

Legal and Regulatory Framework

This chapter reviews the significant changes or updates to rules and regulations, regulatory processes, and other official prescriptions by regulatory authorities and market institutions in the Korean bond and capital markets since the publication of the *ASEAN+3 Bond Market Guide Republic of Korea*. The structure follows the original bond market guide, and only sections with updates or corrections are shown in each chapter; new subjects are added at the end of existing sections and are marked accordingly.

C. Legislative Structure

A number of new laws, regulations, and rules with relevance for the bond market have been promulgated or introduced in the Republic of Korea since the publication of the original bond market guide in 2018, while much of the key and fundamental legislation and regulations for the bond market have been revised in the intervening years. In turn, some laws and regulations have been rescinded. **Table 2.1** has been updated accordingly for easy reference.

While the new laws and regulations will be referenced or reviewed in detail in the relevant chapters and sections of this update note, established and since revised laws and regulations are shown in the table if they are also referenced in this publication and marked “New” if they appear in the table for the first time. Table entries are presented in reverse chronological order.

Table 2.1: Examples of Securities Market Legislation and Regulations by Legislative Tier

Legislative Tier	Contents or Significant Examples
Constitution of the Republic of Korea (1988)	Principles, Rights, and Obligations
Statutes and acts (fundamental and key legislation for the market and market participants)	<ul style="list-style-type: none">• Act on the Protection of Virtual Asset Users (effective 1 July 2024) [New]• Financial Investment Services and Capital Markets Act (revised 22 September 2023)• Act on the Establishment, etc. of the Financial Services Commission (revised 14 September 2023)• Corporate Tax Act (revised 1 July 2023) [New]• Income Tax Act (revised 1 July 2023)• Foreign Exchange Transaction Act (revised 16 September 2021)• Environmental Technology and Industry Support Act (revised 21 April 2021)

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	<p>Table 2.1 <i>continued</i></p> <ul style="list-style-type: none"> • Act on the Management of Financial Benchmarks of the Republic of Korea (promulgated 26 November 2019, effective 24 November 2020) [New] • Act on Electronic Registration of Stocks, Bonds, etc. (promulgated 22 March 2016, effective 16 September 2019) [New] • The Bank of Korea Act (Revised 13 March 2018)
Subsidiary legislation (Presidential Decree or Enforcement Rule of the prime minister or relevant ministry)	<ul style="list-style-type: none"> • Enforcement Decree of the Foreign Exchange Transaction Act (revised 4 October 2023) • Enforcement Decree of the Banking Act (revised 22 September 2023) • Enforcement Decree of the Corporate Tax Act (23 September 2023) • Enforcement Decree of the Income Tax Act (1 October 2023) • Enforcement Decree of the Act on Electronic Registration of Stocks, Bonds, etc. (16 September 2019) [New] <p>Financial Services Commission (FSC)</p> <ul style="list-style-type: none"> • FSC Regulation on Financial Investment Business (revised 22 December 2023) • FSC Regulation on Issuance, Public Disclosure, etc. of Securities (revised 1 May 2023) • FSC–MOJ Regulation on Authorization, etc. for Electronic Registration Business (September 2019) [New] • FSC Regulation on Electronic Registration Business (16 September 2019) [New] • Enforcement Decree of the Financial Investment Services and Capital Markets Act (revised 14 December 2023) <p>Financial Supervisory Service (FSS)</p> <ul style="list-style-type: none"> • FSS Detailed Rules of the Regulation on Financial Investment Business (revised 14 December 2023) • FSS Detailed Regulations on Issuance, Public Disclosure, etc. of Securities (revised 12 April 2021)
Self-regulatory organization rules (e.g., from KOFIA or KRX, and their enforcement rules)	<p>Korea Exchange (KRX)</p> <ul style="list-style-type: none"> • KOSPI Market Business Regulation (revised 19 July 2023) • KOSPI Market Disclosure Regulation (revised 29 March 2023) • KOSPI Market Listing Regulation (revised 7 December 2022) • Guidelines for Operation of Segment Dedicated to Socially Responsible Investment Bonds (December 2019) [New] <p>Korea Financial Investment Association (KOFIA)</p> <ul style="list-style-type: none"> • Regulations on Securities Underwriting Business, etc. (revised 8 June 2023) • Guidelines on ESG Bonds Ratings (January 2023) [New] • Regulations on Registration and Management, etc. of Securities for Qualified Institutional Buyers (revised 21 August 2018) <p>Korea Securities Depository</p> <ul style="list-style-type: none"> • Regulation on Deposit Service for Securities (revised 24 November 2021) • Securities Lending and Borrowing Regulation (revised 24 November 2021) • Regulation of Electronic Registration Services for Stocks, Bonds, etc. (8 March 2021) [New] • Regulation on Settlement Service for Securities (revised 28 August 2019) • Regulation on Bond Registration Business (revised 16 August 2019)

ESG = environmental, social, and governance; KOSPI = Korea Composite Stock Price Index; MOJ = Ministry of Justice. Note: In the Korean bond market, the term “enforcement” in the context of laws and regulations can have multiple meanings; it is typically used to denote the effective date of a law or regulation, or an implementation decree, and may not describe a response to a regulation or rule violation, as may be expected in other markets.

Source: ASEAN+3 Bond Market Forum (ABMF) and ABMF constituents.

1. Fundamental and Key Legislation (Statutes and Acts)

The Government of the Republic of Korea announced an exemption from withholding tax on KTBs and MSBs for foreign investors, effective 1 January 2023. To provide the legal basis for the tax exemption, the Ministry of Economy and Finance (MOEF) revised in 2023 the Income Tax Act and Corporate Tax Act, as well as the respective enforcement decrees of these two acts, while granting a zero-rating to the withholding tax between the effective date and the law's change.

A key addition to the legal and regulatory framework for the bond market in the Republic of Korea has been the introduction of the Act on Electronic Registration of Stocks, Bonds, etc (i.e., the Electronic Securities Act, 2019). While market authorities had made efforts to immobilize physical securities many years ago and select instrument types had been limited to electronic issuance, the Electronic Securities Act, 2019 enshrined the concept that securities such as listed bonds, special bonds such as equity-linked bonds and contingent-convertible bonds, and mortgage-backed securities are required to be issued and circulated only as electronic records. The act and its subsidiary decree took effect on 16 September 2019.

The Electronic Securities Act, 2019 is considered a necessary precursor to any policy measures or legislation related to digital assets, as is the Act on the Protection of Virtual Asset Users (effective 1 July 2024). The latter is intended to protect the rights and interests of virtual asset users and promote the establishment of fair, transparent, and sound trading practices in the virtual asset markets. A more detailed description of the activities under the Electronic Securities Act can be found in Chapter III.I, while the subject of digital assets is mentioned in Chapter III.B.

Also, newly included in the list of statutes and acts are the (i) Foreign Exchange Transaction Act, widely known as FETA, due to recent liberalization measures in the FX market; and (ii) Environmental Technology and Industry Support Act (as amended in 2021), which gave the Ministry of Environment (MOE) the legal basis to formulate its K-Taxonomy, subsidiary regulations, and industry guidance. See Chapter III.B for the relevance of the K-Taxonomy.

One additional significant development was the promulgation of the Act on the Management of Financial Benchmarks of the Republic of Korea in November 2019 (effective 24 November 2020) as a policy response to the discontinuation of the London Interbank Offered Rate (LIBOR) as an internationally utilized reference rate. This development is referenced in Chapter X.A, with further details provided in Chapter IV.K.

2. Subsidiary Legislation (Decrees or Enforcement Rules)

Subsidiary legislation and regulations related to the Electronic Securities Act, 2019 include the Enforcement Decree of the Act on Electronic Registration of Stocks, Bonds, etc.; the Financial Services Commission–Ministry of Justice (FSC–MOJ) Regulation on Authorization, etc. for Electronic Registration Business; and the FSC Regulation on Electronic Registration Business. In addition, various fundamental laws such as the Financial Investment Services and Capital Market Act, Banking Act, and Commercial Act, as well as subsidiary regulations, were revised to reflect the concept of electronic securities and remain consistent with the Electronic Securities Act, 2019. Under the electronic securities system, information about ownership and the transfer of securities rights—in this context, the legal rights associated with the ownership of the securities including entitlements—are recorded electronically, which will help eliminate the risk of theft or counterfeit securities and aid in the prevention of tax evasion.

Significant policy measures, such as the abolition of the IRC and the reactivation of an omnibus account option for foreign investors, which in principle already existed in the subsidiary legislation of the Financial Investment Services and Capital Market Act (FSCMA), led to a revision of the Enforcement Decree of the FSCMA; the revisions bill of the FSCMA was approved on 5 June 2023 and became effective on 14 December 2023, though the effective dates for both measures may differ. For more information on the IRC's abolition and the indirect market access option afforded by the omnibus account, please refer to section K in this chapter.

3. Self-Regulatory Organization Rules

The Electronic Securities Act, 2019 affirmed the Korea Securities Depository (KSD) as the official electronic registry. In turn, KSD established its Regulation on the Electronic Registration Services for Stock, Bonds, etc. and revised existing regulations such as the Regulation on Settlement Service for Securities, the Regulation on Deposit Service for Securities, the Regulation on Bond Registration Business, and the Securities Lending and Borrowing Regulation to provide electronic registration and related services to securities issuers, underwriters, and investors. In contrast to past KSD regulations, any new (or changes to existing) regulations in relation to the Electronic Securities Act, 2019 will require the prior approval of the MOJ, in addition to the FSC.

In addition to regular revisions of its market business, disclosure, and listing rules (see section J in this chapter for details), KRX also issued the Guidelines for Operation of Segment Dedicated to Socially Responsible Investment Bonds in December 2019 to guide market participants and interested parties on the SRI-specific website operated by KRX.⁵

D. Korean Bond Market Regulatory Structure

While the regulatory structure of the bond market has not changed in principle since the publication of the *ASEAN+3 Bond Market Guide Republic of Korea*, the MOE and the MOJ have assumed additional roles in relation to sustainable finance instruments and the review and promulgation of certain regulations, respectively. These additional roles are described below. For the roles of other regulatory authorities, market institutions, and self-regulatory organizations (SROs), please refer to the original publication.

1. Ministry of Economy and Finance

The Ministry of Strategy and Finance was renamed the Ministry of Economy and Finance (MOEF), effective 1 August 2018, following a review by the Advisory Committee on English Names of Government Organizations. The name change was intended to better reflect its role of governing the overall economic and fiscal policies in the Republic of Korea to the international community. However, the remit of the MOEF has not changed, including and in particular in relation to the bond market in the Republic of Korea.

5. Korea Financial Investment Association

As a correction to the previous description of Korea Financial Investment Association's (KOFIA) self-regulatory powers in the *ASEAN+3 Bond Market Guide Republic of Korea*, it should be stated that in the case of a violation of KOFIA rules by a member company, KOFIA's Self-Regulation Committee can assess the violation and recommend a penalty on the member. However, the penalty would be imposed and enforced by either the FSC or the Financial Supervisory Service (FSS) under powers delegated by the FSC, as the case may be.

⁵ The guidelines are available from Korea Exchange at <https://sribond.krx.co.kr/en/index.jsp>.

8. Ministry of Environment [New]

The MOE was established in January 1990 under the Office of the Prime Minister and given greater authority to establish and implement its own policies in 1994. In line with the “Green New Deal” Initiative, the MOE introduced measures to establish a foundation for green industry growth, such as preparing a Korean-style green finance classification system and a guide to green bonds in 2020, taking its cues from the European Union’s decision to introduce a “sustainable financial strategy” and plan to establish an international sustainable finance platform.⁶

In April 2021, the Environmental Technology and Industry Support Act was passed by the National Assembly, on the basis of which the MOE established a national green taxonomy. This K-Taxonomy refers to the classification of green economic activities contributing to six environmental goals: (i) greenhouse gas reduction, (ii) adaptation to climate change, (iii) sustainable water conservation, (iv) recycling, (v) pollution prevention, and (vi) management and biodiversity.

To provide more detailed and practical information for market participants and other stakeholders, the MOE issued the K-Taxonomy Guidelines in December 2021. While the guidelines are not legally binding, they provide principles and standards on which economic activities can be regarded as green activities, thereby assisting in the allocation of funds to green economic activities, including projects and technologies.

Please see Chapter III.B for a description of sustainable finance instruments as a result of the use of the K-Taxonomy and its related guidelines.

9. Ministry of Justice [New]

In relation to the bond market, the MOJ had traditionally enabled the issuance of corporate bonds through relevant provisions in the Commercial Act, which it continues to administer. With the introduction of the Electronic Securities Act in September 2019, the MOJ emerged as the main government authority in standards- and procedure-setting for the electronic securities system; the MOJ now regulates the electronic registry, securities issuing companies, account management institutions, and other stakeholders in relation to the electronic securities system, in conjunction with the FSC.

E. Regulatory Framework for Debt Securities

Given that two new ministries have been added as regulatory stakeholders—and with new legislation, regulations, and rules in place—this section aims to briefly restate the regulatory framework for the Korean bond market, including any necessary corrections.

⁶ The Green New Deal, announced by the MOE in July 2020 as part of the government’s so-called “Korean New Deal,” represents the strategy to lead the Republic of Korea toward a low-carbon economy and away from a carbon-based industrial ecosystem. As part of the Green New Deal, policymakers have implemented protective measures for people and sectors that can be marginalized during the economic and social transitions. A booklet in English on the Korean New Deal and its component policies is available for download from the MOEF website at <https://english.moef.go.kr/pc/selectTbPressCenterDtl.do?boardCd=N0001&seq=4948%20>.

1. General Regulatory Framework

In the case of a public offering of debt securities, a registration of the proposed issuance with the FSC is required. In contrast, private placements other than those offerings in the Qualified Institutional Buyer (QIB) market are issued in the market through negotiation between the issuer and underwriters. Once the debt securities are issued, applicable regulations are largely dependent on whether the securities are traded on the exchange or in the over-the-counter (OTC) market. Exchange trading is regulated by FSC, FSS, and KRX rules; only publicly offered bonds can be listed on the exchange. Trading in the OTC market, which is possible for both publicly offered and privately placed bonds and notes, is regulated by the FSC and FSS, with KOFIA acting as the SRO for the OTC market.

The MOEF represents the issuer of government bonds, with the Bank of Korea (BOK) acting as issuing agent and setting the practices for auction and the primary market. The MOJ does not play a direct role in the issuance, listing, trading, or transfer of debt securities, but it does review and must approve participating institutions in relation to the electronic securities system.

G. Continuous Disclosure Requirements in the Korean Bond Market

One of the major policy changes in recent years in the Korean capital market concerns the introduction of mandatory disclosure in English for companies that have their stocks listed on the Korea Composite Stock Price Index (KOSPI) market (main board) of KRX. The new disclosure obligation applies to information for all securities issued by KOSPI-listed companies, including both listed and unlisted bonds. Corporates who only have bonds listed on KRX are not affected by this new policy (see Public Offers below).

This measure affects both the initial and the continuous disclosure practices in the market; and it is expected to support the policy objective to make the overall Korean capital market more accessible to foreign investors. In 2022, the FSS observed that only 13.8% of all company disclosure information submitted to it was also made available in English, a level considered insufficient and not in line with the practices in major advanced economies, including those in Asia. In addition, any English information that was submitted to the FSS was typically the result of a machine-translation process, generally limited to the financial statements, which can lead to the ambiguous or misleading use of terms.

To ease issuers into the additional disclosure obligation, policymakers have set a phased approach, with the starting date of January 2024 applying initially only to large corporates (classified as those with assets of KRW10 trillion or more) listed on the KOSPI market and corporates with assets of more than KRW2 trillion that have foreign shareholding of 30% or more. This is in recognition that companies of that size likely have issued securities in international markets where English disclosure already prevails. Disclosures in English are to be made available within 3 days from the information being published in Korean. From 2026, the obligation will be expanded to corporates with assets of KRW2 trillion or more, while English disclosure for large companies is expected when any disclosure in Korean is made.

The disclosure obligations itself follow the existing statutory requirements set out in the FSCMA (Article 391: Disclosure Regulations), relevant regulations, and KRX listing and disclosure rules, but they have a particular focus on any disclosure in relation to the financial position of a company, including the provision of financial statements, and on material events affecting the issuer as well as any information relating to trading halts or resumptions. As is the practice in the Republic of Korea, the statutory places of disclosure are both the FSS and KRX under their respective regulations and rules; information sent to the Data

Analysis, Retrieval, and Transfer System (DART), the official corporate filing repository in the Republic Korea operated by the FSS, is accessible to the public at large via a dedicated website and is also available in English. English disclosure information submitted to the KIND system of KRX is made available via its English language website dedicated to disclosure. Under an agreement between FSS and KRX, the disclosure information submitted to one platform is shared with the other.⁷

A notable exemption from these disclosure requirements applies to listed companies that feature less than 5% of shareholding by foreign investors. At the same time, policymakers and KRX support the new obligations with knowledge support or financial incentives, such as the offering of training in English disclosure practices or a reduction or waiver of listing fees.

1. Public Offers

Only publicly offered bonds are able to be listed on KRX, though a listing remains optional. Specific conditions for disclosure of KRX-listed bonds, including SRI bonds, are shown in the next two subsections.

3. Debt Securities Listed on Korea Exchange

Bonds listed on the KRX market are subject to the recently introduced English disclosure requirement if the issuer also has their stock listed on KRX (i.e., on the KOSPI [main] market segment). At the same time, issuers who only list their publicly offered bonds on KRX do not fall under the new English disclosure requirement.

The English disclosure requirement applies to corporate information on the issuer, not the details of a bond, with a particular focus on material changes, management decisions, and the financial statements, as well as any material related to the suspension or resumption of the trading of the issuer's stock. Disclosure obligations, including mandatory English disclosure obligations where they apply, follow the prescriptions in the KRX disclosure rules, specifically Paragraph 48 (Disclosure in English Language) and Paragraph 118-4 of the Detailed Rules of the KOSPI Market Disclosure Regulation (English Disclosure).⁸

Additional information on these and other KRX rules can be found in section J in this chapter. Disclosure requirements specific to SRI bonds are explained in the next subsection.

4. Socially Responsible Investment Bonds Listed on Korea Exchange [New]

Bonds issued under the purview of the K-Taxonomy and relevant industry guidelines are referred to as SRI bonds when listed on KRX but may also be called ESG, thematic, or social contribution bonds in the market (see Chapter III.B for details).

The issuers of these SRI bonds listed on KRX and registered on the dedicated SRI segment provided by KRX (see Chapter III.H for details) are subject to additional disclosure obligations under the KRX disclosure rules due to the nature of SRI bonds. The additional information is also available on the dedicated SRO bond web page of KRX.

⁷ FSS provides access to corporate filings for foreign investors via the English language version of its Data Analysis, Retrieval, and Transfer System, which can be accessed at [https://englishdart.fss.or.kr/about/engAbout1.do#:~:text=DART%20\(Data%20Analysis%2C%20Retrieval%20and,to%20investors%20and%20other%20users](https://englishdart.fss.or.kr/about/engAbout1.do#:~:text=DART%20(Data%20Analysis%2C%20Retrieval%20and,to%20investors%20and%20other%20users). The KRX English language disclosure website, also known as the KIND system, may be found here at <https://engkind.krx.co.kr/main.do?method=loadInitPage&scrnmode=1>.

⁸ The official title of the disclosure rules issued by KRX is the KOSPI Market Disclosure Regulation; the term “regulation” is adopted since the rules have to be approved by the FSC and are quasi-legal as a result.

Issuers must identify the nature of the bond (e.g., green or social bond) and cite the principles and guidelines under which the SRI bond was issued. Additional documents for registration in the SRI segment include

- (i) the sustainable bond management framework,
- (ii) external evaluation documents,
- (iii) post-issuance reporting documents, and
- (iv) other reference materials as requested by KRX.

Changes to the sustainable bond management framework or provisions for the use of proceeds or other specific bond conditions then form part of the continuous disclosure obligations of the SRI bond issuer.

H. Self-Regulatory Organizations in the Korean Bond Market

KOFIA, KRX, and KSD remain the three designated SROs in the Korean bond market; however, the introduction of the Electronic Securities Act in 2019 had an impact on their function and/or ability to carry out rulemaking, as explained below.

1. Korea Financial Investment Association

KOFIA operates the OTC marketplace and provides bond quotations and pricing information via its K-Bond platform. KOFIA manages its members on the basis of a membership agreement through which KOFIA can limit or suspend the activities of members who are deemed to have violated provisions in the membership agreement and corresponding OTC regulations set by KOFIA. At the same time, KOFIA does not have the power to supervise and regulate the OTC market or its participants directly, according to the stipulations and provisions of the FSCMA. If violations of FSCMA provisions occur, KOFIA will refer such violations to the FSS.

KOFIA offers three different types of membership: regular, associate, and special. Regular members consist of authorized financial investment business entities and some registered financial investment business entities. Associate members consist of some registered financial investment business entities and concurrently run financial investment entities. Special members include financial-investment-related institutions, general administrative service companies, fund and bond pricing companies, and credit rating agencies. As of December 2023, KOFIA had 400 regular members, 140 associate members, and 28 special members.

In addition to its previous remit, KOFIA was designated in June 2023 as the administrator that calculates the certificate of deposit interest rate (CD rate), a critical benchmark rate; the CD rate calculated by KOFIA took effect as a critical benchmark rate in accordance with the Act on the Management of Financial Benchmarks on 2 October 2023. Details on the critical benchmark rates and related developments can be found in Chapter IV.K.

2. Korea Securities Depository

KSD handles the settlement of securities traded on KRX as well as the settlement of equities and bonds traded in the OTC market, currently processing a daily settlement volume of KRW25 trillion. At the end of 2023, KSD held electronic and deposited securities valued at KRW6,622 trillion, while KSD participants totaled 1,350—comprising financial institutions, including securities companies, banks, and insurance companies.

As an SRO, KSD sets rules for its operation and participants. Changes to KSD rules require approval from the FSC. Since the establishment of the Electronic Securities Act, 2019, changes to the Regulation of Electronic Registration Services for Stocks, Bonds, etc. require the prior approval of the MOJ, in addition to the FSC.

From 18 April 2022, KSD also assumed the role of calculating agent for the Korea Overnight Financing Repo Rate (KOFRR), a critical benchmark rate pursuant to the Act on the Management of Financial Benchmarks. Details on the critical benchmark rates can be found in Chapter X.A.4.

I. Rules Related to Licensing and Trading Conventions

After the introduction of the Electronic Securities Act, 2019, participants must be an account management institution under the Regulation of Electronic Registration Service for Stocks, Bonds, etc.; meet the requirements as set forth in this regulation as well as in the Detailed Rules of KSD; and have sufficient human resources, computer systems, and other tangible facilities to perform the work as a settlement member.

J. Rules Related to Bond Listing or Registration, Trading, and Disclosure

1. Over-the-Counter Market Rules Issued by the Korea Financial Investment Association

There have been no significant changes to KOFIA rules pertaining to the OTC bond market in recent years.

In January 2023, KOFIA issued Guidelines on ESG Bonds Ratings, with the intention to help credit rating agencies (who are members of KOFIA) assess relevant bonds and notes; the guidelines are considered a code of conduct and describe essential procedures for the evaluation of ESG bonds.

At the same time, KOFIA does not prescribe specific disclosure requirements for ESG bonds in the OTC market segment.

2. Rules of Korea Exchange

Key among the KRX rule revisions was the need to include changes to disclosure obligations in the English language (see section G for details) for issuers listed on the KOSPI market. Consequently, KRX amended its KOSPI Market Disclosure Regulation effective 29 March 2023.⁹

KRX released the Guidelines for Operation of Segment Dedicated to SRI Bonds in December 2019. The guidelines (i) apply to bonds to be listed on KRX markets and registered in the SRI Bonds segment; (ii) explain the SRI Bonds website and the need for use of proceeds for projects that are eco-friendly or generate social benefits; and (iii) describe what companies that want to issue green, social, sustainability, and sustainability-linked

⁹The KOSPI Market Disclosure Regulation is available for download in English from the KRX website at <https://sribond.krx.co.kr/en/05/05040000/SRI05040000.jsp>. The term “regulation” is adopted to reflect the need for the FSC to approve KRX rules and their changes, thereby giving such regulations a quasi-legal character.

bonds in the Korean market need to do. The guidelines were followed by the establishment of the actual SRI Bonds website by KRX in June 2020.¹⁰

Until then, there had been no institution with public confidence that provided official information and statistics on SRI bonds; hence, it had been difficult for investors, especially foreign investors, to get relevant information in one location, as each SRI bond issuer disclosed SRI bond information separately. As an SRO and a market institution dedicated to disclosure, KRX provided confident and transparent information on SRI bonds with the publication of the guidelines and, subsequently, the SRI Bonds website.

More information on SRI bonds can be found in Chapter III.B, while the SRI Bonds website is covered in more detail in Chapter IV.F.¹¹

K. Market Entry Requirements (Nonresidents)

Given that interest in the Korean bond market is likely to rise significantly following the implementation of policy measures designed to improve the market, particularly for nonresident investors (see relevant sections throughout this update note), this section provides a detailed overview of the revised or prevailing requirements and obligations for nonresident issuers and investors for easy reference. Details provided are as of March 2024.

1. Nonresident Issuers

Nonresident issuers can issue bonds or notes in the Korean bond market. Some specific reporting requirements or conditions will apply when issuing bonds or notes in the Korean bond market, regardless of whether in Korean won or a foreign currency. All listings are subject to KRX listing and market rules (referred to as “KRX regulations”) in their respective latest version (see also the previous section).

A foreign company is required to file a report on such issuance of bonds or notes with the MOEF, with the report to be submitted prior to carrying out any foreign exchange or remittance of the bond or note proceeds, under provisions in the Foreign Exchange Transactions Act: Article 15 (1) and Article 18 (1)(2).

2. Foreign Investors

For many years, market participants and observers had perceived the Korean market as difficult to enter and to operate in. Documentation and approval requirements, operating hours, limited use of English, restrictions on transaction types, and resulting higher costs were frequently mentioned as key hurdles. The Government of the Republic of Korea recognized the importance of providing a more open and investor-friendly capital market and put forward a set of policy measures, beginning in 2023, to remove real or perceived barriers. Key among these policy measures have been the abolition of the IRC, market access via ICSDs, and the ability to access and transact in the foreign exchange market more freely. These changes are detailed below, while information on the legal and regulatory basis is described in the next section.

¹⁰ KRX is currently considering changing the term “SRI bonds” to “ESG bonds” in the near future; KOFIA is already referring to such bonds as ESG bonds.

¹¹ The guidelines, as well as other KRX rules and underlying regulations, are available from the SRI Bonds website of KRX at <https://sribond.krx.co.kr/en/05/05040000/SRI05040000.jsp>.

a. **Direct Market Access—Introduction of Legal Entity Identifier for Foreign Investors**

With the abolition of the IRC concept in December 2023 (see section M.1 in this chapter), new foreign (nonresident) investors are now able to access the Korean capital market by simply providing an LEI and supporting constituent documents or passport information in the case of individual investors, as is typically required for the opening of a new account. An approval from a regulatory body is no longer required, and interactions are limited to those between the investor and any market intermediaries the investor appoints.

The LEI now represents the investor identification in all market activities for a new foreign investor and is also used to identify the investor in regulatory reporting by market parties.

According to guidance from the FSC, existing IRC holders will need to continue using their IRC in all market transactions and will continue to be able to amend their IRC, amounting to a reissuance of the IRC (e.g., in the case of changes at the investor). Existing IRC holders will not be able to replace their IRC with an LEI (or passport details in the case of an individual investor) and will be restricted from opening a new account with an LEI or passport number under the regulation. If a foreign investor with an existing IRC opens a new account with their LEI, it will be considered a violation of related regulations and may result in disadvantages in exercising rights.¹²

For institutional investors new to the Korean market, custodians (as a standing proxy) and every securities firm through which an investor intends to trade will need the LEI and documents that support the authenticity of the LEI, as well as the investing entity's constituting documents for their real name verification, just as would be the case in any know-your-customer (KYC) or account-opening process. A guidance jointly provided by KOFIA, Koscom, KRX, and KSD to market participants states that the status of the LEI should be "fully corroborated" to proceed with account opening, meaning that sufficient information is found in authoritative public records to corroborate all data supplied by the applicant.

According to the guidance, documents for validation of a foreign investor's real name include, but may not be limited to, the following:

- documents related to corporate registration included in the original LEI application (as requested by the entity issuing the LEI, or the Local Operating Unit); and
- a certificate of residence or certificate of good standing, in the form of a letter, confirmation, or certificate issued by the government or designated in the economy of residence of the investor.¹³

Individual market intermediaries may have additional documentation requirements. Documents will need to be presented in physical form; while market participants are looking into the use of electronic submission of documents with digital signatures, at the time of publication of this update note, such practice was not yet supported.

¹² Restrictions relate, for example, to the acquisition of listed stock with ownership limits and monitoring for supervision purposes.

¹³ Information and reference are provided here with the kind permission of KRX, KOFIA, KSD, and Koscom. At present, the note is only available in Korean, as it is intended for domestic market participants only. Koscom is a financial information technology firm founded by the then Ministry of Finance and KRX; it is owned by KRX.

The documents should be in English or, if issued in another language, be accompanied by a translation into English. Under established market practice, supporting (corporate) documents may need to be notarized in their economy of origin; certified-true copies are generally not accepted. The real-name-verification process follows the Guideline for Real-Name Financial Transactions established by the Korea Federation of Banks and reviewed by the FSC. The guideline mandates notarization solely for the power of attorney when application documents of a foreign entity are submitted through an agent. A list of potential alternatives to a certificate of residence (as prescribed by the National Tax Service [NTS]) that are accepted in the context of taxation but may also be accepted in the Korean market at large can be found in Table 6.5 of Chapter VI.H.

Since the abolition of the IRC concept, the investor registration relies on these real-name-verification and KYC processes (previously, the IRC form and documents were processed by the custodian as standing proxy and a copy of the actual IRC certificate itself was then shared with other market participants). However, as part of the new practice, custodians (who often are the first point of contact) would accept the foreign investor's LEI and supporting documents, obtain or compile a KYC form (containing all necessary information), and typically share the form (and/or supporting documents) with the securities firms where the new client wants to open accounts. While it is the foreign investor's obligation to furnish every financial institution with the documents necessary for identification, the foreign investor can formally instruct its custodian to circulate the information the investor submitted to the custodian about identification to other financial institutions with which the investor plans to open accounts or through whom the investor intends to transact.

In this regard, it should be noted that the IRC was assigned once and had no expiry date. In contrast, LEI have a validity of 1 year and need to be renewed on an annual basis. There is no regulatory requirement in the Korean market to ensure the ongoing validity of the LEI once the account has been opened, though intermediaries may be subject to additional regulatory requirements in their home market. Investors bear the risk associated with an invalid LEI and need to notify market intermediaries if the status of their LEI changes.

b. Indirect Market Access via International Central Securities Depositories

While many of the recent policy changes and announcements are relevant for investors in all asset classes in the Korean capital market, this particular policy measure only applies to the bond market, in fact only to investments in KTBs and MSBs. As such, only bond investors may avail themselves of this indirect market access route via the ICSDs.

As part of recent policy measures to improve the attractiveness of the Korean capital market, foreign investors will be offered the option to transact Korean government bonds through their accounts in ICSDs. The concept is typically referred to in the Korean market as the "revitalization of the omnibus account," since the omnibus account concept has existed in principle for a number of years (see section M for context).

According to the MOEF, when the omnibus account is reactivated, foreign investors will be able to invest through their ICSD accounts that they already have regardless of the existing procedures such as appointing the standing proxy (typically a custodian) and opening a domestic trading account. The Government Bond Policy Division of the MOEF intends to officially release reference material for the new market entry

option at the end of April 2024, with a more detailed explanation of the ICSD omnibus account.¹⁴

Consequently, the market entry process described under subsection a. above would not apply. Instead, eligible ICSDs will open and maintain omnibus accounts directly with KSD as the central securities depository and electronic register (see also Chapter II.C), while opening and maintaining omnibus cash accounts with an appointed domestic settlement bank. At the same time—since the Korean won may not be transacted or held outside of the Republic of Korea—investors would have to appoint a correspondent bank in the Republic of Korea to execute FX transactions to fund Korean won for settlement, under the third-party FX option recently introduced through the revision of the MOEF Regulation on Foreign Exchange Transaction (see also section M.7 in this chapter). In a recent announcement, the MOEF also offered investors the opportunity to use their existing Korean won accounts to transfer funds to the ICSD omnibus cash account for the settlement of transactions.¹⁵

From their perspective, foreign investors may transact Korean government bonds through their established trading platforms and instruct settlement via their appointed ICSD. Additionally, the investor would arrange a domestic FX trade, as necessary, with its appointed FX bank. The ICSD would in turn settle all such client transactions with domestic settlement counterparties in KSD and effect payments through its cash correspondent upon receipt of funding from the clients' domestic cash correspondents. Instruction formats and market-specific indicators or practices to be observed by clients would follow the prescriptions of each ICSD and may be subject to limitations that affect certain client types and instruments.

Clearstream S.A. and Euroclear Bank have so far been named as the ICSDs becoming members of KSD.¹⁶ For more information about this access route, eligibility, and applicable practices, interested parties are advised to contact their ICSD.

M. Regulations and Limitations Relevant for Nonresidents

The information in this section focuses on details of the relevant changes to requirements and obligations affecting nonresident investors under recently introduced policy measures. The new concessions offered to nonresidents are added to the original list of topics in the *ASEAN+3 Bond Market Guide Republic of Korea*. Details provided are as of March 2024.

The replacement process following the IRC abolition is explained in detail in the previous section, as is the additional indirect market access option for foreign investors via ICSDs. New measures include a raft of changes in relation to the foreign exchange market in the Republic of Korea.

1. Foreign Investor Registration

The need for nonresident investors to obtain an IRC to access the Korean capital market was abolished with effect from 14 December 2023. The IRC concept had been in use since 1992 and has often been cited as a hurdle in terms of ease of market access. The change

¹⁴ Adapted from statements on p. 123 of MOEF. 2023. *Korea Treasury Bonds 2022*. Seoul. English versions of this and other annual KTB reports are available at <https://ktb.moef.go.kr/eng/publications.do>.

¹⁵ See MOEF. 2024. International Investors' KRW Trading for Local Stocks and Bonds Investment To Be Easier. Press Release. 21 February. <https://english.moef.go.kr/pc/selectTbPressCenterDtl.do?boardCd=N0001&seq=5783>.

¹⁶ To avoid ambiguity, it should be mentioned that, prior to the introduction of the Electronic Securities Act, 2019, participants in KSD were referred to as “depository members”; following the introduction of the act, “members” is considered more appropriate (as KSD's main role is as an electronic registry under the act).

demonstrated the willingness of policymakers to listen to market participant feedback and represents a key part of a broader set of policy measures to make the Korean capital market—including the bond market—more accessible and attractive to foreign investors.

The legal basis for the change was introduced in the revision bill of the Enforcement Decree of the FSCMA, approved by the Government of the Republic of Korea at a cabinet meeting on 5 June 2023. Consequently, regulatory authorities revised the FSC Regulation on Financial Investment Business and the FSS Detailed Rules of the Regulation on Financial Investment Business to reflect the change in process. The decree and regulations all took effect on 14 December 2023.

Following the abolition of the IRC concept, market registration for foreign investors in the form of a legal entity is achieved by providing an LEI and supporting documents (passport information for foreign individual investors) as part of the account opening process, a process that brings the Korean market in line with other regional and international markets. The LEI will be used as investor identification in market activities and needs to be provided to all domestic market entities that a foreign investor transacts investment business with in the Republic of Korea, including the custodian(s), other banks (e.g., for FX services), and securities firms. The LEI will also be used to identify a nonresident investor in statutory reporting to regulatory authorities.

Investors who had obtained an IRC in the past are required to continue to use the IRC in their transactional dealings to minimize any potential inconvenience otherwise caused by the change; investors may even amend their IRC—in case of, for example, name changes—or cancel a previously issued IRC if an investor withdraws from the Korean market.

Following the IRC's abolition, regulatory authorities will monitor total and individual foreign holding limits (on Korean equities and other instruments subject to limits) through a combination of IRC and LEI identifiers. The FSS is using the Foreign Investment Management System for that purpose.

6. Access to the Korean Market via International Central Securities Depositories (Indirect Market Access) **[New]**

To increase interest in Korean government bonds from foreign investors and in preparation for the anticipated inclusion of these bonds in international bond indices (see also Chapter X.B), policymakers decided to reactivate the concept of allowing ICSDs to open a direct account at KSD to route the transactions of its foreign investor clients to the Korean market. This as an alternative to each foreign investor opening and maintaining their own cash and securities accounts with Korean intermediaries. A description of the current access option can be found in section K in this chapter, while this section focuses on providing some context for this policy measure.

The policy measure in fact is referenced in the Korean market as a “revitalization of the omnibus account” since the FSC Regulation on Financial Investment Business in principle allows the use of an omnibus account as a policy option (**Table 2.4**). While an earlier trial in 2017 promoted by the FSC and focusing on equities did not result in the actual opening of omnibus accounts—due to onerous and specific reporting requirements for each IRC using such option at the time—the MOEF has chosen to commence the rollout of this option as part of its overall policy measures to make the Korean capital market more attractive for foreign investors. The revitalization of the omnibus account through ICSDs has also been facilitated by the MOEF's decision to exempt foreign investors from withholding tax on interest and capital gains derived from government bonds (see Chapter VI.H for details).

Table 2.4: Comparison of Omnibus Account Types

Omnibus Account Type	Omnibus Account for Stock Trading	Omnibus Account for Bond Trading (Indirect Market Access)
Government body in charge	FSC	MOEF
Introduction	2017	2010
Improvement or revitalization	2023 (improvement)	2024 (revitalization)
Statutory grounds	Subsidiary legislation of FSCMA	Subsidiary legislation of FSCMA
Major points	Streamlining relevant reporting processes in the Korean stock market	Providing alternative indirect access to the Korean bond market

FSC = Financial Services Commission, FSCMA = Financial Services and Capital Market Act, MOEF = Ministry of Economy and Finance of Korea.

Source: ASEAN+3 Bond Market Forum compilation based on information adapted from FSC and MOEF press releases.

Yet, the asset types that can be transacted through the ICSD omnibus account are limited to KTBs and MSBs. While this restricts the use of this indirect market entry option to bond investors, the measure may offer future benefits for investors, such as the ability to use Korean government bonds in their ICSD accounts as collateral for other transactions.

The FSCMA and its subsidiary legislation did not originally contain any provisions on which type of entities may avail themselves of an omnibus account in principle. To establish a clear legal basis for the ICSD omnibus account, the Government of the Republic of Korea revised the FSC Regulation on Financial Investment Business on 13 June 2023 (with an effective date of 14 December 2023), while the remit of both the FSC and the FSS allows the determination of specific criteria for eligibility for this policy option. Consequently, the FSC also revised its Regulation on Financial Investment Business to stipulate (in Article 6-7) that Korean government bonds may be traded offshore between investors who maintain accounts with an intermediary organization (i.e., an ICSD) and settled in the domestic market using an omnibus account to be maintained directly with KSD. In its revision of the Detailed Rules of Regulation on Financial Investment Business (Article 5-1), the FSS subsequently clarified that the term “international depository and clearing organization” meant Clearstream and Euroclear. In consequence, presently only Clearstream S.A. and Euroclear Bank are able to open, maintain, and operate an omnibus account for Korean government bond transactions in the Korean market.

As of the end of 2023, KSD had signed an agent agreement with Clearstream and a CSD agreement with Euroclear to establish and operate omnibus account services for KTBs and MSBs, and it was in the process of implementing the necessary ICSD omnibus account system functionality, which was expected to go live in the first half of 2024. Instead of establishing a direct connection with KSD, both ICSDs will utilize SWIFT messaging to interact with KSD.

At the same time, the ICSD omnibus account option does come with a requirement for the ICSDs to furnish periodical and ad hoc reporting on the transactions conducted through the omnibus account, such as a record of transactions of the investors on a monthly basis. In the transaction details, to be submitted from the ICSD to the FSS via KSD, the full entity names of the foreign investors are to be included as well as the relevant LEI information for new foreign investors entering the market after 14 December 2023 (following the IRC’s abolition).

The reporting obligation is stipulated in Article 5-1 (Paragraphs 2 and 3) of the FSS Detailed Rules of the Regulation on Financial Investment Business.

7. Ability to Transact Foreign Exchange via Third Parties [New]

As part of its set of measures to make the Korean capital market more attractive for foreign investors, the MOEF set out the FX Market Structural Improvement Plan in February 2023. In its announcement, the MOEF clarified that nonresidents are able to execute FX transactions of Korean won against other currencies through any banks or authorized FX agents other than their appointed custodian bank; this practice is generally referred to as “third-party FX.” The MOEF stated that this change in policy did not require changes to the Foreign Exchange Transaction Act, or FETA, and that it would issue a corresponding interpretive ruling to provide clarity to the market.¹⁷ Consequently, the MOEF revised the MOEF Regulation on Foreign Exchange Transaction, effective 4 July 2023.

Previously, it was established market practice that nonresidents were able to execute transactions in the FX market only through dedicated accounts with their appointed custodian bank. While this was occasionally challenged by investors’ understanding of the legal and regulatory framework, the practical aspect of funding through a third party, combined with penalties for failed settlements and statutory reporting requirements on all FX transactions and account movements by the custodian or any third party, discouraged the use of third-party FX.

The MOEF interpretive ruling will, at least in principle, allow nonresident investors to pursue best execution practices in the Korean FX market. At the same time, some of the procedural requirements may continue to make this greater flexibility impractical.

8. Participation in the Domestic Foreign Exchange Market [New]

An additional measure announced in February 2023 as part of the MOEF’s FX Market Structural Improvement Plan will be the ability for nonresident financial institutions to directly participate in the domestic FX market in the Republic of Korea.

Previously, the Korean domestic FX market was limited to domestic banks and non-bank financial institutions licensed as FX businesses. Nonresident investors or nonresidents in general were only able to conduct FX transactions through domestic market participants.

The new concession will require the registration of interested parties as a so-called Registered Foreign Institution (RFI). Upon successful registration, the RFI would be able to transact FX spots and forwards (FX swaps and outright forwards) with any counterparty in the domestic FX market directly. At the same time, RFIs will need to settle KRW transactions through a designated KRW account with a domestic bank.

The MOEF announced that the foreign exchange market reform measures will be officially implemented from the second half of 2024 after 6 months of pilot operation. The MOEF established the Guidelines on the Foreign Exchange Affairs of Foreign Financial institutions and enforced them from 7 November 2023.

¹⁷ The MOEF has set up a dedicated web page, “FX Market Reform,” that offers press releases, guidelines for market participants, relevant laws and regulations, updates on developments, and a list of practical frequently asked questions. The web page is available in English and Korean at <https://www.moef.go.kr/sns/2024/foreignExchange.do?category=lawEng>.