

Legal and Regulatory Framework

A. Legal Tradition

The Republic of Korea has a civil law tradition. To some extent, it has also been influenced by neighboring and international laws including British Common Law, European Union law, and United States law.

B. English Translation

As far as the translation of the laws and regulations in the Republic of Korea are concerned, the Ministry of Government Legislation hosts a database of translated Korean laws.³ All of the translations contained in this system are unofficial. Only the original Korean texts of the laws and regulations have legal effect, and the translations are to be used solely as reference materials to aid in the understanding of Korean laws and regulations.

The Government of the Republic of Korea is not responsible for the accuracy, reliability, or currency of the legislative materials provided, or for any consequences resulting from use of the information on the website hosted by the Ministry of Government Legislation.

For purposes of interpreting and applying a law to any legal issue, users should consult the original Korean text published in the Official Gazette. Furthermore, any translation in which the title of a law indicates it to be a tentative translation has not yet been proofread or corrected by a native English speaker or legal translation expert; these translations may be revised in the future.

C. Legislative Structure

The Republic of Korea features a multitiered legislative structure to govern the financial and capital markets, guided by the Constitution of the Republic of Korea as the supreme law.

[1st tier] Constitution of the Republic of Korea

[2nd tier] Statutes and acts (fundamental and key legislation for the market and market participants)

[3rd tier] Subordinate legislation (e.g., Presidential or Enforcement Decree and Enforcement Rule of the Prime Minister or Regulation of a Ministry)

[4th tier] Self-regulatory organization (SRO) rules (e.g., from Korea Financial Investment Association [KOFIA] or KRX)

³ Government of the Republic of Korea, Ministry of Government Legislation. Korean Law Translation Database System. <http://www.law.go.kr/main.html>

Table 2.1 illustrates the legislative structure mentioned above by giving significant examples of relevant securities market legislation for each of the individual tiers.

Table 2.1: Examples of Securities Market Legislation by Legislative Tier

Legislative Tier	Content 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 Establishment, etc. of the Financial Services Commission (28 May 2014) The Bank of Korea Act (29 May 2016) Banking Act (13 August 2013) Commercial Act (23 May 2011) Financial Investment Services and Capital Markets Act (28 January 2014) Act on Issuance and Distribution of Short-Term Electronic Bonds, etc. (14 July 2011) Secured Bond Trust Act (17 May 2010)
Subordinate legislation (Presidential Decree or Enforcement Rule of the Prime Minister or Ministry)	<ul style="list-style-type: none"> Enforcement Decree of the Banking Act (20 April 2005) Enforcement Decree of the Financial Investment Services and Capital Markets Act (30 December 2013) Enforcement Rule of the Financial Investment Services and Capital Markets Act (29 August 2013) Enforcement Decree of the Act on Issuance and Distribution of Short-Term Electronic Bonds, etc. (4 December 2012) Enforcement Decree of the Secured Bond Trust Act (29 February 2008) Enforcement Rule of the Secured Bond Trust Act (3 March 2008) FSC Regulation on Financial Investment Business (31 December 2013) FSC Regulation on Issuance, Public Disclosure, etc. of Securities (28 June 2016) FSS Detailed Rules of the Regulation on Financial Investment Business (30 March 2015) FSS Detailed Regulations on Issuance, Public Disclosure, etc. of Securities (16 July 2014)
SRO rules (e.g., from KOFIA or KRX, and their enforcement rules)	<ul style="list-style-type: none"> KOFIA Regulations on Business Conduct and Services of Financial Investment Companies (21 June 2016) KOFIA Regulations on Securities Underwriting Business, etc. (21 April 2016) KOFIA Standard Working Rules on Ethics for Financial Investment Companies (26 October 2012) KOFIA Regulations on Registration and Management, etc. of Securities for Qualified Institutional Buyers (21 June 2016) KRX-KOSPI Market Business Regulation (31 January 2018) KRX-KOSPI Market Disclosure Regulation (28 December 2016) KRX-KOSPI Market Listing Regulation (31 January 2018) KSD Regulation on Settlement Service for Securities (28 December 2012) KSD Regulation on Deposit Service for Securities (28 December 2012) KSD Regulation on Bond Registration Business (28 December 2012) KSD Securities Lending and Borrowing Regulation (29 May 2014)

FSC = Financial Services Commission, FSS = Financial Supervisory Service, KOFIA = Korea Financial Investment Association, KRX = Korea Exchange, KSD = Korea Securities Depository.

Source: ADB consultants for SF1.

1. Fundamental and Key Legislation (Statutes and Acts)

Fundamental legislation establishes the key stakeholders of the financial and capital markets in the Republic of Korea, including central bank and regulatory authorities. Statutes and acts, in the context of the bond market, refer to legislation specifically aimed at the securities market or capital market. These laws and acts establish and govern securities markets or market segments, including the bond market, and related institutions and participants, and define instruments and their basic issuance requirements. These laws and acts are passed by the National Assembly of Korea (Parliament). Laws generally state in their text when they take effect.

Among the fundamental legislation is the Banking Act, which regulates the activities that banks and other financial institutions may carry out, including in the bond market. On 15 January 2018, the Financial Services Commission (FSC) proposed amendments to the Banking Act to relax certain compliance and capital requirements, and remove investment limits on certain classes of debt securities. Key provisions include the following: (1) banks are to be exempt from ex-ante reporting for concurrent businesses that are registered, approved, or authorized pursuant to legislation other than the Banking Act; (2) the investment limit on low-risk debt securities such as municipal bonds is to be removed; and (3) banks are to accumulate at least 10% of their cash dividend as an “earned surplus reserve” until the aggregate reserve amount reaches half of the capital as they are required under the Commercial Act. The public comment period for the proposed amendments ended on 25 February 2018.

The FSCMA effectively represents the key legislation relevant for the Korean bond market. The FSCMA is the fundamental law governing the domestic financial and capital markets in the Republic of Korea, as well as securities and other financial instruments, their issuance, and trading.

Public sector bonds are issued based on the relevant laws. Government bonds are issued under Article 5 in the State Bond Act. According to this article, government bonds are issued by the Minister of the Ministry of Strategy and Finance (MOSF), and the issuing method and other necessary matters are determined by a corresponding ordinance of the Minister. The legal basis for municipal bonds issuance includes the Local Autonomy Act and the Local Public Enterprises Act.

Special bonds are also issued based on the acts under which the issuer was established. MSB, a representative special bond, is based on Article 69 of the Bank of Korea Act. BOK can issue and buy back bonds in the open market, as prescribed by the act and the Monetary Policy Committee. Acts for other financial special bonds include the Korea Development Bank Act, Export and Import Bank of Korea Act, and Industrial Bank of Korea Act. The acts for nonfinancial special bonds include the Korea Railroad Corporation Act, Korea Land and Housing Corporation Act, Korea Water Resource Corporation Act, and Korea Expressway Corporation Act. These public banks and corporations can generally issue bonds up to the limit not exceeding a prescribed amount based on capital and reserves, as stipulated in the respective acts.

2. Subordinate Legislation (Decrees or Enforcement Rules)

Subordinate legislation is issued in the form of Enforcement Decrees of the President or Enforcement Rules of the Prime Minister, or Regulations or Detailed Regulations of the FSC as the government body administering the legislation for the financial and capital markets in the Republic of Korea. This subordinate legislation renders statutes and acts effective, and interprets aspects from key legislation for practical application in the markets.

3. Self-Regulatory Organization Rules

In turn, the rules and enforcement rules of the SROs, which have been charged with governing their respective markets and their participants on a day-to-day basis, play a very important part in defining the roles and responsibilities of market institutions and their participants, and the actions they may take. These rules contain descriptions on how regulations should be applied and specific market activities carried out.

D. Korean Bond Market Regulatory Structure

The capital market and various aspects of the bond market in the Republic of Korea are governed by regulations issued and enforced by BOK, the FSC, the Financial Supervisory Service (FSS), and MOSF. In addition, the bond market is administered by two SROs, KOFIA and KRX, which organize their own membership and market participation, and issue rules for market conduct and practices.

Market regulatory authorities involved in the bond and note issuance approval processes—in effect for corporate bonds, notes, and commercial paper—include the FSC, the FSS, KOFIA, and KRX.

1. Ministry of Strategy and Finance

MOSF is committed to developing a strong economy and building growth engines through the concerted efforts of its offices and bureaus. MOSF works to ensure macroeconomic and financial stability, effective policy coordination, efficient allocation of national resources, fiscal soundness, rational tax policies, and robust international cooperation.

MOSF is responsible for (i) implementing mid- to long-term national growth strategies; (ii) economic and fiscal policy coordination; (iii) budget planning and the monitoring of budget implementation; (iv) efficiently managing fiscal resources such as tax revenue and public funds, while working on government accounting and lottery policies; (v) overseeing the management of public institutions; (vi) establishing policies regarding international financial markets and financial cooperation; and (vii) strengthening economic cooperation with both emerging and advanced economies.

For attaining these goals, the main source of government income is tax revenue. However, depending on the social and economic conditions, the income from tax may not be sufficient to cover the required fiscal expenditures. In such cases, the issuance of government bonds is an important fiscal means, so MOSF plays a key role in the government bond market.

Within the limit approved by the National Assembly, MOSF determines the issuance amount of government bonds, which affects the primary market of all Korean bond markets. MOSF also influences the secondary government bond market by appointing the Primary Dealers, who are the major participants in the bond market.

2. Financial Services Commission

As a government organization, the FSC is a board-style administrative organization under the Prime Minister's Office. But unlike other governmental organizations whose authorities are designated by the Government Organization Act, the FSC's authority is designated by the Act on the Establishment, etc. of the Financial Service Commission, the enforcement decree of the act, and other acts and decrees on financial supervision.

The FSC conducts matters regarding financial policies and institutions, including inspections and placing restrictions on financial organizations; licensing and authorizing the establishment of financial organizations; the management, supervision, and surveillance of the capital market; legal and regulatory enactment; and the revision of financial policies and systems. The FSC also manages the business activities, operation, and management of the FSS, and reviews and determines the FSS's budget and account settlement, along with the revision of the FSS rules and regulations.

3. Financial Supervisory Service

The FSS is a special legal entity that has no capital base. It is independent from the central and local governments, conducting public affairs as a public corporation. By law, the FSS is not a government institution, but an independent public corporation, as it aims to carry out politically neutral and financially specialized supervisory functions over the Korean financial market.

With guidance from the FSC, the FSS is responsible for the inspection and supervision of financial institutions. It reports the results to the FSC, as well as any follow-up recommendations of the inspections. The FSC can require the FSS to make necessary changes to ensure effective monitoring and guidance over the FSS. The FSC can also enact general or partial suspension orders to actions taken by the FSS when those actions are deemed to be legally inappropriate or to go against the public benefit, such as investor or depositor protection.

The bond market supervision activities of FSS are conducted as a part of its capital market supervision to ensure that the capital market is effective. These activities are generally grouped into four distinct areas: corporate disclosure, securities market, investigation of securities violations, and accounting. The FSS supervises corporate disclosure to make sure companies and bond issuers that are required by law to publicly disclose certain operating and financial information comply with the law. The FSS also oversees trading activities in the bond market and enforces fair and orderly conduct to protect investors and preserve the integrity of the market.

4. Bank of Korea

BOK decides and implements monetary policy with the aim of maintaining price stability. In implementing monetary policy, BOK influences the volume of money and interest rates through its operational instruments, including money market operations such as buying and selling MSBs, for the purpose of currency and monetary controls.

To contribute to the maintenance of the financial system's stability, BOK conducts on-site examinations and off-site monitoring of the institutions under its purview, and acts as the lender of last resort to provide liquidity as necessary. BOK is responsible for the entire operation of Government of the Republic of Korea securities, including issuance, registration, interest payment, and redemption.

5. Korea Financial Investment Association

KOFIA, the SRO of the primary and secondary bond markets, manages and oversees the OTC market and discloses its trading information pursuant to Article 307 of the Enforcement Decree of the FSCMA.

In the primary bond market, KOFIA issues and maintains regulations for, among others, the QIB Market, as well as regulations on securities underwriting. KOFIA is also charged with ensuring market transparency in the secondary bond market; all

quotes and transaction records of bonds traded in the OTC market are required to be reported to KOFIA for the purpose of easy dissemination.

KOFIA monitors the book-building process, the underwriting activities of the primary market including that of the managing companies, as well as transaction details of the secondary market and the reporting of price quotes. When a KOFIA member company violates the regulations, KOFIA can impose restrictions through the Self-Regulation Committee and impose a penalty on the member company, its executives, or its employees.

6. Korea Exchange

KRX operates the KOSPI market, KOSDAQ market, derivatives market, and Korea New Exchange (KONEX) market. Debt securities, including bonds and notes, are traded on the KOSPI market.

The responsibilities of KRX include the establishment and operation of its markets; transaction of securities and exchange-traded derivatives; transaction confirmation; debt acquisition; confirmation of settlement securities, settlement items, and settlement amounts; settlement execution guarantees; follow-up measures on settlement failure and settlement instruction as a result of transactions on the securities market and the derivatives market; reporting and disclosure of listed corporations; and self-resolution of disputes arising from transactions on its markets.

KRX conducts self-regulatory activities—such as market surveillance, investigations into abnormal trading activities, member inspections, and inter-market surveillance—and carries out disciplinary actions against members (and their officers and employees), as well as preventative activities for unfair trading, under the FSCMA.

7. Korea Securities Depository

KSD is the central securities depository of the Republic of Korea, providing a wide range of post-trade services for the Korean securities market. KSD was established in 1974 as a special public corporation, the Korea Securities Settlement Corporation, and designated as KSD in its current form in 1994. There are several mechanisms to ensure the fairness and transparency of its activities; KSD is supervised by regulatory bodies such as the FSC and FSS.

KSD regulates activities within the bond market by setting forth settlement regulations to be observed by all parties. All settlement processes are carried out according to the regulations. The regulations also establish eligibility criteria that anyone who wishes to participate in settlement processes as a member must fulfill beforehand. In addition, KSD sets rules for, and monitors activities in, securities borrowing and lending, and repo transactions, through its platform.

In the professional bond market, KSD sets systematic restrictions to ensure QIB securities are traded only among QIBs registered with KOFIA. Payment and settlement of QIB securities may only be conducted via financial investment companies, and financial investment companies may do so only on a QIB's proprietary account at KSD.

E. Regulatory Framework for Debt Securities

1. General Regulatory Framework

The regulatory framework for debt securities in the Korean market largely depends on the nature of bonds, especially in the primary market. In case of public bonds (government bonds, municipal bonds, and special bonds), the issuance is made by the issuer according to the acts under which the issuers have been established.

In contrast, the regulatory framework for debt securities issuance in the private sector depends on the prescribed disclosure level—for either a public offering or private placement—rather than on the characteristics of the issuer, even though specific provisions on the obligations of the issuer may be stated in, among others, the Commercial Act, Banking Act, or Specialized Credit Finance Business Act.

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 QIB Market (see next section) 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 OTC market. The exchange trading is regulated by the 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 subject to KOFIA rules.

2. Framework for the Qualified Institutional Buyer Market

QIB bonds are issued based on Article 2-2 (2) of the Regulation on Issuance, Public Disclosure, etc. of Securities issued by FSC. In addition, the Regulations on Registration and Management, etc. of Securities for Qualified Institutional Buyers, issued by KOFIA as the SRO presiding over the QIB Market, prescribe the conditions under which specific private placement bonds and notes can be regarded as QIB bonds and notes, if the bonds and notes are traded only among QIBs. KOFIA regulations stipulate the registration and cancellation practices for QIB and QIB bonds and notes, and the notification and request for document submission, among other provisions. The original requirement for QIB bonds to be traded on K-Bond in the KOFIA rules was amended to allow any type of OTC trading. Nevertheless, QIB transactions remain under the oversight of KOFIA, since KOFIA manages the OTC market and its constituents, and facilitates OTC trading of debt securities in the Republic of Korea.

F. Debt Securities Issuance Regulatory Processes

Public offers of debt securities require (i) registration with the FSC and (ii) the publication of a prospectus. A listing is optional and would attract separate listing eligibility screening and listing approval from KRX as the single listing place in the Republic of Korea.

Privately placed corporate bonds can be issued without registering with the FSC. Private placements aimed at QIBs—a separate category within private placements—that are issued to and traded among QIBs only require registration with KOFIA as the QIB market registration authority.

All debt securities issued are to be admitted to and settled at KSD as the single central securities depository in the Korean bond market.

1. Regulatory Processes by Issuer Type

The regulatory processes for the issuance of debt securities in the Republic of Korea differ depending on issuer type and method of issuance. Financial institutions under the purview of BOK require additional approval, depending on their purpose of issuance. Nonresident issuers may issue bonds and notes in the Korean bond market, though specific registration and reporting requirements may apply depending on the method of issuance.

The issuance of bonds and notes denominated in foreign currencies by nonresident issuers is possible. But it should be reported to the Minister of MOSF with an issuance plan, including information on the use of proceeds.

Table 2.2 provides an overview of these 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 markets in the Association of Southeast Asian Nations plus the People’s Republic of China, Japan, and the Republic of Korea—collectively known as ASEAN+3—the table features common issuer type distinctions that are evident in regional markets. Not all markets will distinguish all such issuer types or prescribe approvals. Sovereign issuers are typically exempt from corporate issuance approvals but, at the same time, may be subject to different regulatory processes.

Table 2.2: Authorities Involved in Regulatory Processes by Issuer Type

Type of Issuer	FSC	MOSF	KOFIA	KRX
Resident issuer	Submission of Securities Registration Statement (for public offers only)		Registration of Placements (for QIB Market-eligible securities only)	Listing eligibility and actual listing subject to approval and criteria in the KRX Listing Rules
Resident nonfinancial institution				
Resident financial institution				
Resident issuing FCY-denominated bonds and notes				
Nonresident issuer		File a report with the Minister of MOSF (Nonresident issuers only)		
Nonresident nonfinancial institution				
Nonresident financial institution				
Nonresident issuing FCY-denominated bonds and notes				

BOK = Bank of Korea, FCY = foreign currency, FSC = Financial Services Commission, KOFIA = Korea Financial Investment Association, KRX = Korea Exchange, MOSF = Ministry of Strategy and Finance.
Source: ADB consultants for SF1.

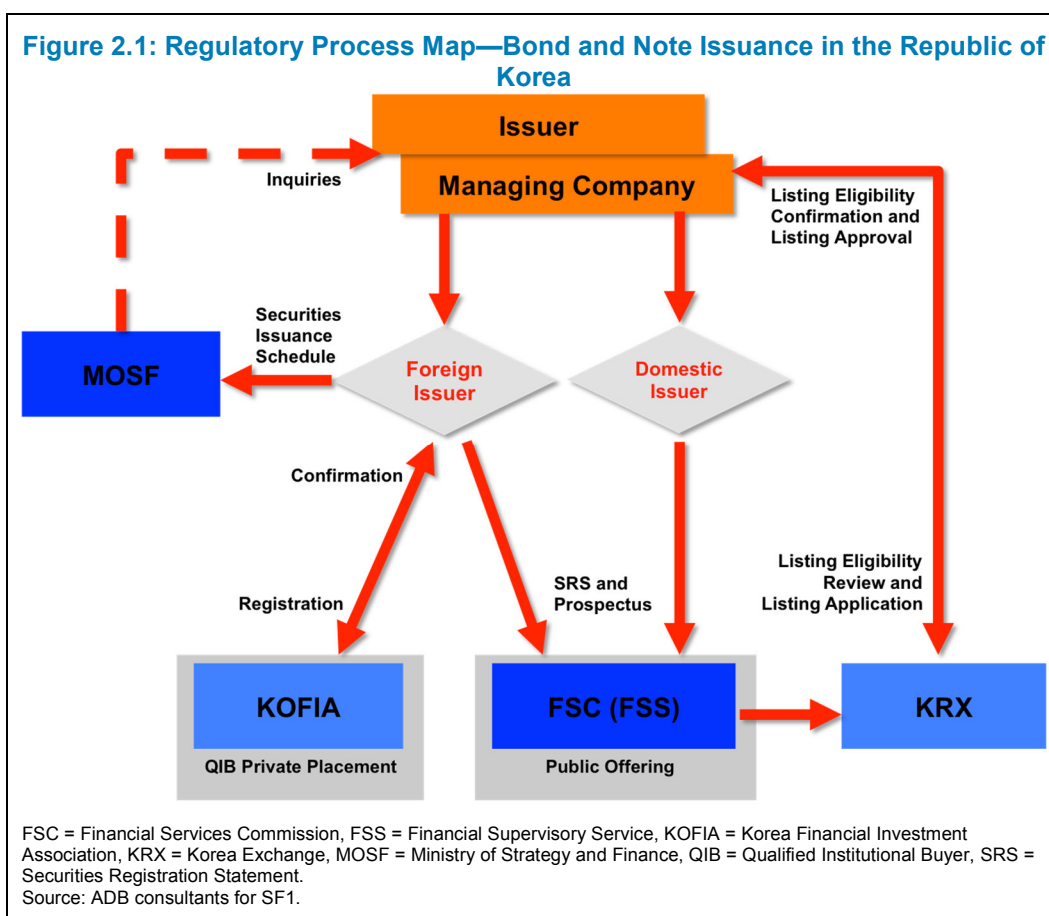
The regulatory processes for all types of issuances are further explained in subsequent sections.

2. Regulatory Process Overview

The issuance of bonds and notes in the Korean market can be made by public offering or private placement, including private placements to QIBs (QIB offering). A public offering represents an invitation to at least 50 investors to acquire newly issued securities. Meanwhile, private placement means an invitation to acquire newly issued securities without placing them for public offering.

For bonds and notes to be publicly offered or sold, a Securities Registration Statement (SRS) needs to be filed by the issuer in connection with the public offering or sale of the securities with the FSC, and should be accepted by the FSC.

Public sector bonds are usually exempted from the registration requirement. These bonds and notes include government bonds, local government bonds, special bonds, or other securities deemed to be those where investors are properly protected through sufficient public disclosure pursuant to the relevant acts governing the issuer.



In the Korean bond market, there is no explicit rule that governs the appointment of a lead manager(s) or lead arranger(s), termed a “managing company” in domestic market practice.⁴ However, the appointment of a managing company is mandatory for a public offer. In practice, the appointment is common in the public offering of non-guaranteed bonds, which represent most of the corporate bond market in the Republic of Korea. On the other hand, the appointment of a managing company is optional in private placements. Naturally, it is also optional for a placement of debt securities

⁴ The term “managing company” used in the Korean bond market is the equivalent of the lead manager, arranger, or lead underwriter commonly seen in other bond markets.

registered in the QIB market. At the same time, the use of one or more managing companies may be practical to reach the intended investor universe.

A managing company must be licensed by the FSC. The managing company may appoint additional underwriter(s) upon request of the issuer or on its own accord. The managing company is also expected to support the compilation of issuance documentation for either a public offer or a private placement, and aid in the submission of said documentation and disclosure information to the respective regulatory authorities, as the case may be.

The listing of debt securities is optional in the Republic of Korea. Listing debt securities does not require a listing sponsor; however, it is established market practice that the managing company would look after the listing process as well.

The regulatory process map shown in Figure 2.1 may help with the navigation of the applicable regulatory processes to be applied to a proposed bond or note issuance in the Korean bond market.

Table 2.3: Matrix on Corporate Bond Offering or Sale in the Republic of Korea

		(1). Newly Issued Securities	(2). Already-Issued Securities
1. Public offering (an invitation to at least 50 investors to acquire newly issued securities) and sale		1-(1). Public offering (gathering 50 or more investors within the past 6 months)	1-(2). Public sale (gathering 50 or more investors)
A. Duty of submission of an SRS to FSC	Offering or sale of KRW1 billion or more	A. Yes; B. Yes	A. Yes; B. Yes
B. Certain obligation to report to FSC	Offering or sale of less than KRW1 billion	A. No; B. Yes or No	A. No; B. Yes or No
2. Private placement (an invitation to acquire newly issued securities without placing them for public offering) and sale		2-(1). Private placement (issued directly to certain demand-side parties) (gathering less than 50 investors within the past 6 months)	2-(2). Private sale (sold directly to certain demand-side parties) (gathering less than 50 investors)
A. Duty of submission of an SRS to FSC		A. No; B. No (but if the securities can be issued to 50 or more persons within 1 year of issuance and meet certain requirements, it is deemed a public offering)	A. No; B. No (but if the securities can be transferred to 50 or more persons within 1 year of issuance and meet certain requirements, it is deemed a public offering)
B. Certain obligation to report to FSC			
3. Private placement and sale offered to QIBs in QIB Market		3-(1). Private placement offered to QIBs in QIB Market (only for QIBs)	3-(2). Private placement sale for QIBs in QIB Market (only for QIBs)
A. Duty of submission of an SRS to FSC			
B. Certain obligation to report to FSC or MOSF		A. No; B. Yes or No	A. No; B. Yes or No

FSC = Financial Services Commission, MOSF = Ministry of Strategy and Finance, QIB = Qualified Institutional Buyer, SRS = Securities Registration Statement.

Source: ADB consultants for ABMF SF1.

In the Republic of Korea, the issuance approval processes and underlying requirements differ between a public offer and issuances of debt securities aimed at QIBs (see Chapter III.N.2).

The issuer may issue QIB Market-eligible securities using a shelf-registration with KOFIA. A shelf- or program registration is valid for 1 year and may be renewed (see Chapter II.F.7).

The following sections provide detailed descriptions of the individual regulatory processes required for each instance. In the Korean corporate bond market, the FSCMA distinguishes between a public offering or sale of securities and a private placement or sale of securities, irrespective of whether those securities are issued domestically or outside the Republic of Korea. For easy reference, Table 2.3 contains a matrix of these offerings and secondary distribution methods of corporate bonds in relation to the specific provision of the FSCMA and supplementary regulations.

3. Regulatory Process in Case of a Nonresident Issuer

Nonresident issuers can issue debt securities in the Korean bond market. Since the FSCMA regulates matters for securities issued not only by domestic issuers but also foreign issuers, the issuance by foreign issuers is also regulated by FSCMA and other related regulations.

According to Article 118 of the FSCMA, the provisions for an SRS in the act are not applied to government bonds, local government bonds, special bonds, or other securities deemed to be those for which investors are properly protected through sufficient public disclosure pursuant to other acts, or as specified by Presidential Decree. According to Article 119 (2) 4 of the Presidential Decree of the FSCMA, the securities of nonresident issuers for which SRS provisions are not applied are those issued by an international financial institution under Article 2 (1) of the Act on the Measures for the Admission to International Financial Institutions, with approval from the Minister of MOSF, and following prior consultation with the FSC.

In consequence, other than the cases mentioned above, the provisions for an SRS apply to public offerings by every nonresident issuer, including foreign governments. However, the FSC may, if it is deemed necessary for protecting investors, prescribe and publicly notify different rules on the descriptions for an SRS and accompanying documents, taking into consideration the characteristics of the issuers, such as foreign enterprises, and the categories, types, and other factors of the securities (Article 129 of the Presidential Decree of the FSCMA).

The Provisions of Regulations on Issuance, Public Disclosure, etc. of Securities distinguish the contents of an SRS, depending on whether the issuer is a foreign enterprise or a foreign corporation that is not a foreign enterprise. Provision 2-11 (1) 1 of the regulation states that, in case of a foreign enterprise, the SRS shall contain

- i. signatures of the representative director and director under Article 119 (5) of the FSCMA regarding the matters under subparagraphs of the article of the decree;
- ii. details about the public offering or sale (7 items);
- iii. details about the issuer (18 items); and
- iv. where a foreign enterprise prepares, as its main financial statement, consolidated financial statements in accordance with International Financial Reporting Standards or other standards the issuer applies, the matters of some items in iii. shall be described based on such consolidated financial statements, including the financial statements of the foreign enterprise, and

the auditor's opinions shall contain an opinion on such consolidated financial statements and the financial statement of the foreign enterprise.

If a foreign issuer is not a foreign enterprise, Provision 2-11 (1) 2 of the regulation requires the SRS to contain the abovementioned signatures as well as the following items:

- i. details about the issuance,
- ii. details about the issuer,
- iii. the current status of any alliance or investment in the Republic of Korea,
- iv. the purpose of the use of funds raised by the issuance,
- v. details on the underwriting and sale, and
- vi. other matters necessary for the protection of investors.

The SRS requirements for the foreign corporation that is not a foreign enterprise are simplified compared with the requirements for a foreign enterprise.

Private placement issuance by foreign issuers is not restricted by SRS provisions. Instead, the issues are subject to the same regulations that apply to domestic issuers of private placements, including applicable resale restrictions. At the same time, private placements in the QIB Market, which is part of the overall private placement market, are free from resale restrictions because all transactions are only possible among QIBs as professional investors. Companies contemplating the issuance of QIB Market-eligible securities are required to register their bonds or notes with KOFIA (see section 6).

As is the case for public offerings by nonresident issuers, an issuance in the QIB Market by nonresident issuers is also subject to the Foreign Exchange Transactions Regulation, which contains obligations on the issuer such as reporting to MOSF.

Following an admission of a nonresident issuer to the QIB Market, there are no remaining substantive distinctions between types or domicile of issuers for the purpose of issuing debt securities. As such, the regulatory process for the issuance of debt securities by a nonresident issuer and related reporting obligations principally follow the processes outlined for placements in the QIB Market, in sections F.6 and G.2, respectively.

Nonresident issuers may also list their debt securities on KRX. For a complete description of the listing process, please refer to Chapter III.I.1.

4. Regulatory Process for a Public Offer and Sale

Unlike professional investors, ordinary investors may not have sufficient ability to assess the risks associated with an investment in debt securities and may not be well informed about such instruments. As such, bonds and notes issued to ordinary investors should be provided with a certain level of information. Therefore, except for the bonds that are considered to already ensure investor protection, as provided in Article 118 of the FSCMA, sufficient disclosure for the protection of ordinary investors should be ensured in the case of debt securities, which are publicly offered. To this end, Chapter 3 of the FSCMA prescribes the issuance of securities including the registration of a public offering and sale.

An offer of securities to the public in the Korean bond market requires the registration of the offer with the FSC. For that, the issuer or their appointed managing companies, which is the term used in the Korean bond market for the lead manager and other underwriters, will need to submit an SRS. The issuer is legally responsible for the submission.

Pursuant to the Regulation on Issuance, Public Disclosure, etc. of Securities as well as the Standard Instructions on Due Diligence for Non-Guaranteed Bond Issuance issued by the FSC, the issuer must sign a contract with a managing company or lead manager, which must include information concerning due diligence and intended book-building. Such lead management contracts shall be signed at least 10 business days before submission of the SRS and the contract must be reported to KOFIA within 5 business days of the contract signing date. The managing company or lead manager of the bond or note issuance will need to include in the SRS specific information on the conclusions from the mandatory due diligence on the issuer and the information to be provided on the issuance to the public.

In addition to the appointment of managing companies, the appointment of a paying agent and an indenture trustee is required for the offer of debt securities to the public; please see Chapter III.M.4. for a description of the functions of these market participants.

The regulatory process does not involve a formal approval from the FSC as such. Instead, the SRS has an effective date (see steps below) by which the FSC will have to raise an objection that would prevent the issuer and lead managing company from going ahead with the planned issuance.

The issuance of securities to the public also requires a prospectus; however, the prospectus only serves as the key disclosure document to the investors and need not be filed with the FSC together with the SRS.

The following steps describe the actions to be undertaken by the parties involved in the regulatory process to be able to issue debt securities via a public offer.

In the event that a bond or note, or a bond or note issuance program, offered to the public is intended to be listed on KRX, a listing approval will need to be obtained from KRX. The application and disclosure requirements will follow the provisions in the KRX Listing Rules. The listing approval process is further described in Chapter III.I.

Step 1—Submission of Securities Registration Statement to the Financial Services Commission

The issuer or its appointed managing company or companies (lead manager[s]) needs to submit an SRS to the FSC. According to Article 119 (5) of the FSCMA, senior representatives of the issuer will need to state in the signed SRS that no false statement or representation of a material fact, nor omission of a material fact, is contained in the descriptions in the SRS.

To the SRS, the issuer or its appointed managing company will need to attach the required specific supporting documents, which include a lead management agreement, a subscription agreement, indenture trustee agreement, paying agency agreement, and other relevant documentation.

KOFIA's Regulations on Securities Underwriting Business, etc. have been revised to prescribe a contract between a managing company and an issuer for corporate bond issuance, which must include due diligence details, such as information on business performance of the issuer, its financial status, and a review of comments regarding information provided in the SRS and other such reports.⁵ The lead management contract typically used in the Korean bond market is based on a standard agreement proposed by KOFIA.

⁵ See http://eng.kofia.or.kr/brd/m_15/down.do?seq=166&file_seq=1&data_tp=A

The prospectus for the proposed bond or note issuance need not be filed with the FSC at the time of the submission of the SRS; instead, the prospectus will need to be filed with the FSC once the SRS becomes effective (see Step 3).

Pursuant to Article 119 (3) of the FSCMA, an issuer may make a so-called "forward-looking statement" concerning predictions or projections for the financial status of the issuer, its future business performance, and other such statements in the SRS filed with the FSC, such as

- i. predictions and projections for the issuer's sales performance, including sales volume, size of income, and other business performance indicators;
- ii. predictions and projections for the issuer's financial status, including size of capital and cash flow;
- iii. information on the issuer's business performance in connection with the occurrence of a specific event or the establishment of a specific plan, or the targeted level at a certain point in time; and
- iv. other information prescribed by Presidential Decree as those concerning future predictions and projections for the issuer.

Article 125 in the Presidential Decree of the FSCMA contains information on the mandatory descriptions in an SRS and its accompanying documents, including

- i. the articles of incorporation or any other similar document that stipulates the operation of organizations, and rights and obligations of investors;
- ii. a copy of the minutes of the general meeting of shareholders or directors' meeting at which a resolution was passed to issue securities or any other document evidencing a resolution to issue securities;
- iii. a document substantiating the incorporation, equivalent to a corporation registration certificate;
- iv. a document substantiating that permission, authorization, or approval has been granted where such permission, authorization, or approval from an administrative agency is required with respect to the issuance of securities;
- v. a copy of a contract for the underwriting of securities, if such contract has been executed;
- vi. a document containing the results of a preliminary listing examination by an exchange if the bonds are intended to be listed;
- vii. a preliminary investment prospectus;
- viii. a short-form investment prospectus; and
- ix. other documents prescribed and publicly notified by the FSC as necessary for the protection of investors.

In the event an issuer would like to issue debt securities under a program, the issuer or its appointed managing company (or companies) will only need to file an SRS and lodge the prospectus for the entire program prior to the first issuance, pursuant to Article 119 (2) of the FSCMA.

Article 120 of FSCMA prescribes that the submitted SRS shall be effective on the day after the expiration of the time period prescribed by its Enforcement Rule (Article 12 of the Enforcement Rule of the FSCMA), considering, for example, the type of securities or the characteristics of the transaction. The time period shall begin on the next business day following the day on which the SRS is submitted and accepted by the FSC. A registration of debt securities for a public offering or public sale becomes effective from the day on which 7 days elapse after the acceptance date of the SRS. However, the period is reduced to 5 days in cases of secured bonds, guaranteed bonds, ABS, and debt securities publicly offered or sold in accordance with a universal self-registration statement.

The FSC shall not refuse to approve an SRS unless it is not prepared in conformity with the prescribed form, there is any false description or representation concerning a material fact, or there is any description or representation of a material fact is omitted.

Step 2—Book-Building by the Managing Companies

The managing companies (lead manager[s]) of the proposed bond or note issuance may engage in a book-building exercise on behalf of the issuer to determine the potential interest rate, and to capture potential investor demand for the purchasing price, interest rate, and investment amounts, to ensure a realistic picture for the chances to place the bond or note issuance in the market.

The issuer shall file an investment prospectus and a short-form investment prospectus with the FSC on the day on which the relevant SRS becomes effective. If a party intends to solicit an offer for a public offering of bonds and notes before the SRS becomes effective, the party may use (i) the preliminary investment prospectus prepared by the issuer; or (ii) use a short-form investment prospectus prepared by the issuer—through an advertisement, a notice, or a leaflet via newspapers, broadcasting, magazines, or an electronic transmission medium—after the relevant SRS is accepted.

Step 3—Publication of Prospectus (effective date of Securities Registration Statement) and Actual Issuance (including listing on KRX, if so intended)

The SRS will become effective 7 business days (for a non-guaranteed corporate bond) or 5 business days (for guaranteed bonds, collateral bonds, and ABS) after its submission to the FSC (Article 12 in the Enforcement Rule of FSCMA). On the effective date, the issuer may distribute and disclose the prospectus at its head office, the FSC, and financial firms that will accept applications for the proposed bond or note issuance.

The prospectus requirements are based on Article 123 of the FSCMA (Preparation and Public Notice of Investment Prospectus). The prospectus is to be prepared in accordance with Article 131 in the Presidential Decree of the FSCMA.

The investment prospectus needs to be composed of two separate sections, which are the title and the main text. The title of an investment prospectus contains the following information:

- i. the effective date of the SRS filed;
- ii. the price of the securities publicly offered or sold;
- iii. the subscription period;
- iv. the payment period;
- v. the place at which a copy of the SRS and the investment prospectus are available for inspection;
- vi. a statement that manipulation for stabilization or market creation may be attempted in the securities market, when the manipulation for stabilization or the marker creation is intended;
- vii. a statement that some of the descriptions in the SRS are subject to change until the day immediately before the subscription date;
- viii. a statement that the government does not confirm that the descriptions in the SRS are true or accurate, nor guarantee or approve the value of the relevant securities; and
- ix. other matters prescribed and publicly announced by the FSC as necessary for the protection of investors.

The main text of an investment prospectus for bond or note issuance is required to have the following contents:

- i. signatures of the representative director and the director responsible for filing the SRS;
- ii. the following details concerning the public offering or sale:
 - a. general matters concerning the public offering or sale;
 - b. details of rights to the securities publicly offered or sold;
 - c. investment risks ensuing from the acquisition of the securities publicly offered or sold;
 - d. the underwriter's opinion on the securities publicly offered or sold, applicable only where there is an underwriter;
 - e. the purposes for which the funds are used; and
 - f. other matters prescribed and publicly announced by the FSC as necessary for the protection of investors;
- iii. the following details concerning the issuer:
 - a. an overview of the company;
 - b. details of its business;
 - c. information on its financial standing;
 - d. an auditor's opinion;
 - e. information on the organizational structure of the company, such as the board of directors, and its affiliated companies;
 - f. information on shareholders;
 - g. information on executive officers and/or employees;
 - h. details of transactions with interested parties; and
 - i. other matters prescribed and publicly announced by the FSC as necessary for the protection of investors.

The issuance of the bonds or notes is made on the day that the prospectus is published. The issuance of publicly offered bonds, payment by bondholders who buy bonds through a public offering, remittance of proceeds by the underwriter(s) to the issuer, and listing of bonds on KRX (if so intended) take place simultaneously on the issuance date. Listing is optional. For a comprehensive description of the listing process for bonds on KRX, please see Chapter III.I.

There is no post-issuance reporting obligation on KRX. If a bond is listed on KRX, the issuer will be subject to the applicable continuous disclosure obligations. Details may be found in section G.

5. Regulatory Process for Offers to Qualified Institutional Buyers

The issuance of debt securities in the QIB Market, or the OTC bond market segment for private placements of bonds or notes aimed at QIBs (see also Chapter III.N.2. for a detailed explanation), requires the registration of QIB Market-eligible securities with KOFIA as the administrator and SRO for the QIB Market.

There is no separate approval required from the FSC or FSS, and no SRS will need to be submitted. The issuer does not need to compile and publish a prospectus. The appointment of a managing company or an underwriter is not required for securities offered to QIBs, but in reality securities for QIBs can be registered by underwriters if they so have been appointed by the issuer. The issuer will need to appoint a paying agent. The agreements with the underwriter (if so appointed) and paying agent form part of the documentation to be submitted to KOFIA in support of the registration of QIB Market-eligible securities.

Issuers to be registered with KOFIA for the QIB Market may be (i) Korean companies with assets of less than KRW2 trillion as of the end of the previous financial year at the time of issuance, or (ii) foreign companies without any limit on the size of their assets.

An issuer of QIB Market-eligible securities is required to make public, through KOFIA's website, certain minimal information as required under the Detailed QIB Regulations, such as type of securities, name of the issuer, issuance amount, issuance date, maturity date, nominal interest rate, currency, name of dealers and/or brokers (if any), and other necessary items. A foreign issuer is also required to submit its annual report to KOFIA and make it public within 120 days after the end of each financial year.

QIB Market-eligible securities refer to debt securities, including corporate bonds, equity-related bonds such as convertible bonds, bonds with warrants, and ABS. For ABS, more than 80% of their underlying assets should be QIB Market-eligible debt securities. The issuer is required to designate KSD as the depository of the QIB Market-eligible securities and register the securities' details with KSD.

Due to the specific nature of the QIB Market and its requirements, a listing of QIB Market-eligible securities on KRX is presently not possible.

Step 1—Submit Registration Application for QIB Market Debt Securities to KOFIA

The issuer will need to register debt securities intended to be issued in and traded on the QIB Market with KOFIA. Pursuant to the Detailed QIB Regulations of KOFIA, the Application Form for Registration of QIB Market-eligible securities needs to contain

- i. general information relating to the issuance, such as
 - a. major rights of the securities;
 - b. profile of the issuer (in the case of ABS, also profiles of the asset owner, details on the ABS, and details on the asset securitization plan);
 - c. financial statements; and
 - d. a legal opinion (in the case of a foreign company);
- ii. minutes of the Board of Directors meetings;
- iii. an excerpt from the corporate registry or equivalent document(s);
- iv. a credit rating report (in any);
- v. the subscription agreement and/or the arrangement agreement;
- vi. the agency agreement for payment of principal and interest;
- vii. the permit, approval, or application required by the Foreign Exchange Transactions Act or other regulations; and
- viii. other agreements executed with related authorities in relation to the securities issuance.

The registration application will need to indicate if a shelf- or program registration is intended, including the total planned issuance amount and the terms of planned multiple issuances, but the supporting documents are similar to those for a normal registration.

If a foreign issuer intends to issue QIB Market-eligible securities under its existing international medium-term note (MTN) program, such as a euro MTN or a global MTN program, the issuer would need to file an application for a shelf-registration of QIB Market-eligible securities with KOFIA, and disclose all information relating to such an MTN program, as amended and supplemented, as required by KOFIA.

The aforementioned documents may be submitted in English. Foreign corporations need to receive a legal opinion on the issuance procedure for QIB registration, legitimacy of the relevant contracts, and integrity of the submitted document, among

other subjects. In such cases, a legal opinion from a law firm based in the Republic of Korea needs to be attached.

Obtaining a credit rating is not mandatory for QIB Market-eligible securities to be issued.

Step 2—Registration of QIB Market Debt Securities by KOFIA

KOFIA reviews the registration application form and the submitted documents and will list QIB Market-eligible debt securities on the registry within 2 business days from the date when the registration application was received, or will reject the application if it has determined that the securities are not qualified. KOFIA will notify the applicant and KSD of the decision and related information.⁶

From a practical perspective, it is advisable to submit the application to KOFIA on an unofficial basis for an informal review approximately 5 days in advance to gain time for adjustments, as may be necessary.

6. Obligations after Approval and after Issuance

In the case of a public offer, issuers shall submit a report on the result of an issuance of securities to the FSC (FSS) without delay once a bond or note offering or distribution is completed. In contrast, no post-issuance reporting obligations exist for a placement in the QIB Market.

a. Public Offers

After the issuance of a bond or note to the public, the issuer or its appointed managing company will have to submit specific reports to the FSS as well as to KOFIA.

Article 128 of the FSCMA stipulates that an issuer or its appointed managing company should submit an issuance report, referred to as the "post-issuance report," to the FSS in the manner prescribed, and that it be publicly announced by the FSC. The report should be submitted without delay when a public offering or sale is complete.

Details that should be contained in the report are described in Article 2-19 (Report on Results of Issuance of Securities) of the Regulation on Issuance, Public Disclosure, etc. of Securities. The FSC shall make the post-issuance report available to the public for inspection at a specified place for 3 years, together with the SRS and the investment prospectus, and shall disclose them to the public through its website and other means, as applicable. Details of formats and methods of preparation of the post-issuance report are to be determined by the FSS Governor.

In addition, the managing companies (lead underwriter and other underwriters, if so appointed) will each have to send KOFIA an issuance report that reviews their respective underwriting performance within 5 business days of the issuance date. The reports are submitted electronically via the KOFIA website.

b. Placements in the Qualified Institutional Buyer Market

KOFIA, as the administrator of the QIB Market, imposes no specific requirements for post-issuance reporting on the issuers of QIB Market-eligible

⁶ The KSD shall operate the system in a manner that only allows for the distribution of QIB Market debt securities among the QIBs registered with KOFIA.

securities. No report immediately following an issuance is required to be submitted. There is also no reporting requirement to FSS.

As part of the prescribed continuous disclosure (see also section G), the issuer will need to make available its annual reports, via the KOFIA website, within 120 days from the end of the respective financial year. This requirement is also applicable to foreign issuers.

7. Issuance Process Specific for a Domestic Financial Institution

The bonds issued by domestic financial institutions in the Republic of Korea are categorized into special bonds issued by public financial corporations and bank debentures or corporate bonds issued by financial institutions. The legal basis for bond issuance comprises the provisions in the laws under which the financial institutions have been established. A notable distinction is that special bonds do not require an SRS submission when the bonds are publicly offered, whereas the other bonds offered by financial institutions are subject to SRS regulations.

The issuance of bonds and notes by domestic financial institutions is determined by the financial institutions themselves and do not require approval from BOK.

8. Regulatory Process for Foreign-Currency-Denominated Debt Instruments

The Korean bond market does not have any limitation or restriction with regard to foreign-currency-denominated bonds or notes. Bonds and notes denominated in offshore Chinese renminbi, Japanese yen, and US dollars can be issued, traded, and settled in the Korean bond market.

As a result, there are no separate approvals or regulatory processes required to be observed for the issuance of foreign-currency-denominated bonds and notes. Thus, in principle, the regulatory process for foreign-currency-denominated debt instruments follows the processes described in the sections for public offers or the other applicable sections above.

However, a nonresident issuer of foreign-currency-denominated bonds and notes will need to file a proposed debt securities issuance schedule with MOSF before embarking on the listing process and before issuance. Proceeds raised by the issuance of such securities should be used for the specified purposes described at the time that the issuance was filed with MOSF.

G. Continuous Disclosure Requirements in the Korean Bond Market

The requirements for the continuous disclosure pursuant to bond or note issuance in the Korean market depend on the method of issuance.

1. Public Offers

The disclosure requirements for bonds and notes issued in the Korean bond market via a public offering are prescribed in the FSCMA and further detailed in the Ordinance of the Prime Minister. Distinctions are made in the regulations between the initial disclosure—in the form of the SRS (see section F)—and the continuous disclosure requirements during the lifetime of the bond or note, as well as the disclosure requirements for foreign issuers.

Articles 159, 160, and 161 in the FSCMA stipulate that "a corporation subject to business reporting" shall submit its business reports to the FSC. Pursuant to Article 167 in the Enforcement Decree of the act, the issuer that has publicly offered or sold non-guaranteed bonds, along with other securities, is included among those corporations subject to business reporting.

2. QIB Market-Eligible Debt Securities Placed in the QIB Market

KOFIA announced the relevant operating regulations with effect from 1 August 2016, including the duty of disclosure for issuers of QIB Market-eligible securities and the need for data submission and reporting.

Foreign corporations shall submit a business report or a document equivalent to a business report within 120 days after the end of each business year after issuing securities aimed at QIBs.

3. Debt Securities Listed on Korea Exchange

a. Companies Subject to Disclosure Regulations

A bond listing corporation is a company that has listed bonds and contingent convertible bonds on the KOSPI market of KRX. The corporation should fulfill obligations of regular disclosure and timely disclosure in compliance with the FSCMA and the KOSPI Market Disclosure Rules. The duration of the obligations stretches from the listing date to the de-listing date of the bonds.

b. Regular Disclosure

A bond listing corporation should submit an annual report to the FSC and KRX within 90 days after the end of the fiscal year. The annual report should cover overall conditions of the corporation, management performance, financial status, and audit opinions of an auditor, among other subjects. A corporation required to submit an annual report has to hand in an annual report (semi-annual report) within 6 months from the beginning of the fiscal year and an annual report (quarterly report) within 3 months and 9 months from the beginning of the fiscal year to the FSC and KRX within 45 days after each period elapses.

c. Timely Disclosure

When a material fact of the present or future regarding management of a bond listing corporation arises or there is a change in the rights of the bonds, and such fact or change cannot be provided by regular disclosure, KRX requires the corporation to make timely disclosure so that investors can be informed in a timely manner. If an issue required to be disclosed according to the KOSPI Market Disclosure Regulation occurs, the corporation should report it to KRX on the day it occurs (Article 57. [1]) or the following day (Article 57. [2]).

The major management issues to be reported are

- i. where a bill or check issued by the corporation is dishonored or its current account transactions with a bank are suspended or banned;
- ii. where its business activities are completely suspended, or a substantial part thereof is partially suspended (including the case where a decision on such suspensions was made);
- iii. where it falls under any of the following, pursuant to the Debtor Rehabilitation and Bankruptcy Act:

- a. where an application for commencement, conclusion, or discontinuation of rehabilitation procedures is filed, and where it is notified of the court rulings on the commencement, conclusion, or discontinuation of rehabilitation procedures, the dismissal of the application for commencement of rehabilitation procedures, the cancellation of the decision on commencement of rehabilitation procedures, and the approval or disapproval of the rehabilitation plan, etc.; or
 - b. where an application for bankruptcy is filed, and where it is notified of the court rulings on declaration of bankruptcy or dismissal of the application for bankruptcy;
- iv. where a ground for dissolution provided for in the Commercial Act or other acts occurs;
- v. where an event prescribed in articles of division and merger of the Commercial Act occurs;
- vi. where a lawsuit that will have a significant influence on the listed bonds is filed;
- vii. where, according to the audit report submitted by the certified public accountant auditor pursuant to the Act on External Audit, a fact falling under any of the following is found:
 - a. where the certified public accountant auditor's opinion is adverse, disclaimer of opinion or qualified due to the limit placed on the scope of audit; or
 - b. where the capital is completely impaired in the latest fiscal year;
- viii. where, according to the semiannual review report, the auditor's review opinion is adverse or disclaimer of opinion;
- ix. where it falls under any of the following in relation to the violation of accounting standards:
 - a. where it is confirmed that the concerned corporation is informed or referred to the persecutor's office pursuant to the Regulation on External Audit and Accounting, etc. by the Securities and Futures Commission and the outcome thereafter is confirmed; or
 - b. where the concerned corporation is indicted by the persecutor for the reasons of violating the accounting standards or the outcome thereafter is confirmed; however, this provision shall not apply to the case where a report was filed pursuant to the provisions of subparagraph (a); and
- x. where a trigger event for conversion of contingent capital securities into stocks occurs, or a trigger event for mitigation of or exemption from the obligation to redeem the contingent capital securities and pay interest thereon occurs.

However, for convenience, if the corporation has listed its equities on the KOSPI or KOSDAQ market, and it makes disclosure on the issue to KRX on the day the issue arises, KRX shall deem that the corporation fulfills the reporting obligation as a bond listing corporation.

d. Electronic Bond Disclosure System

KRX has established an Electronic Bond Disclosure System to help bond listing corporations submit documents electronically rather than in person or by postal service or fax. The system consists of the disclosure submitting system and disclosure distributing system.⁷ The disclosure submitting system is part of the KRX's disclosure system for bond listing corporations to register persons in charge of disclosure and inform investors of their management status through

⁷ For the disclosure submitting system, see <http://filing.krx.co.kr>; for the disclosure distributing system, see <http://kind.krx.co.kr>

electronic documents. The disclosure distributing system is for the general public to access and search for disclosure documents submitted by bond listing corporations.

H. Self-Regulatory Organizations in the Korean Bond Market

The participation and daily business activities in the bond market in the Republic of Korea are organized, governed, and administered by the three SROs described in detail in this section.

1. Korea Financial Investment Association

KOFIA was created through the merger of the Korea Securities Dealers Association, Korea Futures Association, and Asset Management Association of Korea in February 2009, as set forth by the FSCMA.

KOFIA offers three different types of memberships: regular, associate, and special. Regular members consist of licensed financial investment services companies. Associate members are registered financial investment firms and concurrently run financial investment business entities. Special members include financial investment-related institutions, general administrative service companies, fund and bond pricing companies, and credit rating agencies. As of December 2017, KOFIA had 162 regular members, 116 associate members, and 23 special members.

The next two sections explain the key roles and functions of KOFIA in the financial investment sector in the Republic of Korea.

a. Establishment and Enforcement of Self-Regulatory Measures

KOFIA introduces and implements self-regulatory measures that foster a culture of investor protection and fair business practices in financial trading.

The revision of the Securities and Exchange Act in 2002 created the legal basis for enhancing KOFIA's self-regulatory function, while the passage of the FSCMA in 2009 broadened KOFIA's role as a self-regulatory body of the Korean capital market, by granting it the authority to oversee the financial investment industry.

Furthermore, the FSCMA stipulates how conflicts of interest between the association's key roles—its membership services and self-regulatory functions—are to be avoided. The act also defines KOFIA's powers of investigation and sanction, as well as its obligation to submit documentation to the relevant authorities and report on the status of its member firms' legal and regulatory compliance.

With the enactment of the FSCMA, the establishment of KOFIA's Self-Regulation Committee went from being optional to a mandatory requirement, designed to prevent any possible conflicts of interest between its member services function and the self-regulatory process.

The role of the committee is to protect investors while conducting self-regulation activities such as the enactment and deliberation of regulations; enactment and revision of regulations related to the business conduct of member companies; and administration of disciplinary measures to member companies, corporate executives, and employees failing to comply with the regulations.

Credit rating and bond assessment working groups under KOFIA also regularly monitor the rating track record of credit rating agencies and the bond valuation prices provided by bond pricing agencies.

b. Over-the-Counter Market Management

KOFIA also manages and administers the OTC bond market.

To enhance the transparency of OTC bond trading, KOFIA provides market participants with essential information, such as bond trading details, mark-to-market (MTM) yields, representative bond yields, and final quotation yields for different bond types through its website.⁸

As part of its mandate to achieve transparency, KOFIA prescribes a report of transaction details by counterparties to KOFIA within 15 minutes of the trade being concluded; KOFIA then discloses this information via the KOFIA Bond Information website.⁹

KOFIA also provides and maintains the BQS, which collects information on quotes and executed prices of bonds traded in the OTC market.

FreeBond, the trading support system that enables financial investment firms and market participants to discover quotes and supports trade negotiations was introduced in 2010, and was updated to K-Bond in 2017.

KOFIA also operates the QIB Market, which enables domestic and foreign companies to issue bonds to professional investors without an SRS. Please see Chapter II.F.5 for a detailed description of the QIB Market and its processes.

2. Korea Exchange

KRX operates a number of financial instrument exchange markets, including a bond market. KRX issues rules and regulations that are authorized by the FSC and applied to members and market participants' business activities.

KRX standardizes trading terms and conditions in its listed bond market to increase market efficiency and to operate a stable exchange market. In addition, it issues specialized rules for each market segment. In its KRX trading rules, KRX stipulates matters necessary for the trading of securities in the KRX bond market. Further details about trading on the KRX bond market can be found in Chapter IV.

In addition to trading regulations, KRX also promulgates listing rules. Listed bonds have been examined by KRX listing services on their suitability for the KRX bond market. In its listing rules, KRX stipulates the need to review the securities to be listed on the KRX bond market and the process to administer listed corporations and securities.

As part of its SRO role, KRX sets and enforces disclosure obligations by listed companies and the issuers of listed securities, including timely disclosure of events, as further described in section G. In its disclosure rules, KRX stipulates details of reporting, disclosure obligations, and the managing of corporate information in the KRX bond market.

The KRX Market Oversight Committee issues market oversight regulations to examine market fairness. Under the market oversight regulations, KRX stipulates matters

⁸ See www.kofia.or.kr

⁹ See www.kofiabond.or.kr

necessary for market surveillance, investigation into abnormal trading activities, member inspection, inter-market surveillance, and the disciplinary actions taken against members and their officers and employees for unfair trading.

3. Korea Securities Depository

KSD was established on 25 April 1994, as a special public organization with a diversified ownership structure, to function as a single, common, and reliable central securities depository for all eligible types of securities. KSD's roles and functions— inherited from its predecessor organization, the Korea Securities Settlement Corporation—were also enhanced to include international services for investors.

At the end of 2017, KSD held deposit securities valued at KRW3,997 trillion (USD3.8 trillion at the time). KSD handles the settlement of securities traded on KRX as well as the settlement of equity and bonds traded in the OTC market, currently processing a daily settlement volume of KRW22.1 trillion.

At the end of 2017, KSD participants totaled 1,244, comprising financial institutions, including securities companies, banks, and insurance companies, as well as foreign investors. Participants must be a depositor under the Regulation on Deposit Service of Securities; meet financial soundness standards as set forth 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.

As an SRO, KSD sets rules for its operation and participants. Changes to KSD rules require approval from the FSC. This ensures the enactment of fair and reliable regulations, and promotes stability and predictability when enforcing market practices as prescribed by the rules.

The detailed functions and a complete description of the role of KSD in the Korean securities market at large and its post-trade services can be found in the Phase 2 Report of the ABMF Sub-Forum 2 (SF2), *Information on Transaction Flows and Settlement Infrastructures*, dated 13 June 2014.¹⁰

I. Rules Related to Licensing and Trading Conventions

This section refers to the regulatory framework for licensing and trading conventions. For information on the actual trading of debt securities in the Korean bond market, please see Chapter IV.

1. Rules Related to Licensing

KRX, KSD, and KOFIA are bond market infrastructure institutions based on the provisions of the FSCMA. Most of the other participants in the bond market are financial investment business entities that must be authorized by the FSC to carry out their activities in the capital market, pursuant to provisions in the FSCMA. In the Korean bond market, the term “authorized” by FSC is largely similar to licensing found in other markets. The FSCMA distinguishes between authorization for which permission by the FSC is required, and registration, which does not require FSC permission.

Entities acting in the primary bond market must be authorized for investment trading business. Investment trading business under the act comprises selling and purchasing financial investment instruments, issuing and underwriting securities, inviting offers,

¹⁰ See <http://www.adb.org/publications/asean3-information-transaction-flows-and-settlement-infrastructures>

offering, and accepting offers for securities on one's own account or in the name of another party.

Participants in the secondary bond market conduct investment brokerage business and should be authorized for participation by the FSC. Investment brokerage business comprises selling and purchasing financial investment instruments.

The procedures for authorization and registration of financial investment businesses, including the aforementioned businesses, are given in Chapter 1 of Part II of the FSCMA. For an investment advisory business or investment trust business in the Korean bond market, a registration is required in accordance with the procedure prescribed in section 2 of the chapter.

As a participant in the capital market, a single business unit can be defined through the combination of factors such as the types of financial investment business, the scope of financial investment products, and classes of investors. An entity that wishes to operate a registered financial investment business shall create a single business unit by combining the aforementioned three factors and select all or part of the business units for registration with the FSC as a financial investment business.

Based on the Enforcement Decree of the FSCMA, if a financial investment company launches an investment trading service that handles debt securities, equity securities, beneficiary securities, derivatives-combined securities, and securities depository receipts, the company should have minimum net assets of KRW50 billion. However, if it is only managing debt securities, the net asset requirement is KRW20 billion. For an investment brokerage business, the minimum net asset requirement is KRW1 billion, with the amount halved to KRW500 million if the company only targets professional investors who require relatively lower levels of protection.

2. Rules Related to Trading Conventions

KOFIA specifies the trading conventions for the OTC market in the K-OTC Market Regulations and in additional regulations, rules, and guidelines for specific products and activities. According to Article 5-4 in Part V of the Regulations on Financial Investment Business, payment for OTC traded bonds shall be settled within 30 business days from the day immediately after the date on which a seller and a buyer enter into a trading contract, which is concluded through negotiation. It also infers that OTC bond trading is carried out by negotiation conducted by phone or messenger. See the next section for details and the list of KOFIA regulations and rules in Appendix 3.

Trading conventions for the exchange market segments on KRX are contained in the KOSPI Market Business Regulations, including for repo transactions. Article 46 (Principles for Trading of Debt Securities) stipulates that debt securities shall be traded by way of an individual auction, which shall be classified into a period call auction and a continuous auction. The execution of bond trades in the major bond market segments of KRX is carried out through these auction methods.

Nevertheless, the regulations also acknowledge special cases. Article 53-2 stipulates that KRX may execute a trade at a price or repurchase rate which is determined by negotiation between a party who requests for a quotation and the other party who places a quotation in response to the quotation request during the regular trading session. See next section and Chapter IV.H for more details on repo. Chapter IV of the Market Business Regulations contains provisions on the trading of debt securities.

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

KOFIA and KRX, being SROs for the OTC and exchange markets, respectively, set rules for their constituents and trading participants. These rules include provisions for the listing or registration of debt securities, trading of debt instruments in their respective markets, and prescribed disclosure at the time of issuance and throughout the lifecycle of such debt instruments. The rules are approved by the FSC.

1. OTC Market Rules issued by KOFIA

In addition to its Articles of Association and general regulations on business conduct, the regulations and rules published by KOFIA are often specific by the product or activities of its participants. As an example, KOFIA has issued a number of separate regulations on the OTC market and the QIB Market, respectively. Chapter III of the Market Business Regulations contains provisions on the OTC Trading of Bonds. A list of relevant KOFIA regulations and rules is available in Appendix 3.

2. Rules of Korea Exchange

KRX issues market listing, disclosure, and business regulations for its KOSPI market, which includes the bond market platform.

a. KOSPI Market Business Regulations

KRX stipulates matters regarding the trading of securities (including bonds) in the KOSPI market in the KOSPI Market Business Regulation, pursuant to Article 393 of the FSCMA.

Article 393 (Business Regulations) (1) contains provisions with respect to transactions on the securities market and requires the exchange to issue Securities Market Business Regulations. Such regulations are expected to contain prescriptions on

- i. the type of transactions and the consignment thereof;
- ii. the opening, closing, suspension, or temporary closing of the securities market;
- iii. the methods of conclusion of transaction contracts and settlement thereof, provided that delivery of securities and payment shall be excluded;
- iv. the regulation of transactions such as payment of margin; and
- v. other subjects relevant for securities transactions.

Detailed information on trading regulations is provided in Chapter IV of the KOSPI Market Business Regulation.¹¹

b. KOSPI Market Listing Regulations

KRX reviews securities (including bonds) to be listed on the KOSPI market in compliance with Article 390 of the FSCMA. It stipulates matters required for controlling listed corporations and securities in the KOSPI Market Listing Regulations.

Under Article 390 (Listing Regulations), KRX shall prescribe Listing Regulations for Securities (Listing Regulations) for reviewing the securities to be listed and

¹¹ See <http://global.krx.co.kr>

for managing listed securities. Listing Regulations shall include the following subjects:

- i. listing standards and listing review of securities;
- ii. de-listing and de-listing standards for securities;
- iii. suspension of transactions of securities and its revocation; and
- vi. other subjects necessary for the management of listed corporations and listed securities.

Details on bond listing provisions are provided in Part III of the KOSPI Market Listing Regulation, which is available on the KRX website.¹²

c. KOSPI Market Disclosure Regulations

KRX has issued Disclosure Regulations, which include necessary prescriptions for the reporting, disclosure, and management of information regarding listed corporations, pursuant to Article 391 of the FSCMA.

According to Article 391, disclosure regulations shall include details on the following matters:

- i. on which a stock-listed corporation is required to make a report;
- ii. on the methods and procedures that a stock-listed corporation is required to follow in making a report or disclosure;
- iii. on the requests made by the KRX to report or confirm as to whether a rumor and news concerning the listed corporation of stock certificates, for example, is true or not and as to the cause of remarkable changes in the price or trading volumes of securities issued by the listed corporation of stock certificates;
- iv. excluded from the disclosure or report taking into account the protection of investors and confidentiality in management of the stock-listed corporation;
- v. on the disclosure of details reported by the stock-listed corporation;
- vi. as to the standards to decide whether a stock-listed corporation has committed a violation or what type of violation has been committed under subparagraphs i. through iv. as well as the measures taken in response to the violation;
- vii. on the management of the stock-listed corporation such as the suspension of transactions;
- viii. on the compliance with supervision over the report obligation of the stock-listed corporation; and
- ix. other necessary matters on the report or disclosure by the stock-listed corporation.

Detailed information is provided in Part II of the KOSPI Market Disclosure Regulations, available on the KRX website.

K. Market Entry Requirements (Nonresidents)

1. Nonresident Issuers

There are no restrictions or limitations for nonresident issuers, but some specific reporting requirements or conditions will apply when issuing bonds or notes in the Korean bond market.

¹² Footnote 11.

If a foreign company raises funds through the issuance of bonds or notes denominated in Korean won or a foreign currency, the foreign company is required to register with MOSF under provisions in the Foreign Exchange Transactions Act.

When a nonresident issuer intends to list foreign bonds (bonds issued by a foreign corporation) on KRX, stricter listing review requirements are applied compared to those applied to bonds issued by Korean corporations. KRX limits foreign corporations eligible for listing their foreign bonds to international financial organizations, foreign governments, corporations that have listed stocks on foreign exchanges, and corporations that have listed foreign stocks on KRX. An eligible foreign corporation is required to hold equity capital worth KRW10 billion or more, the credit rating of the bond to be listed should be at least BBB (a domestic bond listing carries no minimum credit rating), and the corporation should appoint a domestic listing agent who represents the issuer or acts as a proxy on behalf of the issuer for all interactions with KRX.

2. Foreign Investors

Foreign investors wishing to access the Korean bond market will need to obtain an Investment Registration Certificate (IRC) before investing, regardless of whether they wish to access the OTC market or trade securities in the exchange market. The IRC concept and the process of obtaining an IRC are explained in section M.

Foreign investors wishing to participate in the QIB Market will need to register with KOFIA as a QIB prior to investing. The registration criteria are further explained in Chapter III.H and N.

L. Market Exit Requirements (Nonresidents)

1. Nonresident Issuers

There are no market exit requirements for nonresident issuers.

2. Foreign Investors

There are no market exit requirements for foreign investors. Foreign investors may repatriate their capital investment and interest free of restrictions. At the same time, if the proceeds from disposal of securities or interest are received in Korean won, the foreign investors will need to convert the amount into a foreign currency before remitting the funds abroad.

M. Regulations and Limitations Relevant for Nonresidents

1. Foreign Investor Registration

Foreign investors who wish to acquire or dispose of securities listed on the securities market, or securities offered or sold with the intention of a listing, must register with the FSS.

Foreign investors who wish to buy and sell bonds and notes listed on KRX, or bonds and notes that will be listed on KRX, such as bonds and notes publicly offered or sold in order to be listed on the exchange for the first time, also must be registered with the FSS.

The documents required by the FSS should be submitted in person or through a local agent so that an IRC can be issued. After submitting an IRC, a licensed local investment dealer or investment broker may open an account for securities trading for these foreign investors.

The foreign investor registration aims to manage foreign investment limits and other related issues. Through the system, statistics on foreign investment including foreign holdings are able to be compiled. Furthermore, the IRC is used to authenticate the real name of an investor when opening an account, easing the burden placed on the investor of submitting other identification documents to individual financial investment companies or other intermediaries.

2. Investors Subject to Registration

Generally, an individual of foreign nationality who has not maintained residence in the Republic of Korea for more than 6 months will be subject to registration if he or she intends to invest in listed securities. This means that a Korean citizen residing outside the country need not register for an IRC, given his or her Korean nationality.

The same applies to corporations. Any corporation that does not have an office in the Republic of Korea and was established according to foreign laws must register in order to invest in listed securities in the Republic of Korea. However, local subsidiaries of foreign corporations established by Korean nationals are viewed as foreign entities; therefore, they must register with the FSS for an IRC.

In addition, the main office and branch offices (except branch offices established within the Republic of Korea) of a foreign corporation are viewed as a single foreign entity and are only required to have one IRC issued.

In the case of investment funds, however, a master fund and sub-fund cannot be registered together, according to Article 6-10 (2) of the Regulation on Financial Investment Business, in order to ensure the effectiveness of the investment registration. If they are registered together, a single beneficiary owner may eventually have more than two certificates. However, when a master fund is not registered, each sub-fund is able to register individually since these sub-funds are considered separate beneficiary owners.

3. Exemptions from Registration

Foreign nationals, foreign-incorporated entities, or local branches of a foreign corporation engaging in business activities in the Republic of Korea that qualify for "foreigner under national treatment" status shall be exempt from registration upon submitting documents verifying their status.

Registration will also be exempted in the case of acquiring or disposing of stocks on the OTC market for the purpose of "direct investment," but the details of the relevant transactions must be reported promptly to the FSS.

Exemption from registration will also apply to cases where government bonds and MSBs are acquired and sold using an omnibus account at an international central securities depository (ICSD).

4. Specific Registration Provisions

When registering as an investor, one IRC is issued per beneficiary owner. There are certain exceptions however to make investing more convenient for foreign investors.

Overseas branches or business offices of a domestic investment dealer or investment broker can register separately under the name of the financial institution concerned when it is necessary to arrange the outsourcing of transactions in the securities market.

And a foreign financial institution can register separately under its own company name when it needs to manage its own assets and customers' assets separately.

An investment dealer or an investment broker can also separately file for registration of an investment under its own name when it is necessary to process entire orders for an investor group and allocate purchased securities to them. A foreign investor group can submit orders by using the same IRC.

Here, foreign investors eligible for submitting orders are those where the investment manager of the investor group has reported details to the relevant investment dealer or investment broker before engaging in trading. Investment dealers and brokers have an obligation to keep a record of orders, order execution, and order distribution.

5. Specific Registration Provisions

According to the Detailed Rules of the Regulation on Financial Investment Business, foreign investors, or corporations and institutions engaged in securities trading for foreigners, have an obligation to report. The reporting is normally done by the investor's custodian on behalf of the investor as part of service provision as the standing proxy. The reporting includes transactions by nonresidents as well as transactions involving foreign currency.

N. Regulations on Credit Rating Agencies

This section covers the regulations and requirements applicable to credit rating agencies operating in the Republic of Korea and their business. For the actual credit rating requirements in the Korean bond market, and the application of such credit ratings in the issuance process for bonds and notes, please refer to Chapter III.N.

Article 9-26 of the FSCMA stipulates that credit rating business means the business of credit assessment on, for example, financial investment instruments, enterprises, collective investment scheme, and assigning a credit rating represented by symbols or numbers, and providing such credit ratings to the issuer, underwriter, investors, and other interested persons, or allowing them to inspect such credit ratings.

In order to conduct credit rating business, an eligible entity must be authorized by the FSC, pursuant to Article 335 of the FSCMA. Any entity that wishes to obtain authorization shall file an application for authorization with the FSC. The authorization procedure and other details on the authorization are prescribed in Chapter III-2 of Part IV of the FSCMA. An entity that wishes to obtain authorization before final authorization may file an application for preliminary authorization with the FSC. Each credit rating agency shall continue to meet the requirements for authorization, while engaging in credit rating with proper authorization. A credit rating company may conduct concurrent and incidental businesses, such as business as a bond rating company.

Under its mandate on improving the transparency of the bond market, KOFIA regularly monitors the rating track record of credit rating agencies and their performance through its credit rating working group. KOFIA officially announces those results once a year via the KOFIA Bond Information website. The working group consists of seven members, including experts from related fields such as finance, law, and accounting.