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# New requirements for trading of privately placed corporate bonds

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### Introduction

On 9 December 2021, the government and the Ministry of Finance published for consultation the full text of the draft decree that amends Decree 153/2020/ND-CP (Decree 153), which prescribes private placement and trading of privately placed corporate bonds in the domestic market and offering of corporate bonds in the international market. The consultation period has concluded. The draft decree aims to further strengthen the legal framework for a viable, transparent and effective corporate bond market. However, in its current form, the draft decree could impede the trading of corporate bonds for both issuers and investors.

### Decree 153 and shortcomings

Since the implementation of Decree 153 on 1 January 2021, the privately placed corporate bond market has shown signs of progress toward becoming a high-quality corporate bond market. However, after one year of implementation, Decree 153 displays certain shortcomings:

- bonds can be used for a variety of purposes – Decree 153 allows enterprises to issue bonds to contribute capital and to acquire shares or bonds from other enterprises. This enables small-sized enterprises with insufficient equity or enterprises that have suffered a loss to mobilise a large amount of money. As a result, investors run the risk of holding bonds with low liquidities;
- the growing proportion of individual investors in the secondary market – Decree 153 requires investors in privately-placed corporate bonds to be professional stock investors but does not require such investors to maintain professional stock investor status at all times. As a result, individual investors are exploiting these loopholes to trade in the secondary market; and
- a lack of guidance on trading at the stock exchange – under Decree 153, the Ministry of Finance is responsible for developing guidelines for the trading of privately-placed corporate bonds at the stock exchange. However, after one year of implementing Decree 153, there is no circular in place.

### Additional requirements for issuers

#### *Limit purpose of corporate bond issuance*

The Draft Decree adds restrictions to the purpose of bond issuance. In particular, enterprises may not issue bonds to contribute capital in any form, acquire shares or bonds of other enterprises, or lend capital to other enterprises. Further, the draft decree supplements that investors have the right to request that the bond issuer repurchase the bonds before maturity if they discover that the issuer uses money collected from the issuance for purposes other than those stated in the bonds issuance plan or the undertakings to investors. This provision aims to strengthen the issuers' responsibilities in using bond proceeds for the intended purposes, as well as to prevent situations in which the parent company and companies in the same group mobilise to transfer capital to each other.

This suggested revision receives little support from the general public and the consulted agencies because it is viewed as infringing on the autonomy of enterprises in mobilising capital and discouraging the formation of multi-industry economic groups. However, it is inevitably a tool to protect investors. This amendment is also consistent with the provisions in article 4.8 and article 7.2 of Circular 16/2021/TT-NHNN, which state that credit institutions are not permitted to purchase corporate bonds when the purpose of the issued corporate bonds is to contribute capital and/or purchase shares in other enterprises.

#### *Requirement for credit ratings*

The draft decree stipulates that the credit rating result of a credit rating agency shall be a mandatory document included in the bond offering dossier in the event of:

- the issuance of bonds:
  - to individual investors;
  - without collateral; and
  - without payment guarantee; and
- issuers suffering a business loss.

The draft decree also restricts individual investors to purchasing only credit-rated privately placed corporate bonds.

The requirement to use credit rating results to assess the risks associated with bonds is similar to international practices and is expected to improve the quality of issued bonds, hence lowering risks for investors.

### Additional requirements for investors

Both Decree 153 and the draft decree provide that professional stock investors are permitted to invest in and trade privately placed corporate bonds. The draft decree supplements that prior to performing any purchase or sale of bonds, the investor must have their professional stock investor status confirmed. This requirement is compatible with article 4 of Decree 155/2020/ND-CP<sup>(1)</sup> and is intended to prevent individuals from circumventing the law in order to become professional investors.

#### **Establishment of private corporate bond trading market at stock exchange**

While Decree 153 only states that the Ministry of Finance shall provide guidelines for the trading of privately-placed corporate bonds on the stock exchange, the draft decree supplements regulations on conditions, dossiers and procedures for bond trading at the stock exchange applied to public companies, and to non-convertible and without warrants bonds of non-public companies satisfying certain conditions.

This amendment helps to accelerate and standardise the establishment of a private corporate bond trading market at the stock exchange, and it strengthens the management and supervision of private corporate bonds put into trading.

#### **Comments**

The draft decree seeks to create a more open and transparent private corporate bond trading market, as well as reduce risks for investors.

Rather than interfering too much in the business of enterprises and the rights in trading of investors, as the current draft does, the mechanism to control issuer compliance and enhance issuer commitment should be focused on:

- requiring the issuers to make the prospectus available to the investors;
- detailing the responsibilities and liabilities of the company managers in managing and supervising bond trading;
- describing the criteria for determining cases where bond proceeds are not used for the intended purposes; and
- governing bondholder representatives (who are responsible for supervising issuers' adherence to their commitments) in a manner similar to Decree 155 (ie, by specifying the qualifications, appointment and responsibilities of bondholder representatives).

The draft decree is being finalised for submission to the Ministry of Justice for appraisal and to the government for promulgation.

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#### **Endnotes**

(1) Decree 155/2020/ND-CP on the elaboration of some articles of the Law on Securities.