



# Characteristics of the Korean Bond Market

Since the Korea Bond Market Guide was first issued in 2012, substantial changes to the regulatory environment as well as to market features have occurred. The purpose of this chapter is to give an updated, comprehensive view of the specific characteristics of the Korean bond market.

## A. Definition of Debt Securities

Article 4 (3) of the FSCMA defines debt securities in the following manner:

The term "debt securities" in this Act means state (government) bonds, local government bonds, special bonds (referring to bonds issued by a corporation established by direct operation of an Act; hereinafter the same shall apply), corporate bonds, corporate commercial papers (referring to promissory notes issued by a company for raising the funds required for its business, which shall meet the requirements prescribed by Presidential Decree; hereinafter the same shall apply), and other similar instruments, which bear the indication of a right to claim the payment.<sup>13</sup>

## B. Types of Bonds and Notes

In the Korean bond market, bonds are classified by several criteria (e.g., the type of issuer, method of interest payment, options embedded with the bond, and redemption period, among others).

The Korean bond market does not have any limitations or restrictions on the choice of currencies of denomination of debt instruments. KRW-denominated bonds issued by nonresident are called Arirang bonds, whereas foreign-currency-denominated bonds issued by nonresidents are called Kimchi bond. In practice, the settlement of bonds and notes denominated in Korean won, Japanese yen, offshore Chinese renminbi, and US dollars is supported. Bonds denominated in these currencies can also be deposited with KSD.

The individual features of bonds and notes issued in the Korean market are further explained in the subsequent sections.

<sup>13</sup> See <http://www.law.go.kr/eng/engLsSc.do?menuId=1&query=financial+services+and&x=28&y=27#iBgcolor12>

## 1. Bonds and Notes Categorized by Type of Issuer

Bonds and notes issued in the Korean market may be best distinguished by the type of issuer. While the market is dominated by government bonds, it also features government-like bonds and corporate bonds.

### a. Government Bonds

Currently issued government bonds include KTBs, National Housing Bonds (NHBs) Types 1 and 2, and Foreign Exchange Equalization Fund Bonds, which are denominated in a foreign currency.

Among these government bonds, KTBs are issued in the largest volume and trading is active. Accordingly, the on-the-run KTB market yields serve as a benchmark yield. There are currently six types of KTBs issued, according to maturity; these are 3-year, 5-year, 10-year, 20-year, 30-year, and 50-year KTBs. These KTBs fall into fixed-interest type bonds (3-year, 5-year, 10-year, 20-year, 30-year, and 50-year issuances) and inflation-linked KTBs (limited to the 10-year maturity). Inflation-linked KTBs link the principal and coupon rate of the KTB to a consumer price index.

KTBs are fungible issues, meaning that the issuing conditions, including maturity and coupon rates, are the same for bonds issued within a certain period of time. Currently, 3-year KTBs and 10-year KTBs are issued on 10 June and 10 December each year, 5-year KTBs are issued on 10 March and 10 September, 20-year KTBs are issued on 10 September, and 30-year KTBs are issued on 10 March. The coupon rates of KTBs are set to multiples of 0.125%.

For details on the issuance methods of KTBs, please refer to Chapter III.E.

There are two ways to redeem KTBs: (i) redemption at maturity, and (ii) redemption before maturity. Through the redemption at maturity, the principal is redeemed in a lump sum upon maturity of the bond, while the interest is paid every 6 months from the issuing date. If the date of the redemption of principal falls on a public holiday, the principal is due on the following business day. If it does not coincide with a public holiday, then it is due on the prior business day. The amount paid corresponds to the amount designated for the original maturity date, regardless of whether it is a public holiday.

Redemption before maturity may be carried out via KTB reverse biddings held for Primary Dealers and are purchased directly from KTB holders when MOSF deems it necessary. There is no bidding limit for Primary Dealers, and the minimum amount for each issue is KRW1 billion (par value), with incremental increases in multiples of KRW1 billion.

The winning bid from a Primary Dealer is decided consecutively from interest rates that have been bid for each issue, spanning from the highest interest rate down.

The purchased amount is derived by applying the lowest rates from each of the interest rate groups, which are grouped in intervals of 2 basis points from the lowest bid upward. BOK handles the redemption at maturity, as well as any redemption before maturity and interest payments for KTBs. For that purpose, BOK makes deposits to KSD's current deposit account, and KSD transfers principal and interest to the deposit account of the institution that holds the KTBs.

### b. Municipal Bonds

Municipal bonds are issued by local governments, which comprise regional development bonds and urban railway bonds.

Regional development bonds are issued by local governments under the Local Autonomy Act. Currently, 18 municipalities issue the bond with 5-year maturity. Urban railroad bonds are issued under the Urban Railway Act to finance subway construction in major cities. The issuing entities are not the local subway corporations but the local governments. Urban rail bonds are issued by five municipalities, including Seoul.

### c. Special (Purpose) Bonds

Special (purpose) bonds are issued based on the laws on which the issuers are established. Since these issuers are government agents, the bonds may be regarded as government agent bonds, similar to the practice in other countries.

This type of bond consists of the issues from financial institutions such as BOK, the Korean Development Bank (KDB), and the Export-Import Bank of Korea, and issues by nonfinancial public corporations such as Korea Land & Housing Corporation and Korea Rail Network.

For example, the Korea Development Bank Act provides for the issuance of industrial finance bonds. Article 23 of the act stipulates that (i) KDB may secure funds necessary for performing business operations by issuing industrial finance bonds; (ii) industrial finance bonds shall be issued exclusively by KDB; and (iii) the aggregate of the amount of industrial finance bonds issued, the outstanding balance of bonds and debts guaranteed, and the outstanding balance of debts guaranteed or accepted by KDB shall not exceed 30 times the aggregate of the paid-in capital of KDB and its reserve funds.

Among special bonds, MSBs, which are issued by BOK (see also section C), represent a substantial portion of the overall bond market. As such, statistics on the issuance of MSBs are, in practice, managed separately from the statistics for other special bonds.

### d. Private Sector Bonds (Corporate Bonds)

Private sector bonds can be categorized into (traditional) corporate bonds issued by traditional (usually manufacturing) business firms and corporate bonds issued by financial business firms such as commercial banks and specialized credit finance business firms. The bonds issued by financial institutions, such as commercial banks and credit specialized financial business companies (e.g., credit card companies and leasing companies), have long been regarded as special bonds.

For the issuance of bank debentures, Article 33 of the Banking Act stipulates that a bank may issue debentures within the limit specified by Presidential Decree by up to five times its equity capital. A bank can issue bank debentures with a resolution by the board of directors or a general meeting of stockholders.

Corporate bonds can be classified further into guaranteed bonds, collateral bonds, and non-guaranteed bonds.

### i. Guaranteed Bonds

Guaranteed corporate bonds refer to corporate bonds where a financial institution guarantees the redemption of the principal and payment of interest. Such guarantees of the principal and interest payments are provided by banks, the Korea Credit Guarantee Fund, the Korea Technology Finance Corporation, merchant banks, financial investment companies, and surety insurance companies. The issuing company pays a guarantee fee to the guaranteeing company.

### ii. Collateral Bonds

Collateral bonds are secured by physically guaranteeing the redemption of the principal and payment of interest. They are issued in accordance with the Secured Bond Trust Act.

### iii. Non-Guaranteed Bonds

Non-guaranteed bonds are issued based on the issuer's credit without a guarantee provided by a financial institution or collateral provided by the issuer for the repayment of the principal. Most Korean corporate bonds are issued as debentures. The underwriters of the bonds are required to undergo a credit assessment of the debentures from two or more credit rating agencies.

Corporate bond issuances also can be divided into direct issuances and indirect issuances depending on who bears the issuing risk. Please see section E for more information on these methods of issuance.

## 2. Bonds Categorized by Interest Payment

Bonds can also be categorized by their interest payment as either coupon bonds, discount bonds, or compound bonds. Coupon bonds refer to corporate bonds with coupons denoting the payment of interest at a regular schedule. Discount bonds are bonds where the principal and interest rate are stated at par value and the interest is discounted from par value upon purchase. Compound bonds involve the computation of compound interest for the interest cycle. Thereafter, the principal and interest are paid in a lump sum on the date of maturity.

Every KTB and most corporate bonds are coupon bonds. Short-term MSBs and special bonds issued by financial corporations are discount bonds. NHB Type 1 is a representative compound bond.

In addition, there are fixed-rate bonds and floating-rate notes. A fixed-income bond involves the payment of fixed periodic returns, and a floating-rate note has a variable interest rate that is linked to the benchmark interest rate.

## 3. Bonds Categorized by Redemption Period

Depending on the redemption period, bonds can be divided into short-term bonds, medium-term bonds, and long-term bonds. Generally, short-term bonds have redemption periods under 1 year; medium-term bonds, between 1 year and 10 years; and long-term bonds, over 10 years.

MSBs comprise notes with maturities as short as 14 days and bonds with maturities up to 2 years. KTBs are issued with medium- to long-term maturities (see also section 1.a).

#### 4. Bonds Categorized by Embedded Option

Bonds can be categorized by an embedded option as convertible bonds, bonds with warrant, exchangeable bonds, participating bonds, or bonds with a call or put option. Convertible bonds can be converted to the issuing company's equity on certain conditions. Meanwhile, bonds with warrants entitle the holder to purchase a certain quantity of any future issue of the company's stocks at a fixed price after a set period has passed.

Exchangeable bonds permit the holders to exchange their bond holding for the listed shares of a company under previously agreed conditions within a set timeframe. Participating bonds entitle the holder to receive dividends. Bonds with a call option allow the issuer to redeem all or part of the bond before it reaches its maturity date, whereas bonds with a put option allow the holder of the bond the right to demand the issuer to repay the principal on the bond.

#### 5. Issuance Programs

The issuance of bonds or notes by issuers using an issuance program is possible in the Republic of Korea. To create an issuance program, a so-called "universal shelf-registration statement," instead of a standard SRS, needs to be filed with and accepted by the FSC.

#### 6. Bonds Issued by Nonresidents

Nonresidents may issue bonds and notes in the Republic of Korea (see Chapter II.K for details on any specific provisions). KRW-denominated bonds issued by nonresidents are called Arirang bonds, whereas foreign-currency-denominated bonds issued by nonresidents are called Kimchi bonds. Offshore Chinese renminbi bonds issued in the Republic of Korea are considered to be a type of Kimchi bond. As of the end of 2017, four Arirang bonds amounting to KRW170 billion and 12 Kimchi bonds with a combined face value of KRW840 million were listed on KRX.

#### 7. Asset Backed Securities

The issuance of ABS, which are common in the Korean bond market, is based on the provisions of the Asset-Backed Securitization Act enacted in 1998. For more information on ABS, please refer to section P in this chapter.

### C. Money Market Instruments

Money market instruments are short-term financial products. In the Republic of Korea, representative instruments that are actively issued and traded include certificates of deposit issued by banks, and commercial paper and short-term electronic bonds issued by corporations.

#### 1. Instruments Issued by the Bank of Korea

BOK issues MSBs to help absorb liquidity in support of its monetary policy. The issuance is subject to the ceiling on total outstanding volume set every 3 months by the Monetary Policy Committee. MSBs are discount and coupon instruments issued in 13 standardized tenors ranging from 14 days to 2 years, which explains their significant issuance size and turnover in the market. As such, MSBs can be considered both money market instruments and bond market issuances.

Short-term MSBs, which have a maturity of less than 28 days, are issued at irregular intervals depending on market conditions, while the bidding date for MSBs with a maturity of 28 days or longer is pre-fixed every month.<sup>14</sup>

## 2. Instruments Issued by Corporates

Corporations and other businesses operating in the Republic of Korea issue a number of money market-type instruments, such as commercial paper and short-term electronic bonds. These short-term financial instruments are transacted in the debt market along with short-term bonds. They compete in terms of yields as well as market share.

### a. Commercial Paper

Commercial paper is a promissory note issued by a company for the raising of funds required for its business operation. It is a financial instrument typically acquired by a bank (commercial bank or special purpose bank) and is prescribed in Article 4 of the Enforcement Decree of the FSCMA; the bank typically makes a payment on behalf of a company under a commission agreement with the company, who then issues the commercial paper. The commercial paper should be produced in the form of a bill with the words "corporate commercial paper" printed on it.

### b. Electronic Short-Term Bonds

Electronic short-term bonds are issued based on the Act on Issuance and Trading of Electronic Short-Term Bonds, which was enacted in January 2013, to enable a market for a registered form of short-term financial instruments, as an alternative to commercial paper. Electronic short-term bonds are issued at a discount and may be traded in multiples of KRW100 million.

The electronic short-term bonds system was adopted to develop the short-term financial market and lay the foundation for the introduction of electronic securities. Under this system, the issuance, circulation, and exercise of rights of short-term bonds (issued with maturities of 1 year or less for short-term corporate financing) are processed electronically through an electronic registrar.

KSD registers and manages the details of issued electronic short-term bonds through the issuer account book and the account manager's proprietary and client management account books.<sup>15</sup>

## D. Segmentation of the Market

To provide a better illustration of the segmentation of the different types of debt securities issued in the Korean bond market, Table 3.1 gives an overview of the outstanding amounts by type of instrument as detailed in Section B.

<sup>14</sup> Information adapted in part from Bank for International Settlements. 2012. Public Debt and Monetary Policy in Korea. *BIS Paper*. No. 67. <https://www.bis.org/publ/bppdf/bispap67p.pdf>

<sup>15</sup> Specific information on electronic short-term bonds is available from the KSD website at <https://www.ksd.or.kr/eng/static/EB1504000000.home?menuNo=117>

**Table 3.1: Segmentation of the Market—Outstanding Value of Korean Won Debt Securities in the Republic of Korea by Type**  
(as of 31 December 2016)

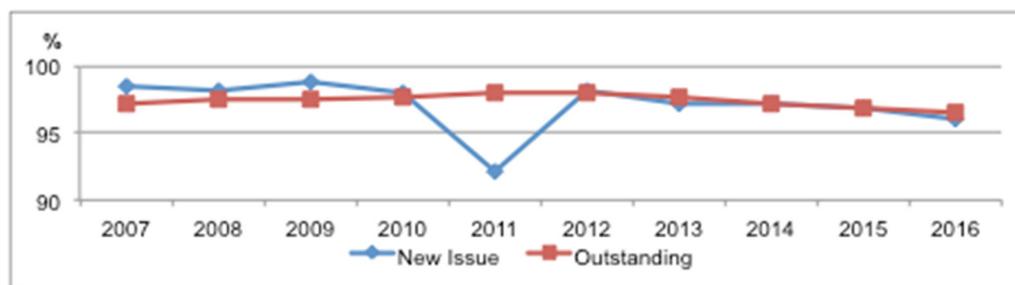
Sector	Type of Bond	Outstanding Amount (KRW trillion)	% of Total
Public	Government Bond	581.3	33.2
	Municipal Bond	21.2	1.2
	Special Bond	336.6	19.2
	MSB	168.4	9.6
Private	Bank Debenture	267.2	15.3
	Other Financial Bond	107.1	6.1
	Corporate Bond	225.6	12.9
	ABS	43.3	2.5
	Total	1,750.6	100.0

ABS = asset-backed securities, MSB = monetary stabilization bond.

Source: Korea Financial Investment Association. <http://www.kofiabond.or.kr/>

As a further distinction in the bond market in the Republic of Korea, the proportion of issuance of bonds or notes via private placement has generally been less than 4% of the overall bond issuance volume (Figure 3.1).

**Figure 3.1: Proportion of Publicly Offered Bonds in the Republic of Korea**



Source: Infomax. <http://yonhap.einfomax.co.kr/newinfomax/>

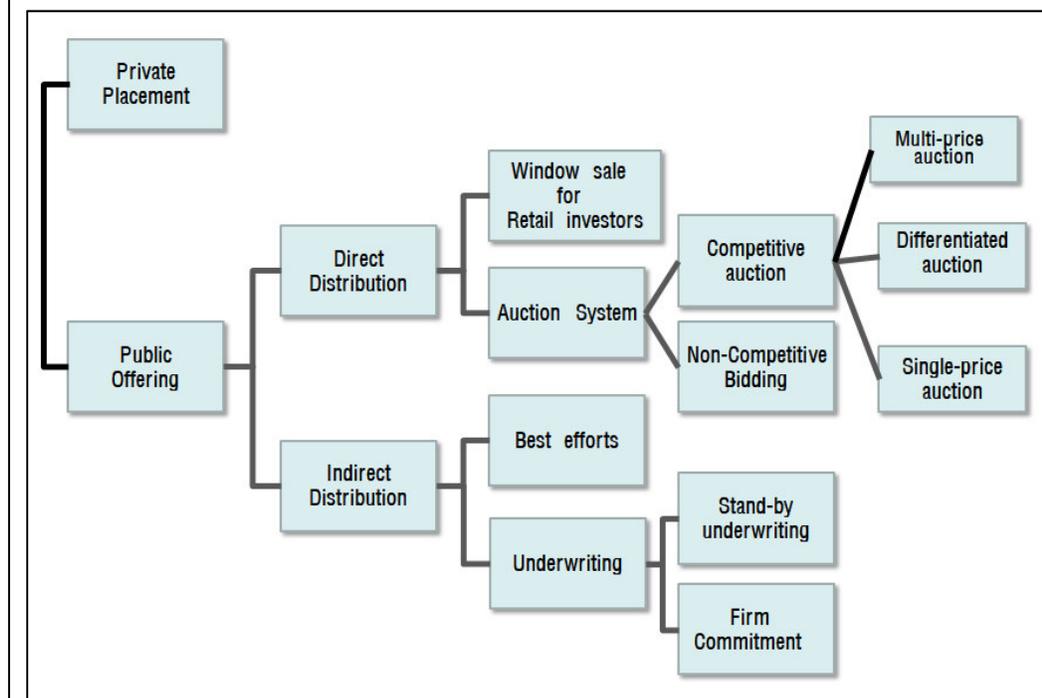
## E. Methods of Issuing Bonds and Notes (Primary Market)

The Korean bond market offers a number of issuance methods for bonds and notes, often depending on the individual types of bonds and notes, and as prescribed in regulations or by the respective SRO, or as evolved in market practice.

### 1. Overview of Issuance Methods

In the Republic of Korea, bonds and notes are issued by either public offering or private placement. These issuance methods are divided into direct distribution and indirect distribution depending on the involvement of a financial institution, which acts as a managing company during the issuance process (Figure 3.2).

Figure 3.2: Overview of Bond Issuance Methods in the Republic of Korea



Source: Korea Financial Investment Association.

Debt securities issued by the public sector, such as government bonds and bonds issued by public corporations, are issued via the direct distribution method. KTBs are issued regularly to Primary Dealers and Preliminary Primary Dealers through the electronic auction system that is part of BOK Wire+. In these cases, competitive auction is the usual issuance method, in particular when involving institutional investors. KTB and MSB issuances are the representative examples of competitive auction.

The institutional investors who want to invest large amount of bonds need to participate in the auction. Investors interested in smaller investment sizes may participate in issuances via the window sale or noncompetitive bidding methods.

## 2. Issuance Methods by Issuer Type

Issuance methods in the Korean bond market may differ by the type of debt securities as well as the issuer of the debt securities. This section will focus on the different methods used in each case.

### a. Government Securities

Government bonds, such as KTBs and MSBs, are issued via auction. There are two main types of auction: multiple price auction and uniform price auction.

#### i. Multiple Price Auction

In a multiple price auction, an issuer orders bids by price (yield) in descending (ascending) order and accepts the higher (lower) bids until the issue is exhausted. Each successful bidder pays the price they bid.

However, the auction tends to shift the demand curve down and to the left for a given quantity, for bidders bid more cautiously in the auction. Bidders who paid higher prices may face larger capital losses if the trading in these securities occurs below the price the bidder paid at the auction. This method was used before August 2000.

#### ii. Uniform Price Auction

In uniform price auctions, an issuer, just like in multiple price auction, orders bids in descending order and accepts those that allow full absorption of the amount up for issue. However, all winning bidders pay the price of the lowest successful bid in the uniform price auction.

#### iii. Differential Auction

A differentiated auction is a mixture of the two main methods. In this method, the accepted bid yield is determined by categorizing all bid yields into groups at intervals of 2 basis points in descending order, and by selecting the highest bid yield in each group (Figure 3.3).

#### iv. Noncompetitive Bidding

Noncompetitive bidding is classified into three categories; (i) noncompetitive bidding for general investors (e.g., individuals and corporations) who are not qualified to participate in competitive bidding; (ii) noncompetitive bidding which is given as an option to the KTB Primary Dealers participating in competitive bidding; and (iii) noncompetitive bidding of the STRIPS dealers who are required to perform the stripping (separating the coupon from the bond itself) of the KTBs.

**Figure 3.3: Method of Determining Successful Bidding Yield**

- ▶ The highest cut-off yield : 5.055% of primary dealer G
- ▶ Grouping : (5.055~5.040%), (5.035~5.020%), (5.015%~5.000%)
- ▶ Cut-off yields

PD	Bid yield	Cut-off yield		
		Differential Pricing Auction Method	Dutch	Conventional
A	5.005%	A,B : 5.015%	All 5.055%	A : 5.005%
B	5.010%			B : 5.010%
C	5.025%	C,D : 5.035%		C : 5.025%
D	5.030%			D : 5.030%
E	5.040%	E,F,G : 5.055%		E : 5.040%
F	5.050%			F : 5.050%
G	5.055%			G : 5.055%

Source: Ministry of Strategy and Finance. <https://ktb.mosf.go.kr/eng/>

Before August 2000, KTB issuance was conducted by multi-price auction. Since then, the single-price auction has been used for the issuance of KTBs. Non-financial special purpose bonds also tend to be issued in this manner. The differentiated auction method was introduced in September 2009 to fix the problems inherent to the multi-price auction method, as well as those using single-price auction.

## b. Corporate Bonds and Notes

For corporate bond issuances in the Republic of Korea, financial institutions, such as financial investment companies and KDB, play key roles as managing companies. A managing company carries out the administrative process for issuance and pricing the new issue. In addition, the company assigns parts of the new issue to the other underwriters.

### i. Underwriting

Most corporate bonds are issued by firm commitment in the Republic of Korea, which means that the issuance of a corporate bond is mostly made through an indirect issuance method where the managing company also bears the issuing risk. In firm commitment underwriting, the managing company or underwriter guarantees to purchase all the securities being offered for sale by the issuer, regardless of whether they can sell them to investors.

In best-effort underwriting, however, the managing company or underwriter will do their best to sell all the securities that are being offered by the issuer. Nevertheless, there is no obligation for the managing company or underwriter to purchase the securities for their own account. Any bonds in a best-effort underwriting that have not been sold will be returned to the issuer.

The stand-by underwriting method is the mixture of the two methods. The managing company that enters into a stand-by underwriting agreement will purchase any securities that are not sold to the public. The stand-by underwriter will then resell the securities to the public.

The issuance of financial corporate bonds tends to be dependent on the use of shelf-registration. Large financial institutions using shelf-registration, such as commercial banks, tend to formally issue their bonds through the firm commitment underwriting of a lead managing company. However, the firm commitment by the lead managing company is made after bids from other managing companies and securities firms for their own or on behalf of institutional investors have been received.

At the same time, financial corporate bonds by smaller-sized financial institutions, with smaller issuance amounts and lower issuance frequency tend to be issued through individual underwriting contracts with a small number of managing companies.

### ii. Book-building

Book-building is an integral part of the offer or sale of debt securities in the Korean market. KOFIA has stipulated rules for mandatory book-building in offers for all its constituents.

Conducting a book-building process is mandatory when offering non-guaranteed corporate bonds to the public. The lead managing company is required to perform such book-building process in order to determine at which price or yield an IPO is to be offered. This process is included as an obligation under the lead managing company's contract with the issuer. The lead managing company is also

mandated to record details regarding its pricing decisions based on the outcome of the book-building process; these details are to be included in the securities registration process.

### iii. Direct Sale

Special purpose bonds are usually issued to institutional investors by way of auction. At the same time, these bonds are also issued to general investors who want to invest for savings purposes. In that case, the bonds are sold directly to the investors at the counters of issuers who are mostly special purpose banks, and issuance terms such as maturity and coupon rate are predetermined. However, this type of issuance is very small in comparison to other issuance methods and, hence, has little significance in the overall issuance volume.

## 3. Issuance Methods by Disclosure Type

The major issuance methods for debt securities in the Korean bond market also differ in the type and amount of disclosure that the issuer is required to provide, whether to the regulatory authorities, an indenture trustee, a listing place, or directly to investors. The most common methods distinguished by disclosure are public offers and private placements. In addition, issuers or intermediaries may decide to issue debt securities via a window sale (e.g., a bank counter) or directly to investors.

### a. Public Offer

In practice, issuers with large issuance volumes, such as financial institutions, tend to use a universal shelf-registration statement, which states the total amount of securities to be publicly offered en bloc over a certain period. If the statement is accepted by the FSC, such securities may be publicly offered or sold without submitting a securities registration statement each time the securities are publicly offered or sold during the period. Please also see Chapter II.F for a complete description of the regulatory process for issuance of debt securities via public offering.

### b. Private Placement

Issuance via private placement is assumed to be deficient of information on the bond and the issuer compared to publicly offered issues. For that reason, privately placed issues have a 1-year resale restriction from the date of issuance. The restriction tends to make it difficult for SMEs to issue corporate bonds in the Republic of Korea. Thus, institutional improvements were made to promote issuance of corporate bonds by SMEs.

## F. Governing Law and Jurisdiction (Bond and Note Issuance)

Governing law and the jurisdiction for specific service provisions in relation to a bond or note issuance may have relevance since potential issuers may consider issuing under the laws or jurisdiction of a market other than the place of issuance. The choice of governing law or the contractual preferences of stakeholders can affect the accessibility to a specific investor universe that may otherwise not be accessible if a bond or note were issued under the laws of the place of issuance.

The provisions for the use of governing law for the issuance of debt securities in the Korean market depend on the nature of the offerings, as described below.

In any case, the actual use of governing laws or jurisdictions other than those of the Republic of Korea may be subject to clarification or legal advice from a qualified law firm, as may be necessary.

### **1. Public Offers**

When issuing a bond or note to the public in the Republic of Korea, the choice of governing law and jurisdiction is limited to the laws of the Republic of Korea and Korean courts, respectively.

### **2. Offers Registered on the QIB Market**

The governing law and jurisdiction, with respect to the terms and conditions of the bonds or notes, may be agreed among the contracting parties, subject to relevant provisions in applicable laws and regulations.

Provisions for QIB Market-eligible debt securities to be registered with KOFIA may be determined with elements of intraregional bond markets or practices, as well as general international capital market agreements.

The provisions for and registration on the QIB Market are based on the applicable regulations for the Korean capital market, such as the Regulations on Issuance, Public Disclosure, etc. of Securities and the Enforcement Rules and Decrees of the FSCMA.

### **3. Arirang Bonds Issued by Nonresidents**

An Arirang bond is a KRW-denominated bond issued by a foreign entity in the Republic of Korea. Similar to domestic issuers, the issuance of Arirang bonds by nonresident issuers is also governed by Korean law since they are considered domestic bonds.

For instance, in the case of nonresident-issued Arirang bonds, the considerations for investor protection in the domestic Korean market as the place of issuance and sale dictate Korean law as the governing law, and jurisdiction rests with Korean courts. From this point of view, for bonds and notes settled in the Republic of Korea (Korean domestic bonds), KSD requires that the terms and conditions of the notes shall be governed by Korean law.

## **G. Language of Documentation and Disclosure Items**

The language of documentation for bond and note issuance, as well as the related initial and continuous disclosure items, is a significant factor of consideration for issuers.

English is the preferred language for most issuers, simply because it allows the issuers to reuse documentation already issued in international markets. However, each domestic bond market in ASEAN+3 may require the submission of approval-related information in their prescribed format and in the local language, particularly in the case of offers to the public or retail investors.

### **1. Public Offers**

If bonds or notes are intended to be offered to the public in the Republic of Korea, issuers or their agents are required to produce the relevant documentation and disclosure items in Korean.

At the same time, the possibility exists for the issuer or their agents to produce documentation in English, for example, in the form of a summary of the disclosure information, such as the short-form investment prospectus. English documentation and disclosure items may also be submitted via the Data Analysis, Retrieval, and Transfer System, or DART, the filing system for SRS for public offerings of bonds and notes. Users can enquire on English documents in the system, as they are marked as such.

## **2. Private Placements**

In the case of a private placement of bonds or notes in the Republic of Korea, issuers or their agents may provide documentation in Korean or English, or a combination of both languages. The key driver for the language of documentation is likely to be the targeted investor universe for the private placement.

## **3. Bonds Registered on the Qualified Institutional Buyer Market**

KOFIA launched the QIB Market debt securities registration and disclosure platform on 1 August 2016. Documentation and disclosure items in English are now accepted by KOFIA. For foreign issuers, the submission of documentation and disclosure information in English became available for the first time in the Republic of Korea.

## **4. Bonds Listed on Korea Exchange**

When a Korean corporation makes continuous disclosure for listed bonds to KRX, it is required to disclose such information in Korean and, if necessary, may disclose the same in English within 1 week. A foreign corporation is required to make timely disclosure in Korean as well. However, if inevitable (e.g., in a case where KRX deems that the issuer cannot make disclosure in Korean in a timely manner), the issuer is required to disclose in English first and then in Korean without delay (i.e., as soon as possible).

# **H. Registration of Debt Securities**

A registration of securities in a given market is typically carried out with the objective of introducing newly issued securities to the market, achieving issuance approval, facilitating information disclosure, or establishing proof of ownership. This section explains the registration concepts evident in the Korean bond market.

The term registration for debt securities in the Korean market is used in two forms, each having a particular purpose in the context of the bond market or securities market at large. Debt securities must be registered with KSD to be eligible for settlement in the Korean market and to be able to track ownership. On the other hand, specific QIB-Market eligible debt securities may be registered with KOFIA to be traded in the OTC market, and to fulfill the intended market information and disclosure obligations of the issuers.

The term registration is not used for debt securities traded on KRX since the listing process fulfills the underlying requirements for disclosure and market transparency.

The term registration is also used in the context of an issuance application to the FSC for debt securities to be offered to the public, via a securities registration statement. This registration and approval process is described in great detail in Chapter II.F.

### 1. Registration of Debt Securities at Korea Securities Depository

Debt securities issued in the Korean market must be registered at KSD to be eligible for settlement in the bond market, regardless whether such debt securities are to be traded in the OTC market or on the exchange.

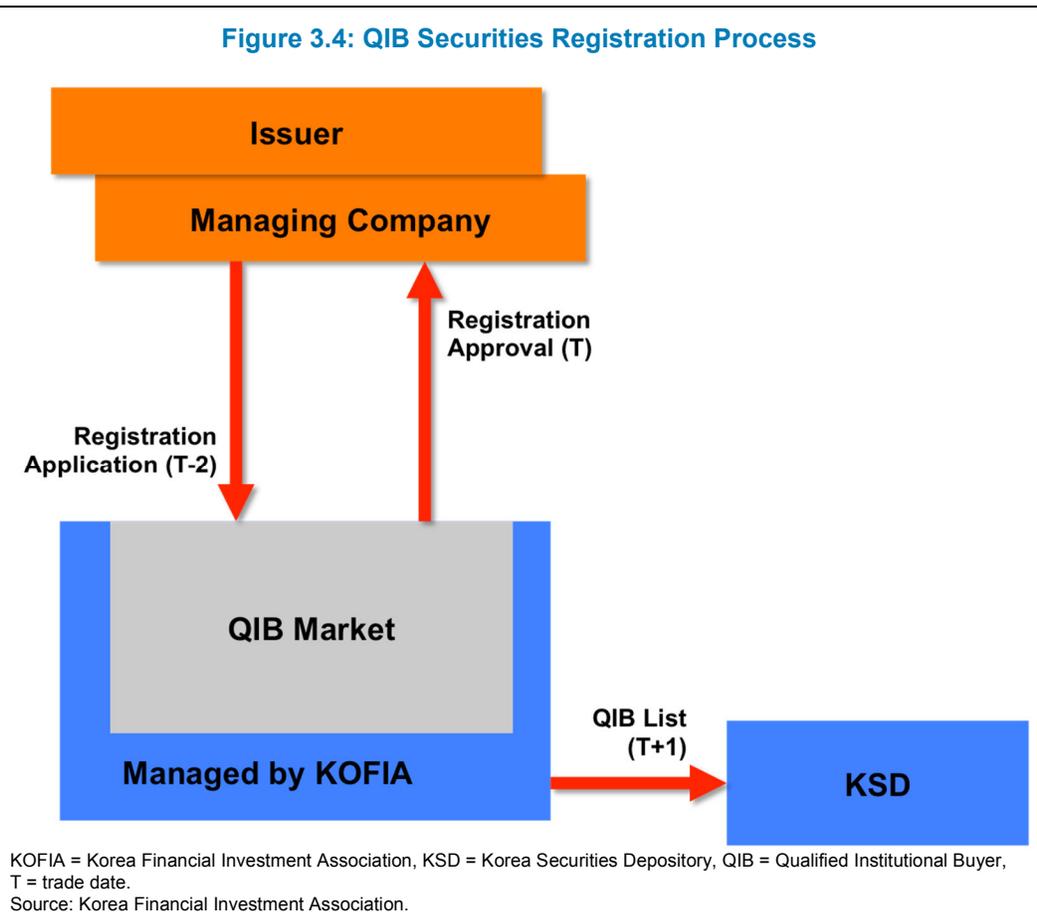
The registration is required since KSD creates and maintains the book-entry records of holdings and ownership of the debt securities—in fact, all securities—in the accounts of its participants and their underlying clients. Transactions in the participant accounts of KSD’s book-entry system enjoy settlement finality and constitute the legal ownership records of the investors (see also section L in this chapter).

KSD also sets systematic restrictions to ensure QIB securities are traded only among QIBs registered with KOFIA (see also next section). To be able to ensure compliance, KOFIA sends a list of QIBs and their KSD account numbers to KSD on a daily basis.

### 2. Registration of Debt Securities in the QIB Market

KOFIA, as the administrator of the QIB Market, is responsible for the registration and management of QIB securities, as well as the actual investment participants of the market, the QIBs (see Chapter III.N.2 for more information on QIBs). The QIB Market is the bond market segment for professional investors and represents a subset of the OTC market in the Republic of Korea. At present, QIB securities are not able to list on KRX.

**Figure 3.4: QIB Securities Registration Process**



Debt securities intended to be traded among QIBs must be registered with KOFIA, subject to the provisions for QIB-eligible securities. The same debt securities must also be registered with KSD to be eligible for settlement (see previous section).

KOFIA requires the issuer or the appointed managing company to submit a registration form, together with the relevant supporting documents. The registration may be done electronically, via KOFIA's online registration platform. As a separate step, KOFIA provides a list of QIBs to KSD to ensure that trades in QIB securities may only be settled among QIB accounts (Figure 3.4).

If an issuer registers an issuance limit for QIB securities (based on the unredeemed balance) with KOFIA in advance, issuance will be allowed at any time with streamlined documentation. The approach is similar to issuance under an MTN program or a note issuance program.

## I. Listing of Debt Securities

If an issuer wishes to list its debt securities in the Korean market, a listing is available on KRX. The listing process is divided into two distinct parts: (i) the review of listing eligibility of both the issuer and the debt securities to be issued, and (ii) the actual listing application and approval. The listing process on KRX is subject to the KRX Listing Rules (official name: KOSPI Market Listing Regulation).

Listing is not mandatory for debt securities in the Korean market, including in the case of a public offer, but debt securities must be listed on KRX to be tradeable on the exchange markets. In 2017, 92% of publicly offered bonds were listed on KRX. A listing application should be made only once the SRS has been accepted by the FSC.

Nonresident issuers may also list their debt securities on KRX, but will have to fulfil additional requirements compared to the bond listing requirements for a Korean domestic issuer. As per domestic issuance requirements for KRW-denominated bonds and notes, a foreign bond issuer should also submit an SRS to the FSC.<sup>16</sup> However, the nonresident issuer will need to obtain the prior consent of MOSF. And after its issuance, the foreign issuer should submit a securities issuance report, which contains details of the foreign bonds, issuance cost, and the amounts acquired by each of the appointed underwriters. Bonds issued by a foreign corporation in the Korean bond market are typically referred to as Arirang bonds.

### 1. Regulatory Process for Listing of Corporate Bonds and Notes

Bonds and notes listed on KRX can be traded in the KRX bond market, which has four segments: (i) KRX KTB, which is an interdealer market specializing in KTB trading; (ii) KRX BondsAll, which is an open market for all market participants including individual investors; (iii) KRX Repo, and (iv) KRX LPB, which is a License and Permit Bond market for individual investors. For detailed explanations of these market segments, please refer to Chapter IV.

The listing of debt securities on KRX is subject to the provisions of Part III in the KRX Listing Rules and a prior assessment based on eligibility criteria.<sup>17</sup>

<sup>16</sup> KRX limits foreign corporations eligible for listing their bonds to international financial organizations, foreign governments, corporations that have listed stocks on foreign exchanges, and corporations that have listed foreign stocks on KRX.

<sup>17</sup> Korea Exchange. KOSPI Market Listing Regulation. <http://global.krx.co.kr>

To be eligible for an initial listing of non-guaranteed debt securities on the KRX bond market, the following requirements should be satisfied: (i) the issuer's equity should be more than KRW500 million, (ii) the bonds should be issued through a public offering, and (iii) the face value of the bonds or notes should be higher than KRW3 million.

For an initial listing of debt securities by foreign issuers, there are additional requirements: (i) the firm's equity should be more than KRW10 billion; (ii) the bonds should be registered with KSD; (iii) the face value of the bonds or notes should be higher than KRW10 billion; (iv) the issuer should have its stock listed on a foreign or Korean exchange, or should have issued its stock through a public offering; and (v) the bonds should carry an investment grade rating (BBB or above).

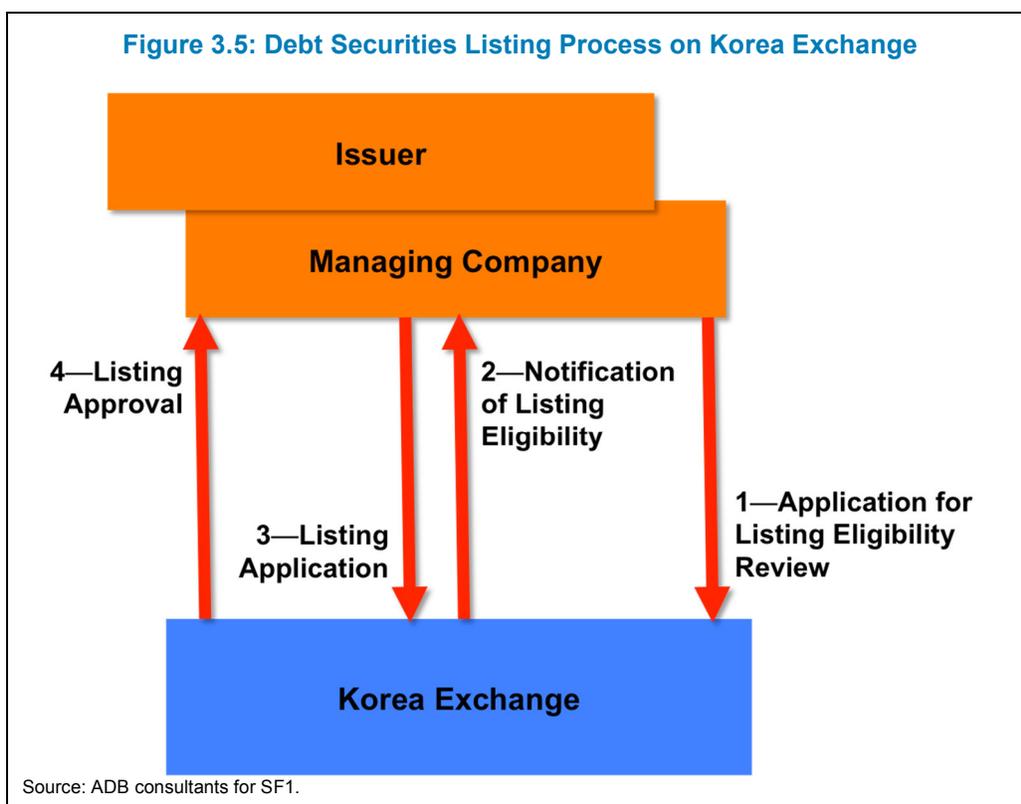


Figure 3.5 displays an overview of the individual steps to be taken by issuers. These steps are further detailed in the subsequent text.

A nonresident issuer will need to file a proposed debt securities issuance schedule with MOSF before embarking on the listing process and before issuance.

#### Step 1—Listing Eligibility Review by Korea Exchange

KRX expects every prospective foreign issuer of to-be-listed debt securities to consult with KRX for a listing eligibility review as a first step. The issuer will be informed of the required listing documents and disclosure items by KRX (see specific eligibility criteria for foreign issuers in the earlier part of this section).

After consultation, the foreign issuer will submit the listing documents to KRX. KRX does not charge for the listing eligibility consultation for foreign issuers.

### Step 2—Initial Listing Application to Korea Exchange

Equipped with a confirmation of listing eligibility, the issuer may file an application for initial listing. KRX expects the issuer to make use of its online bond listing system.<sup>18</sup> All listing proceedings are conducted via KRX's bond listing website.

There are no qualitative requirements for a bond listing. There are only quantitative requirements such as an issuer's minimum equity and a bond's minimum face value. KRX may also request additional information to aid it in the decision-making process. Supplementary documents may be submitted in physical form or by fax, or when the SRS is uploaded to the bond listing system.

The listing application procedure allows for a prospective issuer to designate a bond's listing date, except for on the day of the application submission itself.

Since most of the relevant information has already been submitted to KRX as part of the listing eligibility review, the listing application is straightforward and the review timeframe is short.

### Step 3— Review of Application and Listing Approval

Provided that the initial listing application is complete and all necessary requirements set out in the KRX (KOSPI Market) Listing Rules have been complied with, KRX will be able to review the application and communicate the listing approval within 1 business day.

A listing approval email will be sent to the applicant, which at present is only available in Korean.<sup>19</sup> The listing approval information will also be sent to information vendors and can be found on the KRX website on the day of approval.

KRX charges a listing fee and annual dues. For details of listing-related fees, please refer to Chapter VI or the KRX website.<sup>20</sup>

### Step 4—Actual Listing and Trading

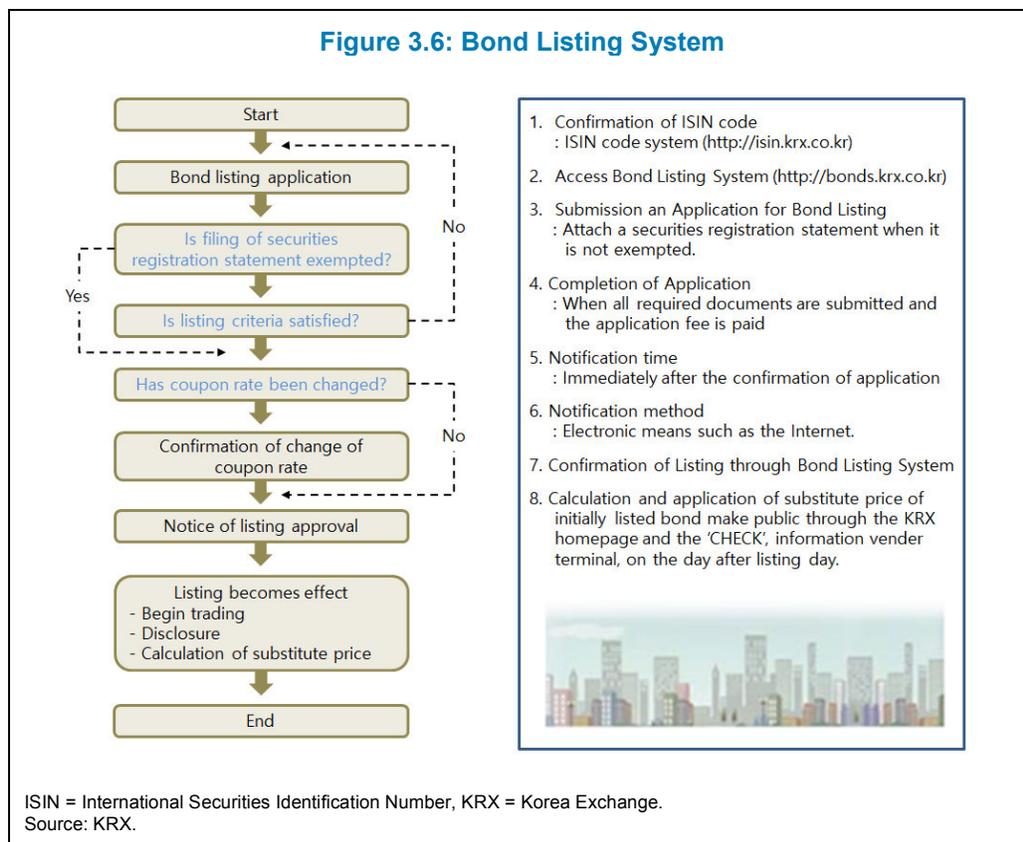
The actual listing is effective upon the listing date indicated in the approval from KRX and trading may commence on the day of listing, following an official announcement on the KRX website. There is no defined cooling-off period between listing approval and actual listing.

Some of the detailed information and steps to be completed in the bond listing system are shown in the schematic in Figure 3.6.

<sup>18</sup> See <http://bonds.krx.co.kr/main/main.do>

<sup>19</sup> See <http://bonds.krx.co.kr/main/main.do>

<sup>20</sup> See <https://global.krx.co.kr/contents/GLB/03/0305/0305010000/GLB0305010000.jsp>



## 2. Other Listing Activities on Korea Exchange

In addition to the listing of debt securities described above, there are also other types of listing activities on KRX.

### a. Shelf-Listing of Debt Securities

NHBs and some municipal bonds (e.g., provincial development bonds and metropolitan city subway bonds) are shelf-listed. Shelf-listing is applied to the listing of government bonds, municipal bonds, and special bonds that were issued on a certain day of each month and then distributed throughout the year. The issuance schedule of these types of bonds for the following year will be determined at the end of each year. The listing of NHBs and shelf-listed municipal bonds is handled by KRX. On the first day of each month, KRX lists NHBs and shelf-listing municipal bonds, and adjusts listing amounts every day upon receiving the notices of issuance amounts. The documents required for a shelf-listing are an application for a shelf-listing, a confirmed issuance schedule, and a report on the result of the issuance. The listing application and attached documents for shelf-listing can be submitted online, via the KRX bond listing system.

### b. Re-Listing

A bond or note de-listed for a valid reason may be re-listed on the KRX bond market. To be re-listed, the face value of such bonds or notes should be more than KRW300 million and a bond or note and its issuer should no longer satisfy the de-listing conditions at the time of applying for a re-listing. The issuer should submit an application for re-listing, an approved recent audit report, and documents proving that the de-listing conditions no longer exist.

#### c. Supplementary Listing

If an issuer of a listed bond or note intends to issue bonds or notes of the same class as the bond or note already listed, the issuer should submit to KRX an application for supplementary listing and attach relevant documents in a bid to increase the amounts of the bonds and notes already listed. All bond issuance terms will remain unchanged except the listed face amount.

#### d. Listing Change

If an issuer of listed debt securities decides to change its name, the issuer should submit to KRX an application for a listing change and attach relevant documents to substantiate the change of its name and the designation of its bonds or notes.

#### e. De-Listing

KRX may de-list a bond or note that may no longer be eligible for listing on the KRX bond market in cases such as (i) where an issuer's equity falls below KRW500 million; (ii) where, in the most recent annual report, the auditor's audit opinion comes under any of the Disclaimer, Adverse, or Qualified categories, depending on the limitations on the scope of audit; (iii) bankruptcy of the issuer; and (iv) a court has made a decision to turn down the application for commencement of rehabilitation procedure of the issuer.

### 3. Listing of Government Bonds

Government bonds are listed upon receipt of the listing application without a listing examination. Of the government bonds issued presently, Treasury bonds and foreign exchange stabilization bonds are listed on the issuing day according to the regulations governing the shelf-listing of bonds; NHB Types 1 and 2 are listed on the first day of each month.

The listing of Treasury bonds and foreign exchange stabilization bonds is facilitated by BOK, as the issuing agent, over the Internet. The listing of NHB Types 1 and 2 is based on the application for shelf-listing for bonds scheduled to be issued during the following year at the end of each year. KRX lists the scheduled quantity on the first day of each month and adjusts the listing value upon receiving the notices of issuance value following confirmation of such bond issuance for the current month.

### 4. Listing of Municipal Bonds

Similar to government bonds, municipal bonds are listed without listing examination, taking into account their public benefits. The listing of shelf-listed municipal bonds (i.e., provincial development bonds and local subway bonds) is handled by KRX in the same manner as described for NHBs above and the listing of bonds issued through a public offering is handled in the same manner as the listing of corporate bonds.

The documents required for a listing application for provincial development bonds and subway bonds are an application for a shelf-listing and a report on the result of the issuance. The documents required for a listing of municipal bonds issued through a public offering include an application for listing, a trust deed, the underwriting agreement or sales contract, and a copy of an agreement on the offering on commitment, in cases where the bonds are issued through an indirect offering. As for

corporate bonds, the listing application for municipal bonds can be submitted online via the KRX bond listing website.

## 5. Listing of Debt Issuance Programs

The listing of debt issuance programs follows a process similar to the one described for shelf-listing above.

## J. Methods of Trading Bonds and Notes (Secondary Market)

Bonds and notes issued in the Korean bond market may be traded OTC or on the exchange. Similar to other bond markets, the OTC market represents the dominant volume of bond and note trading. However, in the Republic of Korea, bond trading on the KRX has maintained a significant portion of overall trading, accounting for 40% of the overall trading volume in 2016 (please also see Chapters I and IV for details).

The individual methods are briefly described in the sections below and are further detailed in the applicable sections of Chapter IV. All debt securities traded in the Korean bond market are settled through KSD.

### 1. Trading in the Over-the-Counter Market

The OTC market is administered by KOFIA and populated by institutional investors only. The OTC market is, in effect, divided in the normal OTC market and the QIB Market, which only trades QIB Market-eligible securities (see also Chapter II.F).

Participants in the OTC market trade using the K-Bond trading platform and other trading tools. Almost all OTC trading in the Korean bond market is conducted on K-Bond, where trading is made by negotiation among the market participants.

The bonds traded on K-Bond are mostly publicly offered bonds and notes listed on the exchange, such as government bonds, special bonds, and large-issue sized corporate bonds.

QIB Market participants must be QIBs themselves and register as such with KOFIA to be able to be traded on the QIB Market.

### 2. Trading on Korea Exchange

Investors can also trade bonds on KRX, in one of its four market segments. Bonds traded on KRX should meet certain requirements for listing that KRX imposes; key among them is the requirement to have been issued via a public offering.

Bond trading is carried out through the electronic trading system in the KRX bond market. The electronic trading system collects all quotations and displays them on trading screens in real time; trades are executed electronically. The KRX bond market offers straight-through processing from quotation searching to trade execution to downstream functions like clearing and settlement. KRX also acts as central counterparty for each trade.

The actual trading of debt securities on KRX occurs on KRK KTB and KRX BondsAll. KRX KTB is not limited to exchange members and is populated by institutional participants, such as banks and investment companies, and includes the Primary Dealers. KRX BondsAll caters to ordinary investors who must use exchange members (i.e., brokerage companies) to trade debt securities. KRX BondsAll transactions are traded in smaller denominations, in line with the investor profile.

The bond market segments on KRX are further explained in Chapter IV.

## K. Bond and Note Pricing

Following the 1997/98 Asian financial crisis, the Government of the Republic of Korea introduced MTM valuation in November 1998 to improve transparency in trust asset management, secure investor confidence, and enhance the asset quality of financial institutions.

### 1. Bond Pricing Agencies

The Korean market features a number of dedicated bond pricing agencies, in addition to KOFIA and KRX, who provide bond pricing information for instruments and transactions on their respective platforms. KIS Pricing, KBP, and NICE Pricing Service provide pricing services on the back of their original function as credit rating agencies (Table 3.2). In April 2012, Fn Pricing began to provide MTM base yields as well.

**Table 3.2: Bond Pricing Agencies in the Republic of Korea**

Name	KAP	KIS Pricing	NICE P&I	Fn Pricing
Capital	KRW5.3 billion	KRW3.0 billion	KRW3.0 billion	KRW5.0 billion
Largest Shareholder	TWOSUN PEF1	KIS	NICE	Fn Guide

KRW = Korean won.

Note: Company names are reflected as used in the market.

Source: ADB consultants for SF1.

### 2. Korea Financial Investment Association

KOFIA does not serve as a bond pricing agency itself, but monitors the relevance and accuracy of the prices calculated by the bond pricing agencies. In addition, KOFIA announces a daily MTM benchmark yield table that provides the standard for the appraised prices calculated by the bond pricing agencies for each type, maturity, and day.

KOFIA calculates such MTM prices for each type of bond based on two or more bond yields provided by the three domestic bond-rating companies—KIS Pricing, KBP, and NICE Pricing Service—who also provide pricing services (see also Chapter IV.G).

Furthermore, KOFIA monitors the validity of the valuation price provided by each bond rating company, as per the Regulations on Business Conduct and Services of Financial Investment Companies. The results are reported to each company and the FSS and posted on KOFIA's Bond Information Service website every quarter.<sup>21</sup>

### 3. Korea Exchange

KRX provides information on average yields and prices of bonds rated by the three major bond credit rating agencies to help bond investors make decisions. Information on all bonds listed on the KRX market is provided and, particularly, conversion prices and current prices of the underlying equity for equity-related bonds. KRX also discloses credit ratings, credit rating methodologies, and substitution prices of bonds,

<sup>21</sup> See [www.kofiabond.or.kr](http://www.kofiabond.or.kr)

among other information. For more details on the bond-related information provided by KRX, please see Chapter IV.

KRX also features market-maker programs to help determine interest rates in the secondary market. On KRX KTB, 17 Primary Dealers and 4 pre-Primary Dealers are engaged in the market-maker program for 6 on-the-run KTB issues and over 40 off-the-run KTB issues. On KRX BondsAll, 24 market makers are engaged in market-making for over 15 listed bonds daily, regardless of the type of bond.

## **L. Transfers of Interests in Bonds and Notes**

All debt securities to be settled in the Korean bond market will have to be registered at KSD (see also section H in this chapter), regardless whether the debt securities are intended to be traded OTC or on the exchange. Since the Korean market is immobilized, any physical certificates will need to be deposited into KSD to be eligible for settlement.

In its book-entry system, KSD keeps the electronic records of ownership of the bonds and notes deposited according to the account names maintained by its participants on behalf of the underlying investors. Foreign investors must keep securities accounts with their custodian and corresponding accounts at KSD in a name that matches their IRC (see also Chapter II.M).

### **1. Settlement of Transactions and Finality**

The settlement of a transaction results in the transfer of (debt) securities in the KSD book-entry system from the account of the KSD participant acting for the seller to the account of the KSD participants acting for the buyer, with a corresponding transfer of the resulting cash amount in reverse for a delivery-versus-payment transaction. KSD guarantees the finality of the settlement once the corresponding account entries have been effected.

Settlement from trades originating from the exchange bond market are seamlessly transmitted to KSD by KRX, while OTC trades require the separate capture of settlement instructions into the KSD system by the settlement agents for the trade counterparties.

### **2. Other Transfers**

Transfers between participant accounts at KSD, and corresponding changes in the interests in or beneficial ownership of debt securities, may also occur as a result of other transaction types, such as repo, securities borrowing and lending, or margin transactions. Details on repo and securities lending transactions are explained in Chapter IV.

Other transfers may include a transfer of ownership between related parties, if not so prohibited (see next section), or as the result of a gift, bequest, or inheritance.

### **3. Transfer Restrictions**

Restrictions on the book-entry transfer of securities are listed in Article 24 of KSD's Regulation on Deposit Service for Securities. These include securities yet to be available for transfer, those due for redemption, or those pledged by the account holder for other purposes.

## M. Market Participants

Bond market participants in the Republic of Korea consist of a number of significant types of issuers and investors. Bond market investors are typically institutional investors, whether domestic or from overseas.

In addition, the market features a number of market institutions and infrastructure for the issuance, trading, and settlement of bonds.

### 1. Issuers

Issuers in the Korean bond market are legal entities that can issue bonds and notes, as prescribed in Article 4 (3) of the FSCMA. These entities include the Government of the Republic of Korea, local governments, financial or nonfinancial government agencies, and financial or nonfinancial business corporations.

### 2. Guarantor

Guarantors for bonds are responsible for the payment of interest and principal. Before the 1997/98 Asian financial crisis, the role of guarantors was important because a substantial part of new issues consisted of corporate bonds guaranteed by financial institutions.

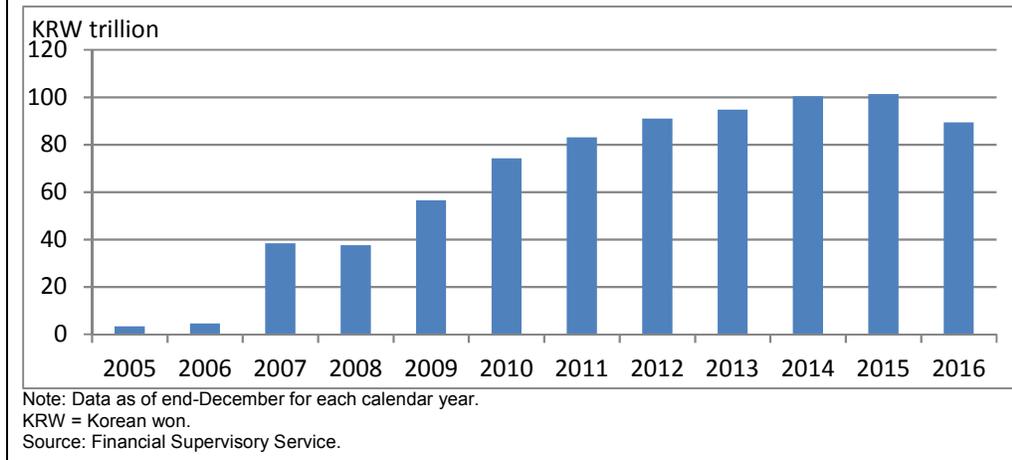
The role of guarantors is still important in the case of ABS, especially in cases where underlying assets are financial instruments issued by SMEs. Guarantors active in the Korean market include the Korea Credit Guarantee Fund, the Korea Technology Credit Fund and commercial banks, as well as financial investment companies. The ability to conduct guarantee business is subject to authorization by the relevant regulator; a financial investment company must be authorized by the FSS.

### 3. Investors

Investors can be categorized into ordinary investors and professional investors. A professional investor means any entity that has an ability to take risks accompanying an investment in light of the expertise held in connection with financial investment instruments and the scale of assets owned. In contrast, ordinary investor means any investor other than a professional investor.

Foreign investors are also an important part of the Korean bond market. Despite some procedural conditions for investment such as the foreign investor registration with the FSS, there is no fundamental distinction between domestic investors and nonresident investors in terms of regulative aspects.

Until the mid-2000s, investment in bonds by foreign investors was not significant. Since then, investment in the bond market has increased rapidly, amounting to KRW101 trillion as of December 2015, which accounted for around 6% of total bonds outstanding at the time (Figure 3.7).

**Figure 3.7: Bond Market Investment by Foreign Investors**

#### 4. Parties Involved in Debt Securities Issuance

A number of intermediaries provide services to issuers and investors in the context of the issuance of debt securities in the Korean bond market. The following text provides a brief description of the type of intermediaries and their specific functions.

##### a. Primary Dealers

The Primary Dealer concept in the Republic of Korea was introduced in 1999 to promote the market for KTBs. Primary Dealers enjoy privileges in the primary market, including exclusive underwriting rights for government bonds and a standing borrowing arrangement. At the same time, Primary Dealers are obliged to fulfill specified duties in the secondary market. At the beginning of October 2016, there were 19 Primary Dealers—10 securities companies and 9 banks.

##### b. Managing Company

A managing company in the Korean bond market is a financial entity that makes a decision on the terms and conditions of underwriting securities to be publicly offered or sold at the request of the issuer or seller of the securities. The managing company manages all business affairs related to the public offering or sale, including the underwriting of the securities. In cases when there is more than one managing company for a public offering or sale, the issuer or the seller of the securities can appoint a so-called representative managing company. A managing company must be authorized to conduct such business by the FSC, pursuant to provisions prescribed in the FSCMA. The managing company inhabits the role and functions that are typically carried out by an arranger in other markets.

In the past, managing companies (underwriting managers) played a rather minor role in the corporate bond primary market in the Republic of Korea, acting as evaluators of corporate value and risks during the underwriting process. As securities companies focused more on price competition to secure sufficient quantities of bonds rather than the risk assessment or pricing, their capabilities as investment banks were not sufficiently utilized. Moreover, the expansion of the demand base for corporate bonds was impeded as investors gradually lost confidence in the data and prices calculated at the time of bond issuance.

The FSC addressed this problem as part of the Plan to Improve the Primary Market for Corporate Bonds to Promote Investment Banks, announced on 17 October 2011. This plan aimed to strengthen the responsibilities and underwriting capacity of securities companies, and promote the development of the primary market for corporate bonds. The measures mainly focused on two areas: systematic due diligence and mandatory book building. To streamline the due diligence process, the KOFIA Regulations on Securities Underwriting Business were revised at the time.

#### c. Underwriter(s)

Underwriter refers to an entity that underwrites and bears issuing risk of securities in cases of a public offering, private placement, or public sale of the securities. Underwriters in the Republic of Korea are financial institutions with authorization from the FSC, including some financial investment firms, which are meeting the required business conditions, and KDB. The underwriting business is authorized by the FSC, pursuant to the provisions prescribed in the FSCMA.

#### d. Paying Agent

For bonds and notes to be issued in the Republic of Korea, an issuer may conclude a paying agency agreement with a designated bank, which will remit funds due from the issuer to KSD for distribution to its participants.

KSD performs the exercise of rights on deposited securities according to Article 314 at the request of its participants (included in the service agreement when opening an account at KSD), and processes the payment of principal and interest through the check clearing system and distributes to its participants.

#### e. Indenture Trustee

An indenture trustee is a legal entity for investor protection. If appointed, an indenture trustee is entrusted with the administrative affairs for bondholders, such as collecting redemption, preserving bonds, and other administration of bonds. Under Article 26 in the Enforcement Decree of the Commercial Act, institutions eligible as an indenture trustee include commercial banks, special purpose banks, KSD, and the Korea Securities Finance Corporation. Each institution must be authorized by its relevant regulator.

#### f. Authorized Institution(s) as Depository Participants

Participants are legal entities who open accounts and deposit their securities at KSD for deposit, withdrawal, and transfer of their securities. Those eligible to be participants are securities companies, banks, insurance companies, futures companies, institutional investors, foreign depositories, and other entities deemed appropriate by KSD.

#### g. Legal Advisers (Legal Counsel)

An attorney-at-law, patent attorney, or tax accountant is able to provide the relevant legal advice to an issuer of debt securities or other market participants in the bond market. The legal adviser should have officially recognized qualifications. Attorneys are licensed by the Ministry of Justice. In addition, they also are required to be registered with the Korean Bar Association.

#### h. Public Accountants and Auditors

No false statement or representation of a material fact should be made in the documents that are related to the issuance of bonds and notes. These documents may include an SRS, supplements to a universal shelf-registration statement, an investment prospectus, and a business report, among others.

Public accountants and auditors involved in the preparation and review of these documents should be certified persons or entities who are governed by their respective professional bodies. They are authorized by the FSC.

## N. Definition of Professional Investors and Related Classification

Among ASEAN+3 markets, the Republic of Korea features one of the most comprehensive definitions of professional investors and its constituent investor types. These definitions are anchored in key legislation and further augmented in FSC regulations. Some market segments are using specific professional investor definitions, such as QIB, while the KRX bond market so far does not make use of such specific definitions.

Investors who are eligible as professional investors may opt out of being considered professional, and can continue as ordinary investors upon a written notification to the financial intermediary with or through which the investors have previously accessed the securities market.

### 1. General Definition in the Financial Investment Services and Capital Markets Act and Its Enforcement Decree

Article 9 of the FSCMA contains the general definition of professional investor (Section 5) and also defines ordinary investors (Section 6) in the following manner (excerpt below):

- (5) The term "professional investor" in this Act means an investor who has an ability to take risks accompanying the investment in light of the expertise that it possesses in connection with financial investment instruments, the scale of assets owned by it, [...] and who falls under any of the following subparagraphs: Provided, That a financial investment business entity shall give consent to a professional investor prescribed by Presidential Decree when the investor notifies the financial investment business entity in writing of its willingness to be treated as an ordinary investor, unless there is a justifiable ground otherwise, and such investor shall be treated as an ordinary investor when the financial investment business entity gives such consent:
  1. The State;
  2. The Bank of Korea;
  3. Financial institutions specified by Presidential Decree;
  4. Stock-listed corporations: Provided, that trading over-the-counter derivatives with a financial investment business entity shall be limited to cases where an investor notifies the financial investment business entity in writing of its willingness to be treated as a professional investor;
  5. Other persons specified by Presidential Decree;
- (6) The term "ordinary investor" in this Act means any investor other than professional investors.

Furthermore, Article 10 (Scope of Professional Investors) of the Enforcement Decree of the FSCMA (Presidential Decree No. 24317, 16 January 2013) stipulates the following (excerpt below):

- (1) The term “professional investor specified by Presidential Decree” in the proviso to the main body of Article 9 (5) of the Act means a professional investor not falling under any of the following subparagraphs:
  1. The State;
  2. The Bank of Korea;
  3. A person who falls under any provision of [Paragraph 2, 1–17];
  4. A person who falls under any provision of [Paragraph 3, 1–11];
- (2) The term “financial institutions specified by Presidential Decree” in Article 9 (5) 3 of the Act means any of the following financial institutions:
  1. Financial institutions under the Banking Act;
  2. The Korea Development Bank under the Korea Development Bank Act;
  3. The Industrial Bank of Korea under the Industrial Bank of Korea Act;
  4. The Export–Import Bank of Korea under the Export–Import Bank of Korea Act;
  5. The National Agricultural Cooperative Federation under the Agricultural Cooperatives Act;
  6. The National Federation of Fisheries Cooperatives under the Fisheries Cooperatives Act;
  7. Insurance companies under the Insurance Business Act (hereinafter referred to as “insurance companies”);
  8. Financial investment business entities [excluding concurrently-run financial investment business entities under Article 22 of the Act (hereinafter referred to as “concurrently-run financial investment business entities”)];
  9. Securities finance companies with authorization under Article 324 (1) of the Act (hereinafter referred to as “securities finance companies”);
  10. Merchant banks;
  11. Financial brokerage companies with authorization under Article 355 (1) of the Act (hereinafter referred to as “financial brokerage companies”);
  12. Financial holding companies under the Financial Holding Companies Act;
  13. Specialized credit financial business entities under the Specialized Credit Financial Business Act;
  14. Mutual savings banks under the Mutual Savings Banks Act and their Central Federation;
  15. The Forestry Cooperatives Federation under the Forestry Cooperatives Act;
  16. The Korean Federation of Community Credit Cooperatives under the Community Credit Cooperatives Act;
  17. The National Credit Union Federation of Korea under the Credit Unions Act;
- (3) The term “persons specified by Presidential Decree” in Article 9 (5) 5 of the Act means any of the following persons:
  1. The Korea Deposit Insurance Corporation and reorganized financial institutions under the Depositor Protection Act;
  2. The Korea Asset Management Corporation under the Act on the Efficient disposition of Non-Performing Assets, etc. of Financial Institutions and the Establishment of Korea Asset Management Corporation;
  3. The Korea Housing Finance Corporation under the Korea Housing Finance Corporation Act;
  4. The Korea Investment Corporation under the Korea Investment Corporation Act;
  5. The Association;
  6. The Korea Securities Depository established pursuant to Article 294 of the Act (hereinafter referred to as the “Securities Depository”);
  7. The Korea Exchange established pursuant to Article 373 of the Act (hereinafter referred to as the “Exchange”);

8. The Financial Supervisory Service under the Act on the Establishment, etc. of Financial Services Commission (hereinafter referred to as the “Financial Supervisory Service”);
9. Collective investment schemes (excluding those specified and publicly notified by the Financial Services Commission);
10. The Korea Credit Guarantee Fund under the Credit Guarantee Fund Act;
11. The Korea Technology Credit Guarantee Fund under the Technology Credit Guarantee Fund Act;
12. Funds established pursuant to a relevant Act (excluding those under Subparagraphs 10 and 11) and the corporations that manage and operate any of such funds;
13. Corporations that manage any mutual aid business pursuant to a relevant Act.

## 2. Qualified Institutional Buyer

The QIB concept was introduced by the FSC in May 2012 to define a group of investor types that could make their own investment decisions while supporting the private placement market for SMEs.

QIBs are a subset of professional investors. Professional investors refer to investors who do not need any strong investor protection measures, given their own expertise and experience.

The definition of QIB is stipulated in Article 2-2, Paragraph 4 of the FSC Regulation on Securities Issuance and Disclosures and refers to an expert pursuant to Article 11, Paragraph 1, Items A and B of the Enforcement Decree of the FSCMA; a corporation or organization pursuant to Article 10, Paragraph 3, Subparagraph 16 of the Enforcement Decree of the FSCMA; an SME pursuant to the Small and Medium Enterprises Promotion Act; collective investment schemes established pursuant to Article 6, Paragraph 1, Subparagraphs 5–7 of the FSCMA; and corresponding foreign investors with equivalent credentials.

QIBs include institutional investors such as governments, BOK, pension funds, insurance companies, banks, securities companies, collective investment schemes, and corporations with at least KRW10 billion in capital, but exclude individuals. In addition, corresponding foreign institutions with equivalent credentials can participate in the OTC market as a QIB.

The scope of the QIB concept corresponds closely with the typical scope of professional investors applied to professional bond or note issuance concepts in other markets in the region, such as AMBIF (see also Chapters IX and X).

## 3. Use of Definition by Korea Exchange

KRX directly applies the concept of professional investors, as stipulated in Article 9 of the FSCMA (see also section 1), for market supervision and surveillance.

KRX is also working on the establishment of an electronic bond trading platform for professional investors only to stimulate and the Korean bond market and create opportunities for a further internationalization of the market.

## O. Credit Rating Requirements

Before the 1997/98 Asian financial crisis, most of the corporate bonds issued in the Republic of Korea were guaranteed bonds, so there was little necessity for considering

the credit of the corporations issuing new bonds. However, since the crisis, the corporate bond market has become dominated by non-guaranteed bonds, which were solely focused on the credibility of the issuing corporation to service interest payments and redeem the bond upon maturity, thus increasing the importance of credit ratings. Credit ratings are particularly important in the case of a public offering because such an issuance is offered to ordinary investors.

Credit ratings in the Korean market differ by instrument type, as explained further in this section.

### 1. Public Offers

Section 11 of the Regulations on Securities Underwriting Business issued by KOFIA provides for the credit rating requirements of non-guaranteed bonds.<sup>22</sup>

Chapter III of the regulation states that in the case of an underwriter underwriting non-guaranteed bonds, such bonds shall be rated by at least two credit rating agencies (CRAs) from among those approved for credit rating business pursuant to the provisions of the Act on Use and Protection of Credit Information. One CRA shall suffice in the case of underwriting ABS issued in the form of bonds pursuant to the Act on Asset-Backed Securitization, or in inevitable cases such as the business suspension of a CRA.

Non-guaranteed bonds issued by foreign corporations shall be deemed as rated in accordance with this provision if they are rated by two or more CRAs (referring to international credit rating agencies as prescribed by the Governor of the FSC in the Regulations on Securities Issuance and Disclosure).

### 2. Corporate Bond Credit Ratings

When a company issues corporate bonds, it is required to obtain a credit rating from a specialized CRA for all non-guaranteed bonds. This is done to ensure fair pricing of bonds based on the creditworthiness of the issuers. Additionally, investors will have access to an independent evaluation and assessment of bonds, which in turn enables them to make informed investment decisions.

There are 10 different credit rating grades for bonds, ranging from AAA to D, depending on how certain the ability of an issuer to pay principal and interest is judged (Table 3.3). Grades ranging from AAA to BBB indicate that principal and interest are deemed to be recoverable, while bonds falling under the BB to C grades are classified as speculative as they are heavily influenced by changes in the investment environment.

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<sup>22</sup> KOFIA. Regulation No.146, Chapter III Underwriting Of Non-Guaranteed Bonds, §11. Conclusion of Lead Management Agreement, etc. on Underwriting of Non-Guaranteed Bonds, Regulations On Securities Underwriting Business, etc. (20160421). [http://eng.kofia.or.kr/brd/m\\_15/list.do](http://eng.kofia.or.kr/brd/m_15/list.do)

**Table 3.3: Credit Rating Definitions for Bonds and Notes**

Grade	Definition
AAA	Highest ability to repay principal and interest
AA	Excellent ability to repay principal and interest but slightly less than AAA-rated bonds
A	Very good ability to repay principal and interest but vulnerable to economic conditions and environment
BBB	Good ability to repay principal and interest but possibility exists of economic conditions and environment deterioration lowering its ability to repay principal and interest going forward
BB	Although its ability to repay principal and interest is not immediately problematic, the bonds have speculative factors since stability to go forward is not guaranteed
B	Ability to repay principal and interest is lacking; speculative; in a recession, repayment of interest is not certain
CCC	Uncertainties currently exist in its ability to repay principal and interest; highly speculative given the high risk of default
CC	Higher uncertainty factors exist compared with the upper grades
C	High risk of default; lacks ability to repay principal and interest
D	Unable to repay

Note: Bonds rated AA to B are marked with the signs + or – to denote the superior or inferior recoverability of principal and interest.

Source: Korea Investors Service.

### 3. Commercial Paper Credit Ratings

Companies that seek to obtain short-term financing from merchant banks, securities companies, and commercial banks by issuing commercial paper are required to undergo a credit assessment. The credit rating results are used not only to determine the soundness of the commercial paper, but also as criteria for determining the terms and conditions of issuance.

Accordingly, the government has selected independent CRAs to rate issuing companies and disclose the results, with the aim of developing a commercial paper market and ensuring the financial soundness of asset management, as well as to protect investors.

Credit ratings for commercial paper comprise six grades, ranging from A1 to D (Table 3.4). Among the grades, A1 to A3 are investment grades that recognize the ability of the issuer to repay principal and interest in a timely manner. B and C are speculative grades, indicating that on-time repayment of principal and interest is heavily influenced by changes in the economic environment.

**Table 3.4: Credit Rating Definition for Commercial Paper**

Grade	Definition
A1	Best ability to repay on time and best stability of repayment ability
A2	Very good ability to repay on time but stability slightly inferior to A1
A3	Good ability to repay on time with good stability but inferior to A2
B	Adequate ability to repay on time but speculative issues exist on its stability depending on short-term changes in conditions
C	Highly speculative issues in ability to repay on time and in its stability
D	Cannot repay

Note: Commercial paper rates A2 to B is marked with + or - to denote the superior or inferior ability to repay principal and interest.

Source: Korea Investors Service.

#### 4. Electronic Short-Term Bond Credit Ratings

Electronic short-term bonds, which are electronically-issued bonds with a maturity of 1 year or less, were introduced on 15 January 2013, pursuant to the Act on Issuance and Trading of Electronic Short-Term Bonds. Their purpose is to complement the shortcomings of commercial paper, such as weak investor protection and slow distribution. These electronic bonds are quickly replacing commercial paper as a major source of short-term financing.

The same credit rating grades and definitions for commercial paper are also applied to electronic short-term bonds. They are used as criteria for determining the terms and conditions of issuance based on the ability of the issuer to repay short-term debt.

#### 5. Asset-Backed Securities Credit Ratings

ABS are given credit ratings in the same manner as non-guaranteed corporate bonds or commercial paper, depending on the type (asset-backed short-term bond or asset-backed commercial paper). The credit rating system and definitions are the same as the system and definitions for non-guaranteed corporate bonds and commercial paper, thereby making it easier to determine the ability of the issuer to repay the principal of and interest on ABS.

#### 6. Credit Rating for Issuance to Qualified Institutional Buyers

Corporate bonds and notes, and note issuance programs registered on the QIB Market, must obtain a credit rating from a CRA recognized internationally and/or by Korean investors. The rating needs to be disclosed, but the level of the rating is not an eligibility criterion for the QIB Market.

Investment by QIBs in QIB Market-eligible securities with a credit rating, and where the issuance-related information is publicly disclosed as required by KOFIA, will result in net capital ratio benefits for eligible QIBs.

Domestic and international CRAs recognized by KOFIA, as the administrator of the QIB Market, include

- i. Standard & Poor's,
- ii. Moody's,

- iii. Fitch Ratings,
- iv. Korea Rating,
- v. KIS Rating, and
- vi. NICE Rating.

## **P. Securitized Products Market**

The Korean bond market features substantial issuance of ABS, with a number of distinct instrument types as well as ABS-versions of existing debt instruments such as straight bonds and commercial paper.

The issuance of ABS and representative structured bonds was explosive just after the 1997/1998 Asian financial crisis when the instrument was used for the restructuring of businesses. By 2001, the total issuance amount of ABS had reached KRW36.7 trillion, while the issuance of non-financial corporate bonds stood at KRW87.2 trillion. As the economy recovered, the issuance volume of ABS became smaller. However, the global financial crisis again increased the necessity of the use of ABS. Since 2012, more than KRW30 trillion of ABS have been issued each year.

This section aims to illustrate the securitized products market in greater detail.

### **1. Basic Structure**

To create ABS, an originator typically establishes a special purpose company (SPC) and transfers the assets to the SPC so that it may issue the ABS based on these underlying assets. Once issued, the ABS is managed by an asset management servicer under the supervision of a trustee.

### **2. Major Participants**

Entities involved in ABS issuance include originators, servicers, issuers (SPCs), business trustees, and credit enhancement agencies. Originators are the ultimate beneficiaries of ABS who own the underlying assets.

A servicer manages and maintains the underlying assets and their cash flows. The servicer also plays a significant role in managing the redemption of the ABS. It establishes a separate asset management system to handle claims, redemption, and debt collection. It also collects and provides relevant information, and prepares reports.

An SPC refers to a company that is established to issue ABS and segregate the underlying assets from the originators. Pursuant to the Asset-Backed Securitization Act, an SPC should be a limited company.

The SPC is only allowed to engage in the issuance and redemption of ABS in a way that is described in the ABS plan. Since an SPC is generally a paper company set up exclusively for the purpose of asset securitization, its business is trusted to a business trustee who is responsible for the settlement of accounts, book keeping, and tax affairs of the SPC.

A trustee takes care of ABS payments, management, and reinvestment. The main roles of the trustee are to monitor the overall asset management business on behalf of investors, manage cash and bank accounts related to the redemption of ABS, engage in custodial business activities such as reinvestment as requested by the servicer, and carry out ABS redemption as a proxy.

### 3. Structure of Asset-Backed Securities

The features of the underlying assets and cash flows are critical factors in determining the structure of an ABS. Collateral for an ABS can be classified as either amortizing or non-amortizing assets.

Amortizing assets are for loans for which the borrower makes regular, periodic payment of principal and interest over the life of said loan. In contrast, non-amortizing assets are for loans that do not have a set schedule for periodic payments by the individual borrower. Amortizing assets include residential mortgage loans, auto loans, corporate loans, and bonds, while credit card receivables and account receivables of corporations are considered non-amortizing assets.

When structuring an ABS, key factors are whether or not there was a true sale, the method of asset segregation and management, the method of wire transfer, and other measures that control the structural risks of securitization. True sales of assets uphold the legal rights of an SPC to the ABS, even when the originator or servicer has declared bankruptcy, by transferring the assets from the originator under a particular transfer structure.

Credit enhancement was introduced to promote the certainty of redemption. There are two primary types of credit enhancement: internal and external. The most common forms of internal credit enhancement are senior and subordinate structures and overcollateralization and excess spreads, while credit lines and credit guarantee are representative of external credit enhancement.

### 4. Asset-Backed Commercial Paper

Commercial paper is a short-term loan that many companies rely on to supplement their liquidity to pay for immediate expenditures, as they are simple to issue compared to corporate bonds.

Unlike conventional commercial paper, which is issued with credit and no collateral, asset-backed commercial paper (ABCP) is issued to raise capital in consideration of the underlying assets or future cash flows of a corporation or financial institution. In particular, most ABCP is not governed by the Act on Asset-Backed Securitization and is issued by a company that issues commercial paper.

Participants in the ABCP market include issuers, program managers, bill brokerage agencies, liquidity providers, and credit enhancement agencies. ABCP issuers are generally conduits, or SPCs, and raise capital by issuing commercial paper to purchase assets from originators. Program managers are usually commercial banks that manage the overall ABCP program and are responsible for the issuance and redemption of ABCP.

Bill brokerage agencies are mainly securities firms that sell ABCP to investors. Liquidity providers purchase ABCP that are not underwritten in the market to enhance liquidity and maintain the ABCP program, and also engage in approval and supervision activities. And lastly, credit enhancement agencies provide credit guarantees and take other measures to enhance the credit ratings of ABCP.

### Q. Market Features for Investor Protection

Investor protection is among the fundamental regulatory objectives for a bond market—any securities market—to work well and develop further. Among different types of investors, professional investors have the ability to take risks in accordance

with the investment. As a result, investor protection efforts by policy bodies and regulatory authorities are typically focused on ordinary investors, who are usually retail investors.

The FSCMA and its enforcement decree emphasize investor protection as one of their core purposes through all of the relevant provisions.

The need for investor protection explains why a certain level of information should be provided to the general public when a bond or note is newly issued via a public offering and/or listed on an exchange. In addition, investor protection is required not only in the primary market but also through the activities of ordinary investors in the secondary market.

This section reviews a number of topics that have a bearing on the protection of investors in the Korean bond market, particularly for retail or nonprofessional investors.

### **1. Investor Complaints**

An ordinary investor may file a complaint with the Consumer Complaints Center operated by the FSS, which administrates complaints by consumers of financial products, including bond investors, against financial service firms. Complaints may arise due to alleged market price manipulation, insider or unfair trading, and the use of material nonpublic information, all of which are prohibited under the FSCMA.

For efforts at mediation and the resolution of financial disputes as a result of an investor complaint or petition, the FSS hosts the Financial Disputes Settlement Committee, though its recommendations are not legally binding.

In situations that cannot be mediated and resolved, investors may still choose to seek adjudication on the dispute through the courts. The FSCMA stipulates that a party who causes damage as a result of behavior prohibited by the act should be liable for such damage, and that those who suffered the damage have the right to claim for the damage.

### **2. Bondholder Rights**

A bondholder is entitled to receive interest payments on a periodic basis and receive the repayment of the principal at maturity, in line with the terms and conditions of the bonds. In addition, a bondholder may request from the issuer, at any time during its business hours, to inspect or copy documents, such as the articles of incorporation and minutes of general meetings of shareholders. A bondholder may also raise an objection subject to a capital reduction resolution passed by a meeting of bondholders. An issuing company may designate an indenture trustee that has the power to act on behalf of the bondholders to monitor and enforce bondholder rights.

Information on the meeting of bondholders is provided in section S.

### **3. Indenture Trustee**

In the case of the issuance of debt securities via a public offering, an issuer of non-guaranteed bonds shall appoint an indenture trustee, and both parties shall enter into a standard indenture trustee agreement.

The indenture trustee is entrusted with the bond administrative affairs for bondholders such as collecting redemption, preserving bonds, and other administration of bonds.

The adoption of the indenture trustee concept in 2012 contributes to the protection of ordinary investors, and bondholders overall, and supports the further growth of the corporate bond market. For further information on the nature and function of an indenture trustee, please refer to section R in this chapter.

#### **4. Foreign Investors**

The provisions for the protection of investors in the Republic of Korea do not make a distinction between domestic investors and foreign investors. As such, nonresident investors in the bond market have the same rights and obligations as domestic investors.

#### **5. Investor Compensation Fund**

The concept of an investor compensation fund, for the purpose of protecting investors in the securities market from financial loss, has been considered by the policy bodies and financial regulatory authorities. However, such a fund concept has not yet been introduced to the market.

### **R. Indenture Trustee**

The revised Commercial Act, which went into effect in April 2012, introduced the indenture trustee system to the Korean market. Under the revised act, terms related to the previous “trustee” were changed to “indenture trustee” and “standard non-guaranteed corporate bond trust indenture agreement.”

The indenture trustee is entrusted with the bond administrative affairs for bondholders such as collecting redemption, preserving bonds, and other administration of bonds.

Article 480 of the Commercial Act and its enforcement decree stipulates that institutions designated to assume the role of indenture trustee are eligible financial institutions such as banks, trust companies, securities companies, KSD, and the Korea Securities Finance Corporation.

The indenture trustee concept ensures objective bond management without any business interests involved between an indenture trustee and issuers. Under the provisions, a company is disqualified as an indenture trustee if there is a potential conflict of interest between the bond issuing company and the indenture trustee, or if the indenture trustee has a special interest in the bond issuing company. In addition, when an indenture trustee acts in violation of the provisions or a resolution by a meeting of bondholders, the indenture trustee shall be jointly and severally liable to the bondholders for compensation for any damage that may result from the violation.

For the issuance of non-guaranteed bonds, an indenture trustee agreement following the standard template specified by KOFIA should be executed between the issuer and the indenture trustee. However, exceptions apply to bonds issued by specialized credit financial companies, merchant banks, commercial banks, and financial investment companies, as well as ABS, as stipulated in Paragraph 11-2 of the Regulation on Securities Underwriting Business.

### **S. Meeting of Bondholders**

Pursuant to Subsection 2 of Section 3 in the Commercial Act, a meeting of bondholders may arrive at resolutions on matters that can affect the interests of bondholders. Such bondholder meetings can be convened by the issuer of the

corporate bonds or by an indenture trustee. If at least two classes of bonds have been issued, a meeting of bondholders shall be convened for each class of bonds.

Each bondholder has the right to vote in its proportion to the total of the corresponding class of bonds. A meeting of bondholders may, if deemed necessary, request the issuer to cause its representative to attend the meeting. Any consent or request may be decided upon by a majority vote of the bondholders present. Bondholders not attending the meeting may exercise their right to vote in writing.

To exercise votes in writing, a bondholder shall submit a written application specifying required entries to the convener of the meeting by no later than the day immediately preceding the date set for the meeting of bondholders. The person who has convened the meeting shall request that a court authorize any resolution within 1 week from the date of adoption of such resolution.

A resolution of the meeting of bondholders shall take effect by obtaining authorization by a court. The resolution of the meeting shall be effective vis-à-vis all the bondholders who hold the class of bonds concerned. Any expense incurred in relation to meetings of bondholders shall be borne by the issuer.

## **T. Bankruptcy and Insolvency Provisions**

This section provides a brief history of the evolution of the legal frameworks for bankruptcy and insolvency in the Republic of Korea.

### **1. Formalization of Workout Arrangement**

The principles on bankruptcy in the Republic of Korea were adopted from the German legal system, as introduced by Japan. The principles on rehabilitation were largely modeled on United States federal law, such as Chapter 11 protections.

In June 1998, almost all Korean financial institutions entered into the Financial Institutions Arrangement for Facilitating Corporate Restructuring (known as the Master Workout Arrangement), introducing an informal workout system into the Korean insolvency regime. The Government of the Republic of Korea subsequently enacted the Corporate Restructuring Promotion Act (CRPA), which replaced the Master Workout Arrangement with the aim of facilitating and expediting informal workouts. The act, effective from September 2001 until the end of 2005, was the basic law governing out-of-court, informal corporate rescue procedures.

### **2. Consolidation of the Legal Frameworks**

On 21 March 2005, the Government of the Republic of Korea promulgated the Act on Rehabilitation and Bankruptcy of Debtors, also known as the Unified Insolvency Law, which came into force in April 2006.

The law consolidated the previous Korea Company Reorganization Act, Composition Act, Bankruptcy Act, and Act on Rehabilitation of Individual Debtors in order to establish systematic procedures for the rehabilitation and liquidation of insolvent companies and individuals. In consolidating these statutes, the law abolished the composition procedure and established a rehabilitation procedure which modified and improved the previous reorganization procedure. As a result, the law provided for two corporate insolvency procedures: bankruptcy and rehabilitation. In the application of the Act on Rehabilitation and Bankruptcy of Debtors, nonresidents shall have the same status as that of Korean companies and individuals.

As a response to difficulties in reaching agreement between creditors and a lack of professionalism in the management of insolvent companies, the government introduced the corporate restructuring vehicle in October 2000. The corporate restructuring company was also introduced in May 1999 to promote corporate restructuring of insolvent companies and to address financial institutions' nonperforming loans.

The primary role of the corporate restructuring company is to obtain managerial control of an insolvent company and enhance its corporate value through vigorous restructuring. The insolvent company is eventually sold, within 8 years of the date of acquisition, in order for the corporate restructuring company to realize capital gains.

### 3. Current Framework and Practices

The latest CRPA, which came into effect on 18 March 2016, is the fifth revised version of the original CRPA enacted in 2001. The subordinate regulations to the new CRPA, the Presidential Decree and the Rules on Supervision of Financial Institutions to Promote Corporate Restructuring, came into effect on 29 April 2016 and 3 May 2016, respectively.

Further details on the restructuring and insolvency frameworks of the Republic of Korea and other economies in Asia and the Pacific can be found in *The Asia-Pacific Restructuring & Insolvency Guide* and *A Guide to Asia-Pacific Restructuring and Insolvency Procedures*.<sup>23</sup>

## U. Event of Default

The default of a bond is a failure to meet the legal obligations (or conditions) of the bond issuance. It means that a bond issuer (debtor) has passed the payment deadline on either interest or principal.

In case of default by an issuer on a corporate bond, the indenture trustee has the power under the Commercial Act provisions to carry out on behalf of the bondholders all judicial or extrajudicial activities necessary for the collection of interest and/or redemption payments arising from the bonds or for the preservation of the bond value.

Pursuant to Article 424 of the Commercial Act, the determination on the deferring of a payment with respect to the relevant bond(s), or an exoneration from or settlement of any liability accrued due to the nonperformance of an obligation by the issuer, requires a resolution by a meeting of bondholders.

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<sup>23</sup> White & Case LLP. 2016. *Asia Pacific Restructuring & Insolvency Guide*; <https://www.whitecase.com/publications/alert/asia-pacific-restructuring-insolvency-guide>  
Clifford Chance. 2013. *A Guide to Asia-Pacific Restructuring and Insolvency Procedures*.  
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