital from investors.

Regulations on redemption of bonds before maturity

Under the Draft Decree, clause 3 of Article 8 Decree 153 is supplemented with the investors' right to request a issuer to redeem its bond before maturity if it is found that the issuer uses the proceeds from bond issuance differently from the issuance plan or the purpose committed with investors. Correspondingly, the Draft Decree also adds issuers' responsibilities to "be committed to redeem bonds before maturity when: the issuer changes its purpose of using the proceeds from bond issuance; violates the law on corporate bond issuance; or violates the bond issuance plan".

Compared with Decree 153, the new provision has enhanced the issuers' responsibilities and obligations in using the capital gained from bond issuance for the right purpose in order to limit inappropriate practices in the market. When this regulation takes effect, issuers must be careful in spending the capital raised by bond issuance for the right purpose, as well as to prepare plans to handle and reduce risks or reach specific agreements with investors in case when they are requested to redeem their bonds under the new regulations, because the ground relied on by investors to ask for redemption of bonds before maturity is relatively wide and

unclear. If there is no specific limit on the severity or level of investors' acceptance for such behaviors as violations of bond issuance laws, violations of bond issuance plans or using capital for improper purposes, they will be easily abused, then negatively affect the cash flow of businesses.

Supplement of regulations on privately-placed bond trading on exchanges

Aiming to ensure the quality of privately-placed corporate bonds trading on Stock Exchange, the Draft Decree has added the provisions on the type of privately-placed corporate bonds registered for trading; dossier and procedures for securities trading registration; change and cancellation of securities trading registration (clause 10, 11, 12 of the Draft Decree supplement Article 16a, 16b and 16c of Decree 153). Specifically, bonds registered for trading on the corporate bond trading system for private placement at the Stock Exchange include: (a) privately-placed corporate bonds of public companies; (b) non-convertible bonds without warrants for private placement of non-public companies, which meet the following conditions:

- (i) The charter capital contributed at the time of transaction on the system is from VND 30 billion or more;
- (ii) The business is profitable in the year preceding the transaction year and does not have accumulated losses; and
- (iii) The bond is secured (being backed by collateral or payment guarantee of all principal and interest upon maturity).

With the new regulations of the Draft Decree, privately-placed corporate bond market is expected to be more public, transparent with strong management and supervision, which ensures the stability, friendliness and safety of the market for the investors.

In addition to the above contents, the Draft Decree also amends and supplements some contents such as: determination of professional stock investors' capacity, disclosure of business information, etc. which are also expected to affect bond issuers, organizations performing corporate bond offer and trading. In the coming time, enterprises and investors need to pay attention to regularly updating the drafting process of the Draft Decree for appropriate application in the future.