

Legal and Regulatory Framework

A. Legal System

Brunei Darussalam has an English common law legal system that was inherited from the British Residential system. The Constitution of Brunei Darussalam sets out the governing authorities along with their respective functions, including the power to make laws. The full list and contents of laws can be found on the Brunei Darussalam Attorney General's Chambers website. The Syariah legal system, introduced during the reign of the first Sultan of Brunei Darussalam, is integral to societal discipline and has exclusive jurisdiction over Islamic matrimonial and family matters.

The Application of Laws Act (Chapter 2) states that the "common law of England and the doctrines of equity together with statutes of general application in force in England as of 25th April 1951, shall be in force in Brunei Darussalam subject to if local circumstances and customs permit."

The Brunei Darussalam judiciary consists of a three-tiered court system: (i) the Supreme Court, comprising the High Court and the Court of Appeal; (ii) the Intermediate Court; and (iii) the Subordinate Court, comprising the Magistrate Courts, Juvenile Court, and the Small Claims Tribunal. Appeals from the Subordinate Courts go to the High Court. While all appeals from the Intermediate Court and the High Court go to the Court of Appeal. The Court of Appeal is the final appellate court for all criminal cases. The parties to civil cases may agree to refer the final appeal on a civil matter to the Judicial Committee of the Privy Council in London. In February 2016, the Commercial Court was established as a specialist court to deal and expedite the hearing of commercial cases, including those relating to contracts, the export and import of goods, insurance, banking and financial services, and the operation of markets and exchanges.

The Brunei Darussalam Arbitration Centre came into operation in May 2016 and provides the services and administration for arbitration and mediation to domestic and international users in relation to commercial disputes, and serves as an alternative to civil court proceedings. The Arbitration Order 2009 and the International Arbitration Order 2009, which both came into force on 23 February 2010, provide the legal mechanism for domestic and international arbitration as well as the recognition and enforcement of arbitral awards. The order adopts the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration. Both pieces of legislation follow the principle that the courts of Brunei Darussalam may support but not interfere with the arbitration process. Brunei Darussalam is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration (New York Arbitration Convention) providing for the direct recognition and enforcement of arbitral awards in 156 countries.

B. Official Language

Bahasa Melayu is the official language in Brunei Darussalam, but English is widely used in the country. All laws, rules, and regulations in Brunei Darussalam are also published in the English language.

C. Legislative Structure

The legal infrastructure for regulating the capital market in Brunei Darussalam comprises primary legislation, subsidiary legislation, and regulatory direction:

- [1st tier] Constitution of Brunei Darussalam
- [2nd tier] Primary legislation (key legislation for the securities market)
- [3rd tier] Subsidiary legislation (rules and regulations)
- [4th tier] Directions (notices and directives issued by AMBD)
- [5th tier] Guidelines (issued by AMBD)

Table 2.1 illustrates the legislative structure outlined above.

Table 2.1: Examples of Securities Market Legislation by Legislative Tier

Legislative Tier	Content or Significant Examples
Constitution of Brunei Darussalam	<ul style="list-style-type: none"> • Constitutional Matters I—Constitution of Brunei Darussalam • Constitutional Matters III—Constitutional (Financial Procedure) Order
Primary legislation	<ul style="list-style-type: none"> • Autoriti Monetari Brunei Darussalam Order, 2010 • Securities Markets Order, 2013 • Syariah Financial Supervisory Board Order, 2006
Subsidiary legislation	<ul style="list-style-type: none"> • Securities Markets Regulations, 2015 • Securities Markets (Compoundable Offences) Regulations, 2015 • Securities Markets (Fees) Regulations, 2015
Directions (notices)	<ul style="list-style-type: none"> • Notice on Exemption from Public Offering Registration Requirement, 2014 • AMBD Notice No. CMU/N-1/2016/5—Notification on Private Offerings and Exempt Securities and Transactions • Notice on Withdrawal of Exemptions Granted Under the Repealed Securities Order, 2001; and Mutual Funds Order, 2001

Source: Compiled by ADB consultants for SF 1 based on information provided by Autoriti Monetari Brunei Darussalam.

The primary legislation sets out the main regulatory provisions. The Securities Markets Order, 2013 (SMO) came into force on 25 June 2013 and provides for the licensing and regulation of securities markets activities, including the bond market and related institutions and participants in Brunei Darussalam market segments.

Regulations are made to supplement provisions of the primary legislation. The SMR came into effect on 1 February 2015 and provides detailed rules for implementation of the various general provisions under the SMO. The Securities Markets (Compoundable Offences) Regulation, 2015 makes provision for the compounding of

offences under the SMO, whereas the Securities Markets (Fees) Regulation, 2015 sets out the applicable fees.

Directions are specific instructions from AMBD to a regulated person (as defined under the SMO) or a financial institution (as defined under the Autoriti Monetari Brunei Darussalam Order, 2010) to ensure compliance. It can exist either in the form of a notice or a directive. Notices are issued in relation to a class of specified persons, whereas a directive would usually impose the requirements on a particular person. These are legally binding in nature and noncompliance will be an offense. To date, AMBD has issued two notices under the SMO: (i) the Notice on Exemption from Public Offering Registration Requirement, 2014; and (ii) the Notice on Withdrawal of Exemptions Granted Under the Repealed Securities Order, 2001 and Mutual Funds Order, 2001.

D. Brunei Bond Market Regulatory Structure

The capital market in Brunei Darussalam is governed by the laws and regulations regulated and enforced by AMBD. In the absence of a self-regulatory organization (SRO), AMBD also supports the development of market infrastructure needed to facilitate growth of the debt securities and *sukuk* market in Brunei Darussalam.

1. Autoriti Monetari Brunei Darussalam

AMBD acts as the central bank of Brunei Darussalam. It was established on 1 January 2011 under the Autoriti Monetari Brunei Darussalam Order, 2010 with four principal objectives:

- (i) achieve and maintain domestic price stability;
- (ii) ensure the stability of the financial system, in particular by formulating financial regulations and prudential standards;
- (iii) assist in the establishment, functioning, and oversight of efficient payment systems; and
- (iv) foster and develop a sound and progressive financial services sector.

AMBD continues to play a vital role through its developmental, regulatory, and supervisory functions. It will continue to work closely with market participants to provide a conducive environment and the infrastructure needed for the sector to grow.

2. Brunei Securities Exchange

The development of the Brunei Securities Exchange is currently underway and is a high priority for the Government of Brunei Darussalam and AMBD. A securities exchange is a key piece of infrastructure needed to support growth of the capital market in Brunei Darussalam.

3. Syariah Financial Supervisory Board and Syariah Advisory Body

Brunei Darussalam has a two-tiered Syariah governance structure:

- (i) The first tier comprises the centralized Syariah Financial Supervisory Board (SFSB) for which AMBD is the secretariat. The SFSB was established under the Syariah Financial Supervisory Board Order, 2006, which provided for control of the administration and dealings of financial institutions concerning Islamic products. Any new Islamic product must be approved by the SFSB in accordance with *Hukum Syara'* (Islamic law) before being transacted. The SFSB has a mandate to ascertain the

application of Islamic law on any financial matter; issue rulings on matters referred to it; and advise on any Syariah issues relating to Islamic financial business, activities, or transactions.

- (ii) The second tier comprises an internal Syariah Advisory Body (SAB) within each Islamic financial institution (IFI). IFIs and SABs are to consult with the SFSB, through AMBD, on Syariah matters relating to any business that is based on Syariah principles. SABs are responsible for IFIs' adherence to and implementation of SFSB guidelines and regulations.

E. Regulatory Framework for Debt Securities and *Sukuk*

Generally, any issuance of securities in Brunei Darussalam, including debt securities and *sukuk*, are governed by Part V (Public Offering) under the SMO where any public offerings are required to be registered with AMBD, unless they are considered exempt securities and transactions under section 117(b) of the SMO.

F. Debt Securities and *Sukuk* Issuance Regulatory Processes

Generally, any issuance, whether in Brunei dollars or a foreign currency, of corporate bonds, notes, or *sukuk* shall meet the public offering registration requirements as set out in section 116(1) of the SMO, unless the type of securities or transactions are exempted under section 117(b) of the SMO.

1. Regulatory Processes by Issuer Type

Table 2.2: Authorities Involved in Regulatory Processes by Issuer Type

Type of Issuer	AMBD
Resident issuer	
Resident nonfinancial institution	X
Resident financial institution	X
Resident issuing FCY-denominated bonds and notes	X
Nonresident issuer	
Nonresident nonfinancial institution	X
Nonresident financial institution	X
Nonresident issuing FCY-denominated bonds and notes	X

AMBD = Autoriti Monetari Brunei Darussalam, FCY = foreign currency.

Note: "X" indicates approval is required.

Source: ADB consultants for SF1.

Table 2.2 provides an overview of regulatory processes by corporate issuer type and identifies which regulatory authority or market institution will be involved. In order to make the issuance process by issuer type more comparable across ASEAN+3 markets, the table features common issuer-type distinctions that are evident in regional markets.² Not all markets will distinguish all such issuer types or prescribe

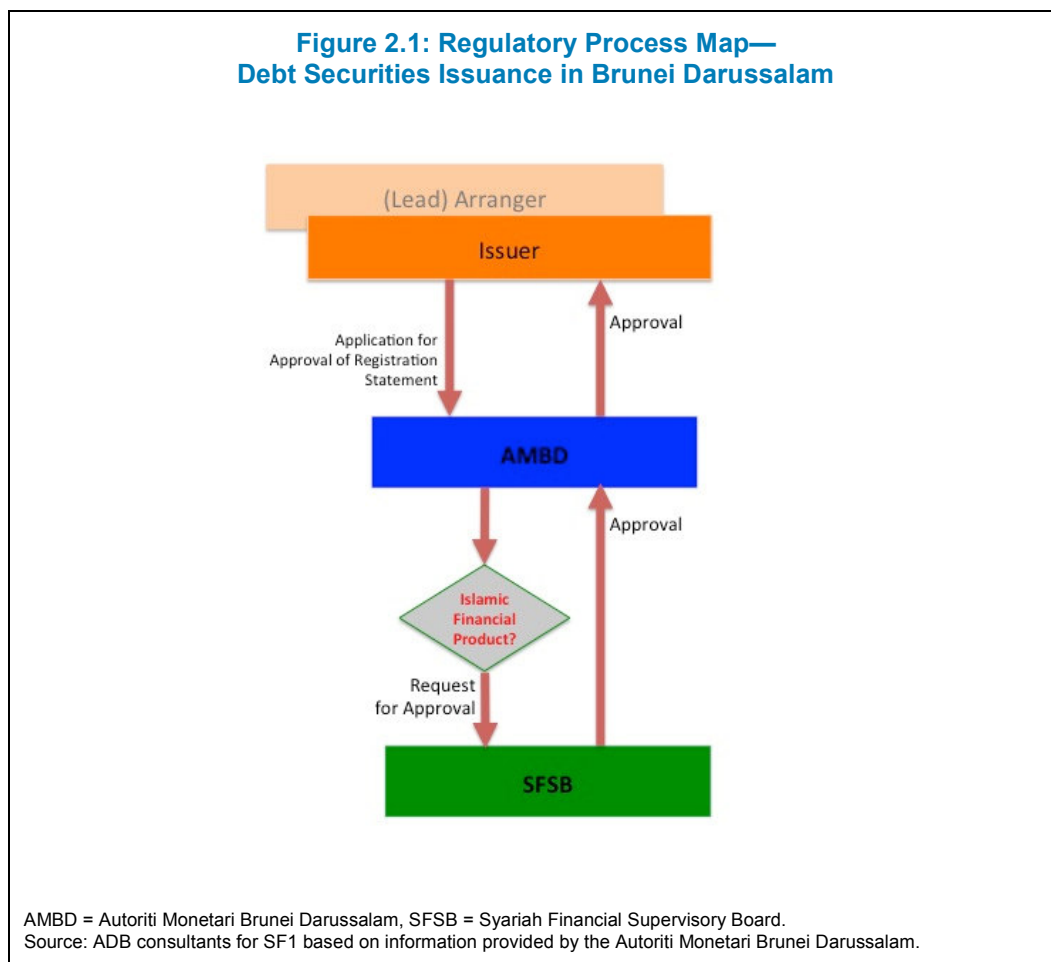
² ASEAN+3 refers to the 10 members of ASEAN plus the People's Republic of China, Japan, and the Republic of Korea.

approvals. Sovereign issuers are typically exempt from corporate issuance approvals but, at the same time, may be subject to different regulatory processes.

There are no differences between the regulatory process for domestic and foreign issuers. All applications go directly to AMBD for its approval.

2. Overview of Regulatory Processes

The general regulatory process map in Figure 2.1 may help with the navigation of the applicable regulatory processes to be applied to any issuance of bonds, notes, or *sukuk*. Any application submitted to AMBD requires two supporting documents: (i) the Registration Statement and (ii) the prospectus. Any *sukuk* issuance will require additional endorsement from the SFSB.



The individual regulatory processes, as may be applicable, are explained in subsequent sections.

3. Regulatory Process in Case of a Nonresident Issuer

There are no separate processes for nonresident issuers. The steps outlined in section 4 apply to any applications for the issuance of debt securities and *sukuk*.

4. Regulatory Process for Public Offers

The regulatory framework in Brunei Darussalam is geared toward the issuance of securities via a public offering. Such issuances are subject to the approval from AMBD. The appointment of an underwriter for public offers is not mandatory under the law.

The application to AMBD and approval process involves a number of steps that are explained in greater detail below.

Step 1—Submission of Application for Approval to AMBD

According to section 116(1) of the SMO, any person who wishes to sell or make an offer to sell securities through a public offering shall first submit an application to AMBD. In making the application, the following documents are to be submitted:

- (i) covering letter;
- (ii) registration form for debentures;
- (iii) prospectus; and
- (iv) fee of BND500 for filing the Registration Statement.

The applicant is also required to comply with any other requirements under the SMO. The actual approval process is contained in a multitude of sections under the SMO (and SMR), with the actual approval being granted pursuant to section 122 of the SMO.

As for the Registration Statement, it shall contain all such necessary information as investors and their professional advisers would reasonably require and expect to find therein. This will enable them to make an informed assessment of the

- (i) assets and liabilities, financial position, profits and losses, and prospects of the issuer; and
- (ii) rights attaching to the securities.

Additionally, it shall also contain other information or documents as may be necessary with respect to

- (i) the terms of the offering, including the identity of any underwriter and the method of offering;
- (ii) information about the business and operations of the issuer;
- (iii) the identity of directors, senior management, promoters, and auditors;
- (iv) capitalization and indebtedness of the issuer;
- (v) risk factors;
- (vi) securities market data regarding any trading history of the issuer's shares;
- (vii) use of the proceeds of the offering;
- (viii) pending litigation;
- (ix) management discussions and analysis of financial conditions and results of the issuer's business operations;
- (x) forecasts of estimated profits or losses for the year ending immediately before the date of the prospectus and the year ending immediately after the date of the prospectus;

- (xi) a certificate from the issuer's auditor stating any changes in directors and auditors during the last 3 years, indicating the reasons for any changes; and
- (xii) audited financial statements for the years and periods required by AMBD.

Furthermore, the Registration Statement for any debenture public offering shall also contain the following information:

- (i) rights and restrictions related to the transfer of the debentures;
- (ii) return on the debentures;
- (iii) property or other collateral used as security for repayment, if any;
- (iv) debenture holder's representative, if any;
- (v) encumbrances on the property of the company that issues securities in case of unsecured securities;
- (vi) outstanding debt from previous issues of debentures;
- (vii) procedure, time, and place of payment;
- (viii) procedures for the conversion of rights, if any; and
- (ix) any other necessary information that AMBD may require.

Step 2—Approval from AMBD

AMBD will review the application and issue a formal written approval or rejection letter with regard to the bond, note, or *sukuk* issuance within 40 calendar days. AMBD may require further clarification or additional information from the applicant.

Regulations do not stipulate a specific time frame for which the issuance approval is valid; however, Part II (Securities Registration and Prospectus Requirements), Section 12(5) of the SMR states that the prospectus is valid for 12 months from the time of its publication. Regulation 12(1) of the SMR requires issuers to make the prospectus available to the public as soon as practicable after it has been approved.

5. Regulatory Process for Shelf Registration

As set out in section 127(1) of the SMO, a person may issue, offer for subscription or purchase, or make an invitation to subscribe or purchase securities, when at the time of the issue, offer, or invitation there is in force

- (i) a Shelf Registration Statement as updated by a form of supplementary shelf prospectus, and
- (ii) additional forms and information relating to all matters in which AMBD shall require by way of regulations made under this Order with respect to a shelf registration and form of supplementary shelf prospectus, additional forms, and information.

An eligible issuer may use a short-form Registration Statement for ongoing or shelf registrations of its securities, in which the issuer registers a relatively large amount of different types of securities that it may then issue from time to time as needed.

A Shelf Registration Statement and a prospectus become effective upon approval of the AMBD and permit take-downs of the securities without additional approval provided the filing information is updated as instructed by the AMBD.

There are no specific regulations on the time frame within which the take-downs (or tranche issuances) will need to be completed; instead this may be determined by AMBD administratively, as stipulated in section 3(1) of the SMR.

6. Regulatory Process for Private Offering

The following are some of the exempt transactions as set out in section 117 of the SMO that are designated as private offerings:

- (i) **Pure buy-and-hold private offering.** The sale of securities by an issuer to fewer than 50 persons in Brunei Darussalam during a 12-month period may be considered a private offering in respect of which no public advertisement for the offer to sell such securities is permitted and such securities sold to these investors must be held for investment for a period of at least 2 years.
- (ii) **Private offering to Professional Investors.** The sale of securities to any number of the specific classes of investors defined in section 20 of the SMO, and such other persons as AMBD may by regulation determine as qualified buyers, is also considered a private offering.

Please refer to Chapter III.N for a description of the applicable investor classes.

All transactions that are exempt transactions within the meaning of section 117 of the SMO are exempted from the requirement to file with AMBD the Registration Statement as well as the prospectus as outlined in section F.4 of this chapter. In such cases, AMBD only requires a notification of the offering using a form prescribed as per AMBD Notice No. CMU/N-1/2016/5—Notification on Private Offerings and Exempt Securities and Transactions.

7. Obligations after Approval and after Issuance

Under the current regulatory framework, post-issuance reporting obligations apply to public offers only and are detailed below.

(a) Public Offers

The person who obtains AMBD's approval for the issuance of any debt securities and *sukuk* through a public offering will be required to report monthly (end-of-month reporting) on the debt securities and *sukuk* with regard to

- (i) country risk,
- (ii) type of security,
- (iii) currency,
- (iv) coupon rate,
- (v) maturity,
- (vi) indicative bid,
- (vii) indicative offer, and
- (viii) yield to maturity.

(b) Private Offerings

For any issuance conducted by way of private offering, the issuer shall be required to report on a monthly basis (end-of-month reporting) the following information on non-sovereign debt securities and *sukuk*:

- (i) product name,
- (ii) product type,
- (iii) issuer,
- (iv) issue date,
- (v) tenor, and
- (vi) maturity.

8. Issuance Process Specific for a Domestic Financial Institution

There is no separate regulatory process for domestic financial institutions. The regulatory process is the same as described in section F.4 of this chapter.

9. Regulatory Process for Foreign-Currency-Denominated Debt Instruments and *Sukuk*

There is no separate regulatory process for foreign-currency-denominated debt instruments and *sukuk*. The regulatory process is the same as described in section F.3 of this chapter.

G. Continuous Disclosure Requirements in the Brunei Bond Market

AMBD has implemented the following continuous disclosure requirements for public offers and private offers.

1. In the Case of a Public Offering

As per paragraph (7) from section F of this chapter, any person who has obtained AMBD's approval for the issuance of any debt securities or *sukuk* through a public offering will be required to report on a monthly basis (end-of-month reporting) on the debt securities or *sukuk* with regard to

- (i) country risk,
- (ii) type of security,
- (iii) currency,
- (iv) coupon rate,
- (v) maturity,
- (vi) indicative bid,
- (vii) indicative offer, and
- (viii) yield to maturity.

2. In the Case of a Private Offering

An issuer of private debt securities or *sukuk* through a private offer would have to submit to AMBD a report on a monthly basis (end-of-month reporting) containing the following information:

- (i) product name,
- (ii) product type,
- (iii) issuer,
- (iv) issue date,
- (v) tenor, and
- (vi) maturity.

H. Self-Regulatory Organizations in the Brunei Bond Market

At present, there are no SROs in the Brunei bond market. Any SRO would have to meet the requirements stated in Part IV on Self-Regulating Organizations in the SMO.

I. Licensing and Registration of Market Participants

The licensing and/or registration of capital market participants is described below.

1. Capital Market Participants

A company or corporation, and individuals of such companies or corporations that conduct business in any regulated activities, as in Part II Activities Constituting Investment Business, Schedule—Securities and Investment Business, in Brunei Darussalam are required to hold a Capital Markets Services Licence (CMSL) or a Capital Markets Services Representatives Licence (CMSRL), respectively.

CMSL and CMSRL are only valid for a period of 12 months. Nevertheless, AMBD may extend the licence tenure to 36 months for a CMSL holder and to 24 months for a CMSRL holder as an incentive to raise the standards of corporate governance and market conduct.

The regulated activities provided in Part II Activities Constituting Investment Business, Schedule—Securities and Investment Business of the SMO are as follows:

- (a) dealing in investments;
- (b) arranging deals in investments;
- (c) safekeeping and administration of assets;
- (d) managing securities;
- (e) providing investment advice;
- (f) establishing collective investment schemes; and
- (g) using computer-based systems for giving investment instructions.

A CMSL will only be granted to a company or corporation incorporated in Brunei Darussalam or a foreign branch. They must be fit and proper, as set out in section 157(5) of the SMO. In assessing whether the CMSL applicant is fit and proper, several criteria will be considered, as specified in regulation 29(2) of the SMR, which are as follows:

- (a) honesty, integrity and reputation;
- (b) competence and capability;
- (c) financial soundness; and
- (d) requirements relating to competencies of representatives.

A CMSL applicant is required to satisfy the minimum financial requirements set by the AMBD for any regulated activities as specified in regulation 33 of the SMR.

A CMSRL applicant is required to satisfy the requirements of Part VII of the SMO and the conditions set out in regulation 40(1) of the SMR. In assessing the competency of the applicant to carry out a regulated activity, the applicant's educational and professional background, working experience, and previous track record will be considered.

A CMSRL applicant is required to pass the relevant licensing examination set by AMBD. The examination result of the applicant is valid for 3 years from the date of

passing the licensing examination set by AMBD. A CMSRL holder may be exempted from taking the licensing examination every 3 years by undertaking a minimum of 20 points of continuing professional development³ in a year, on or before the anniversary date of the licence.

J. Rules Related to Bond and *Sukuk* Listing, Disclosure, and Trading

Any rules and regulations, such as Listing Rules and Trading Rules, that will be used by market operators or SROs will require approval from AMBD.

For information on disclosure rules and obligations, please refer to sections F.7 and G in this chapter. Information on trading related rules can be found in Chapter IV.

K. Market Entry Requirements (Nonresidents)

Nonresidents are principally able to participate freely in the Brunei bond market. Details can be found below.

1. Nonresident Issuers

There is no distinction in the requirements under the SMO between resident and nonresident issuers. Nonresident issuers, which are also called foreign issuers, may issue debt securities or *sukuk* denominated in either Brunei dollars or a foreign currency in Brunei Darussalam, subject to the approval of AMBD (see section F in this chapter). There is no restriction for nonresident issuers to open and maintain accounts in Brunei dollars or a foreign currency with licensed onshore banks in Brunei Darussalam.

2. Foreign Investors

There are no specific market entry requirements for foreign investors to invest in the Brunei bond market, including *sukuk*. Foreign investors may invest in Brunei Darussalam in any form, including the purchase of debt securities or *sukuk* denominated in either Brunei dollars or a foreign currency. However, prior to investing in securities in Brunei Darussalam, investors are required to open an account with a bank in Brunei Darussalam.

L. Market Exit Requirements (Nonresidents)

The sections below contain details on the applicable exit requirements for nonresidents.

1. Nonresident Issuers

Any nonresident issuer who wishes to exit the market must submit to AMBD the following documents

³ Continuing Professional Development (CDP) comprises trainings and other such activities accredited by a specific CDP Board. Courses offered by the Centre for Islamic Finance, Business and Management are one example of CDP.

- (i) Board of Director's resolution, and
- (ii) any notice or statement provided to clients on the closure of the business.

2. Foreign Investors

There are no specific market exit requirements for foreign investors. There are no restrictions for foreign investors to repatriate funds from the divestment of domestic assets or profits and dividends arising from investments in Brunei Darussalam.

M. Regulations and Limitations Relevant for Nonresidents

The applicable regulations and possible limitations for nonresidents are provided below in brief, grouped according to the key topics of interest for nonresidents.

There are no currency controls in Brunei Darussalam.

1. Foreign Currency Limitations

There is no restriction on the amount of foreign currency that may be remitted into or out of Brunei Darussalam by nonresidents. Any person receiving an amount in a foreign currency from abroad may deposit the funds into a foreign currency account maintained with a licensed onshore bank.

However, any person carrying physical currency or bearer negotiable instruments valued at BND15,000 (or its equivalent in a foreign currency) or more while traveling in and out of Brunei Darussalam is required to declare it upon entry or exit at control posts. The failure to declare contravenes section 37(1) of the Criminal Asset Recovery Order and the person would be liable to a fine not exceeding BND50,000, imprisonment for a term not exceeding 3 years, or both.

2. Local Currency Limitations

Outbound remittance of Brunei dollars may be converted into a foreign currency either with a licensed onshore bank or a licensed money remittance company prior to remittance.

Similarly, any person carrying physical currency or bearer negotiable instruments valued at BND15,000 (or its equivalent in a foreign currency) or more while traveling in and out of Brunei Darussalam would have to declare it upon entry or exit at control posts.

3. Foreign Currency Funding

Nonresidents may obtain foreign currency financing from licensed onshore banks provided the availability of foreign currency funding at the banks, subject to applicable anti-money-laundering and combating-the-financing-of-terrorism requirements being met.

4. Local Currency Funding

Nonresidents who are not financial institutions may obtain Brunei dollar financing from licensed onshore banks subject to the bank meeting prudential requirements and internal limits for the purpose of financing real-sector activities in Brunei Darussalam such as manufacturing, trade, and other commercial activities.

N. Regulations on Credit Rating Agencies

This section covers the regulations and requirements applicable to credit rating agencies operating in Brunei Darussalam and their business. For the actual credit rating requirements in the Brunei bond market, and the application of such credit ratings in the issuance process for bonds, notes, and *sukuk*, please refer to Chapter III.O.

At present, there are no credit rating agencies operating in Brunei Darussalam.