

# Legal and Regulatory Framework

## A. Legal Tradition

Malaysia follows the common law legal system, which is guided by the Constitution of Malaysia and expressed through laws referred to as acts. The Malaysian legal system was developed from English law, but has developed its own character since independence.

The application of English law, as may be applicable, is specified in the statutes, including in such cases where English law will prevail if no other law has been specified.

## B. English Translation

Bahasa Malaysia is the official language of Malaysia. While all legislation is issued in Bahasa Malaysia, the majority of the laws, regulations, and notices in Malaysia are also published in English. In many instances, the English text is used in Malaysian courts.

In the event of a dispute or where there is a question of interpretation, by virtue of the Interpretation Acts, 1948 and 1967 (Act 388), the Bahasa Malaysia text shall prevail.

## C. Legislative Structure

Like most countries, Malaysia features a multitiered legislative structure to govern the financial and capital markets, guided by the Constitution of Malaysia.

[1st tier] Constitution of Malaysia

[2nd tier] Acts (key legislation for the securities market)

[3rd tier] Regulations (regulatory authority guidelines)

[4th tier] Guidelines and practice notes (issued by the regulatory authorities)

[5th tier] Rules (issued by market institutions)

Table 2.1 illustrates the legislative structure outlined above by giving 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 Malaysia	Principles, rights, and obligations
Acts (key legislation)	<ul style="list-style-type: none"> <li>• Capital Markets and Services Act, 2007</li> <li>• Securities Commission Malaysia Act, 1993</li> <li>• Securities Industry (Central Depositories) Act, 1991</li> <li>• Financial Services Act, 2013</li> <li>• Islamic Financial Services Act, 2013</li> <li>• Central Bank of Malaysia Act, 2009</li> </ul>
Regulations	<ul style="list-style-type: none"> <li>• Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework, 2015</li> <li>• Guidelines on Issuance of PDS and Sukuk to Retail Investors, 2015</li> <li>• Prospectus Guidelines, 2012</li> <li>• Guidelines on Registration of Credit Rating Agencies, 2011</li> <li>• Guidelines on Trust Deeds, 2011</li> <li>• Guidelines on Registration of Bond Pricing Agencies, 2006</li> <li>• Notices on Foreign Exchange Administration (FEA) Rules, 2013</li> </ul>
Guidelines and practice notes	<ul style="list-style-type: none"> <li>• Joint Information Note on the Issuance and Subscription of Ringgit- and Foreign Currency-Denominated Sukuk and Bonds in Malaysia, 2013</li> <li>• Practice Note on Registration by the Securities Commission for the Purpose of Acting as a Bond Trustee, 2006</li> <li>• Regulated Short-Selling of Securities in the Wholesale Money Market, 2014</li> </ul>
Rules	<ul style="list-style-type: none"> <li>• Central Securities Depository and Paying Agency Rules, 2015</li> <li>• Bursa Malaysia Listing Requirements</li> <li>• The Rules of Bursa Malaysia Securities</li> <li>• Operational Procedures for Foreign Currency Settlement in RENTAS, 2015</li> </ul>

PDS = private debt securities, RENTAS = Real-Time Electronic Transfer of Funds and Securities System.  
Source: Compiled by ADB Consultants for SF1 and based on publicly available information.

Key legislation is the summary term for laws aimed at a particular market, such as the securities market or capital market. These laws, referred to as acts in Malaysia, establish and govern securities markets or market segments, including the bond market, and related institutions and participants. Acts are enacted by Parliament and take effect upon publication in the government's Gazette. The Capital Markets and Services Act, 2007; Securities Commission Malaysia Act, 1993; and Central Bank of Malaysia Act, 2009 represent key legislation for the Malaysian bond market.

Regulations are issued by the regulatory authorities charged with the overall supervision and governance of the securities and capital markets. Regulations interpret aspects from key legislation and elaborate on the roles and responsibilities of market institutions and their participants.

Guidelines and practice notes are issued by the regulatory authorities of the financial and securities market—BNM and the SC, respectively—for the activities and market participants under their respective purview. Notes are also issued by market institutions under the purview of BNM. These directives and other statements contain descriptions on how regulations should be applied and specific market activities carried out.

Rules are issued by market institutions—including BMS, Bursa Malaysia Depository (BMD), and MyClear—to govern markets and the operations of their members or participants, and to establish market procedures. The Listing Requirements and BM Trading Rules, as well as Operational Procedures for RENTAS, are key examples.

In recent years, both BNM and the SC have adopted a functional regulations approach to capital markets, rather than creating and maintaining an institutional regulatory framework. This is particularly obvious in the changes to the SC Guidelines.

## D. Malaysian Bond and *Sukuk* Market Regulatory Structure

Generally, Malaysia’s capital market is governed by the rules and regulations issued and enforced by the SC, as well as by Bursa Malaysia and its subsidiaries.

The Malaysian debt securities and *sukuk* market, however, is supervised by the SC and BNM. Both regulators play a dual role of supervising market intermediaries and the activities in the market, as well as actively supporting and developing the market infrastructure and fostering a conducive environment. As a result of the coordinated and committed efforts of the SC and BNM, the Malaysian debt securities and *sukuk* market has achieved substantial growth over the years.

BNM and the SC entered into a memorandum of understanding, which established a framework of cooperation between the two agencies for the performance of their regulatory responsibilities. The memorandum spells out mechanisms to facilitate cooperation and information exchanges to attain the common objectives of both agencies.<sup>4</sup>

### 1. Bank Negara Malaysia

BNM is the central bank of Malaysia. It was established on 26 January 1959 under the Central Bank of Malaysia Act, 1958, with its objectives extended under the revised Central Bank of Malaysia Act, 2009:

- (a) The principal objective of [BNM] is to promote monetary stability and financial stability conducive to the sustainable growth of the Malaysian economy.
- (b) The primary functions of [BNM] are as follows:
  - (i) formulate and implement monetary policy in Malaysia;
  - (ii) issue currency in Malaysia;
  - (iii) regulate and supervise financial institutions, which are subject to the laws enforced by [BNM];
  - (iv) provide oversight over money and foreign exchange markets;
  - (v) exercise oversight over payment systems;

<sup>4</sup> Adapted with minor edits from Executives’ Meeting of East Asia and Pacific Central Banks Report on Payment, Clearing, and Settlement Systems in Malaysia, 2012.

- (vi) promote a sound, progressive, and inclusive financial system;
  - (vii) hold and manage the foreign reserves of Malaysia;
  - (viii) promote an exchange rate regime consistent with the fundamentals of the economy; and
  - (ix) act as financial adviser, banker, and financial agent of the government.
- (c) [BNM] shall have all the powers necessary, incidental, or ancillary to give effect to its objects and carry out its functions.
- (d) [BNM], in giving effect to its objects and carrying out its functions under this [act], shall have regard to the national interest.

BNM focuses on the three pillars of central banking: monetary stability, financial stability, and the payment system. In addition, emphasis is given to the developmental role of BNM with respect to economic management, institution building, and the strengthening of the financial system.

BNM is a statutory body wholly owned by the Government of Malaysia. It reports to the Minister of Finance, Malaysia on matters pertaining to monetary and financial sector policies.

#### (a) *Bank Negara Malaysia as a Regulator*

To enable BNM to meet its objectives, it has been vested with comprehensive legal powers under various acts to regulate and supervise the financial system. These acts include the Central Bank of Malaysia Act, 2009; Financial Services Act, 2013; Islamic Financial Services Act, 2013; and Development Financial Institutions Act, 2002. Collectively, these acts lay the legal foundation to empower the central bank to license and regulate conventional and Islamic banks and investment banks, money brokers, insurance companies, *takaful* (mutual support insurance) operators, and development financial institutions, which constitute the majority of participants in the domestic debt securities and *sukuk* market.

BNM also oversees the key market infrastructure for the Malaysian bond market: the Fully Automated System for Issuing/Tendering (FAST);<sup>5</sup> and the Real-Time Electronic Transfer of Funds and Securities System (RENTAS), which is operated by a wholly owned subsidiary, Malaysia Electronic Clearing Corporation (MyClear).<sup>6</sup> FAST and RENTAS Rules are issued by MyClear under the authority delegated by BNM.

A list of Guidance Notes and Rules issued by BNM and MyClear in relation to the bond market can be found in Appendix 2.<sup>7</sup>

BNM continues to play a pivotal role in supporting the local debt securities and *sukuk* markets through its involvement in infrastructure development and in facilitating foreign exchange administration rules for local and foreign issuers and investors in the Malaysian market.

#### (b) *Bank Negara Malaysia as Issuing Agent of Government Securities*

As the banker of, and advisor to, the government, BNM's role includes managing the liabilities of the government, both in Malaysia and abroad. It advises the government on its loan

<sup>5</sup> See <https://fast.bnm.gov.my/fastweb/public/MainPage.do>

<sup>6</sup> See <http://www.myclear.org.my>

<sup>7</sup> A review in March 2016 showed that the most recent update to this list was made in May 2015.

programs, including planning the auction calendar for government securities, taking into consideration the terms and timing of the loans and the types of securities. BNM participates actively in the monthly Cash Flow Committee meeting, chaired by the Treasury, to discuss the final details of government securities issuances. In addition, BNM is responsible for the issuance process, registration, settlement, and redemption of government securities through its in-house automated issuing–tendering and settlement platforms.

BNM is empowered by several laws to act as the issuing agent on behalf of the Government of Malaysia. Conventional debt instruments such as MGS and Malaysian Treasury Bills (MTB) are issued under the Loan (Local) Act, 1959 (revised in 2004) and the Treasury Bills (Local) Act, 1946 (revised in 1977), respectively. On the other hand, Islamic securities such as MGII and Malaysian Islamic Treasury Bills (MITB) are issued under the Government Funding Act, 1983 (previously known as the Government Investment Act, 1983). Each act sets a different issuance limit for conventional and Islamic instruments, by order of the *Yang di-Pertuan Agong* (constitutional monarch of Malaysia) as published in the Gazette.

The Treasury Bills (Local) Act, 1946 empowers the Minister of Finance to borrow money through the issuance of MTB, while the Loan (Local) Act, 1959 authorizes BNM to raise funds within Malaysia, on behalf of the minister, for the development fund. The Government Funding Act, 1983 provides for raising funds by the Government of Malaysia using instruments that adhere to Shariah principles, as approved by the National Shariah Advisory Council. This act grants the minister the authority to receive investments, by creating and issuing instruments evidencing such investment, on behalf of the Government of Malaysia.

### (c) *Bank Negara Malaysia as Financial Market Participant*

In promoting monetary stability, BNM pursues a monetary policy that serves the interests of Malaysia with the primary objective of maintaining price stability while giving due regard to developments in the economy. As part of its monetary policy operations, BNM may undertake other financial transactions involving currencies, securities, precious metals, or other commodities or financial instruments as approved by the Monetary Policy Committee.

Since 2005, BNM has been allowed to purchase MGS from the primary and secondary markets based on market prices, and to use the purchased securities for its open market operations.

To ensure that these purchases do not unduly influence or distort market prices, BNM's participation in the primary auction is based on the weighted average price of the auction and is limited to a maximum of 10% of the issue size. Similarly, the amount purchased in the secondary market is limited to 10% of the outstanding issued amount. At the end of December 2015, BNM held 0.32% of total MGS outstanding.<sup>8</sup>

BNM is the issuer of BNM Monetary Notes, which are issued to manage liquidity in both the conventional and Islamic financial markets. BNM also conducts repurchase auctions as part of its open market operations.

<sup>8</sup> For the latest available information, please refer to the BNM Monthly Statistical Bulletin. [http://www.bnm.gov.my/index.php?ch=en\\_publication\\_catalogue&pg=en\\_publication\\_msb&eld=box1&mth=12&yr=2015&lang=en](http://www.bnm.gov.my/index.php?ch=en_publication_catalogue&pg=en_publication_msb&eld=box1&mth=12&yr=2015&lang=en)

#### (d) *Bank Negara Malaysia's Role for Financial Market Development*

BNM also plays a significant developmental role, including the evolution of the domestic financial system's infrastructure with major emphasis placed on building the efficient and secured payment systems as well as the institutions needed to build a comprehensive, robust, and resilient financial system including the SC, BMS (formerly the Kuala Lumpur Stock Exchange), and the Credit Guarantee Corporation.

### 2. **Securities Commission Malaysia**

The SC is the primary authority with respect to the regulations and activities of the Malaysian capital market.

The SC was established on 1 March 1993 under the Securities Commission Malaysia Act, 1993 to promote and maintain fair, efficient, secure, and transparent securities and derivatives markets; and to facilitate the orderly development of an innovative and competitive capital market. It is a self-funding statutory body with investigative and enforcement powers. It reports to the Minister of Finance and its accounts are tabled in Parliament annually. The SC's many regulatory functions include

- (i) supervising exchanges, clearinghouses, and central depositories;
- (ii) acting as the registering authority for prospectuses of corporation other than unlisted recreational clubs;
- (iii) acting as the approving authority for corporate bond issues;
- (iv) regulating all matters relating to securities and derivatives contracts;
- (v) regulating the takeover and mergers of companies;
- (vi) regulating all matters relating to unit trust schemes;
- (vii) licensing and supervising all licensed persons;
- (viii) encouraging self-regulation; and
- (ix) ensuring the proper conduct of market institutions and licensed persons.

The SC administers the CMSA and the Securities Industry (Central Depositories) Act, 1991. Collectively, these acts govern a substantial part of the activities in the domestic bond market. It also has the ultimate responsibility of investor protection. Apart from discharging its regulatory functions, the SC is also obliged by statute to encourage and promote the development of the securities and derivatives markets in Malaysia.

Prior to 1993, there was no single authority entrusted with the responsibility of regulating and systematically developing the Malaysian capital market. Supervisory powers were shared between industry organizations such as the stock exchange and government institutions. To streamline the regulatory structure of the capital market, the SC was established as a self-funding statutory body with investigative and enforcement powers.

The SC's commitment to strengthening and broadening the domestic capital market is manifested in the Capital Market Masterplan (CMP1). Launched in 2001, the CMP1 sought to chart the direction of the Malaysian capital market until 2010. Twenty-two of the 152 recommendations in the CMP1 related to developmental initiatives for the debt securities and *sukuk* market. In turn, the CMP2 continues to influence the development of the Malaysian bond market until 2020. For details on the CMP2, please refer to Chapter X.

### *Securities Commission Malaysia's Statement of Principles and Standards*

The purpose of the Statement of Principles and Standards is to facilitate efficient and ethical engagement between the SC and its external stakeholders. Notwithstanding the above, all market participants engaging with the SC are also expected to apply the ethical principles set out in this statement:<sup>9</sup>

- Principle 1: Ethics and Integrity
- Principle 2: Transparency and Disclosure
- Principle 3: Adherence to Client Charters
- Principle 4: Maintaining Confidentiality
- Principle 5: Providing a Safe Environment and Workplace for Staff
- Principle 6: Environmental and Social Responsibilities
- Principle 7: The SC's Expectations of the People with Whom the SC Does Business

### *Securities Commission Malaysia's Guidelines and Practice Notes*

To organize, direct, and govern the capital market, the SC typically issues Guidelines and Practice Notes. The Guidelines cover specific market segments (e.g., PDS and *sukuk*) or dedicated subjects (e.g., Trustees and Trust Deeds). The Practice Notes are focused on the conduct of specific activities within the market segments governed by the Guidelines.

A list of Guidelines and Practice Notes issued by the SC in relation to the bond market can be found in Appendix 2.<sup>10</sup>

## **3. Financial Markets Association of Malaysia**

Although the FMA is not officially a self-regulatory organization (SRO), it has fulfilled a number of significant functions of organizing and certifying participants in the capital market in Malaysia, including for the bond market, since its establishment in 1974. The SC recognizes certification by FMA as one of the bases upon which to license an OTC bond dealer, which is referenced in the SC's licensing regulations. The FMA developed and maintains a code of conduct for the industry, defined quoting and trading conventions for debt securities and *sukuk*, and other rules affecting the financial markets.

For more information on the FMA, including details on its role and functions, membership, and convention and rule-making, please refer to sections H and I in this chapter.

## **4. Bursa Malaysia and Its Subsidiaries**

BM is an exchange holding company approved under Section 15 of the CMSA. BM is the frontline regulator of the Malaysian capital market with responsibility for maintaining a fair and orderly market in the securities and derivatives that are traded through its facilities. As an integrated exchange, BMS also has the duty to ensure orderly dealings in the securities deposited with Bursa Malaysia Depository, and orderly, clear, and efficient clearing and settlement arrangements for transactions cleared and settled through its facilities. BM and its subsidiaries have put in place a comprehensive and effective regulatory and supervisory

<sup>9</sup> Adapted from the SC website at <http://www.sc.com.my/about-us/statement-of-scs-principles-and-standards/>

<sup>10</sup> A review in March 2016 showed that the most recent update to this list was made in May 2015.

framework to regulate the market and its participants, including the listed issuers and their directors and advisers, Participating Organisations, Trading Participants, Clearing Participants, Authorised Depository Agents, and Authorised Direct Members.

In this respect, BM and its subsidiaries have issued various sets of rules to stipulate the requirements that need to be met by the regulated entities either upon admission and/or on a continuing basis. BM and its individual entities administer and monitor compliance with these rules and take strict, prompt, and objective enforcement action for breaches of these rules. BMS actively supervises the listed issuers and brokers. BMS and Bursa Malaysia Bonds (Bursa Bonds) also undertake surveillance over trading activities in their respective marketplaces.

With particular reference to the bond market, Bursa Bonds facilitates, regulates, and supervises the ETP, and BMS governs the Exempt Regime (for profile listing), and trading of Exchange-Traded Bonds and Sukuk (ETBS), respectively.

Some of the listing and trading rules of BMS are discussed in the appropriate chapters and sections of the Malaysia Bond Market Guide.

## 5. Shariah Advisory Council

To ensure that all Islamic capital market products are in compliance with Shariah principles, the Shariah Advisory Council (SAC) was established in 1996 by the SC for the onshore market. The SAC comprises prominent Shariah scholars, jurists, and market practitioners to advise the SC on matters relating to the Islamic capital market and provide Shariah guidance on Islamic capital market transactions and activities.

There are two SACs in Malaysia. In addition to the SAC under the SC, BNM also has a SAC under its purview. The SAC for each regulatory authority is the highest and final authority on all Shariah matters concerning the products under each institutions purview: the SAC of the SC has the mandate to make final decisions on Shariah matters concerning Islamic capital market products, while the SAC of BNM is the sole authoritative body on Shariah matters pertaining to Islamic banking, *takaful*, and areas under the purview of BNM.

The SC also incorporated the Shariah principles and concepts approved by the SAC into the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework and the Guidelines on Issuance of PDS and Sukuk to Retail Investors, upon their publication in March and June 2015, respectively, and defined the roles and responsibilities of Shariah Advisers that are expected to observe these principles and concepts, and advise issuers and Principal Advisers on the eligibility and suitability of such principles and concepts when considering the issuance of *sukuk*.

## E. Regulatory Framework for Debt Securities and Sukuk


The SC has put in place a clear distinction between regulations governing the issuance and transactions in bonds aimed at professional investors and retail bonds. In March 2015, the SC introduced the Lodge and Launch Framework targeting the offer of PDS and *sukuk* to Sophisticated Investors in Malaysia and abroad, and demarcating these wholesale bonds and *sukuk* from offers to retail investors or the general public.

The Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework, effective June 2015, feature a supplement called the Lodgement Kit, which



includes specifications for documentation and disclosure requirements, reporting, and other obligations. These guidelines and related material are included on the SC's website as illustrated in Box 2.1.

**Box 2.1: Securities Commission Malaysia's Lodge and Launch Framework Regulations**

 **Lodge and Launch Framework**

- List of Lodged Unlisted Capital Market Products
  - Wholesale Funds
  - Private Debt Securities and Sukuk
  - Structured Products
- Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (pdf)  
*(Date Issued: 9 March 2015)*  
*(Updated: 15 June 2015)*  
*(Effective Date: 15 June 2015)*
- Lodgement Kit (pdf)
- Summary of Updates to the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (pdf)  
*(Effective Date: 15 June 2015)*
- FAQ on the requirements of the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (pdf)
- LOLA Online Submission System

Archive of Superseded Guidelines

FAQ = frequently asked questions, LOLA = Lodge and Launch Framework.  
Source: Securities Commission Malaysia. Lodge and Launch Framework. <http://www.sc.com.my/legislation-guidelines/lodge-and-launch-framework/>

To further distinguish the issuance of retail bonds and *sukuk* from wholesale bonds and *sukuk*, the SC streamlined the relevant regulations on retail bond and *sukuk* issuance in the Guidelines on Issuance of PDS and Sukuk to Retail Investors, effective June 2015.

The overall regulatory framework under the purview of the SC for PDS and *sukuk* issuances, related approvals, and regulations is best demonstrated using the list of legislation and guidelines for bonds on the SC website as shown in Box 2.2.

A list of relevant Guidelines and Practice Notes issued by the SC is also available in Appendix 2.

In addition to the SC Guidelines and subsidiary regulations, BNM also regulates a number of activities that are associated with its supervision of the conventional and Islamic money markets. The regulations include the practices for repurchase agreements (repos), short-selling, and securities lending. In addition, the issuance and settlement infrastructure for debt securities comes under the purview of BNM, and the relevant market institutions issue their own Rules and Notes.

## Box 2.2: Securities Commission Malaysia's Regulatory Framework for Bonds

### LEGISLATION & GUIDELINES / Bond

#### Bond

##### Guidelines and Practice Notes

- Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors (pdf)  
(Date Issued: 15 June 2015)
  - FAQ on the requirements of the Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors (pdf)
- Guidelines on Trust Deeds (pdf)  
(Revised: 12 July 2011)  
(Effective: 12 August 2011)
- Guidelines on Registration of Credit Rating Agencies (pdf)  
(Date Issued: 30 March 2011)
- Guidelines on Registration of Bond Pricing Agencies (pdf)  
(Effective Date: 25 January 2006)
- Guidelines on Registration of an Electronic Broking System (pdf)  
(Effective Date: 6 January 2006)
- Guidelines on Dealing in Unlisted Debt Securities by a Universal Broker (pdf)  
(Date Issued: 30 October 2002)
  - Practice Note 1 – Application of the Guidelines to Cross-selling of Unlisted Debt Securities to Eligible Individuals by Dealer's Representatives Not Certified by PPKM (pdf)  
(Date Issued: 12 July 2005)
- Guidelines on allowing a person to be appointed or to act as a trustee under subsection 69(2) of the Securities Commission Act 1993 (pdf)  
(Date Issued: 17 September 2001)
- Practice Note on Registration by the Securities Commission for the Purpose of Acting as a Bond Trustee (pdf)  
(Date Issued: 12 October 2006)
- Guidance Note on the Secondary Trading of Foreign Currency Denominated Debentures and Foreign Currency Denominated Islamic Securities (pdf)  
(Date Issued: 15 September 2005)

##### Relevant Acts and Regulations (including amendments)

- Securities Commission Act 1993 (Prescription of Islamic Securities) (Amendment) Order 2005 (pdf)  
(Date Issued: 6 October 2005)
- Securities Commission (Prescription of Islamic Securities) Order 2004 (pdf)  
(Date Issued: 3 July 2004)
- Securities Commission (Non-Application of the Definition of Debenture) Order 2001 (pdf)  
(Date Issued: 19 July 2001)
- Securities Commission (Shelf Registration Scheme for Debentures) Regulations 2000 (pdf)  
(Date Issued: 7 April 2000)

FAQ = frequently asked questions, PPKM = Persatuan Pasaran Kewangan Malaysia (Financial Markets Association of Malaysia).

Source: Securities Commission Malaysia. Legislation and Guidelines>Bond. <http://www.sc.com.my/legislation-guidelines/bond/>

A list of applicable Practice Notes issued by BNM and the Rules issued by the relevant market institutions are available in Appendix 2.

The processes that are relevant for the application (lodgement), approval, and reporting for debt securities and *sukuk* are explained in greater detail in the following section.

## F. Debt Securities and *Sukuk* Issuance Regulatory Processes

Generally, the issuance of corporate bonds and *sukuk* to retail investors in the Malaysian market requires the approval of the SC, unless exempted as stated in Schedule 5 of the CMSA.

In relation to the issuance of bonds and *sukuk* aimed at Sophisticated Investors, effective June 2015, the Lodge and Launch Framework promulgated by the SC allows the lodgement with the SC of the required documentation and disclosure items prior to the bond, note, or *sukuk* issuance within a stipulated time frame.

Foreign issuers intending to issue MYR-denominated bonds, notes, or *sukuk* require prior approval from BNM under the Foreign Exchange Administration (FEA) Rules, regardless whether these are offers to retail investors or aimed at Sophisticated Investors only. BNM may also need to approve the issuance of bonds, notes, or *sukuk* denominated in foreign currency by resident issuers under certain circumstances.

### 1. Regulatory Processes by Issuer Type

Table 2.2 provides an overview of these regulatory processes by corporate issuer type and identifies which regulatory authority is involved. In order to make the issuance process by issuer type more comparable across ASEAN+3 markets, the table features common issuer type distinctions that are evident in regional markets. Not all markets will distinguish all such issuer types. Sovereign issuers are typically exempt from corporate issuance approvals but, at the same time, may be subject to different regulatory processes.

**Table 2.2: Regulatory Processes by Issuer Type**

Type of Corporate Issuer	SC	BNM	BMS
<b>Resident issuer</b>			
Resident nonfinancial institution	X <sup>c</sup>	X <sup>a</sup>	X
Resident financial institution (LOB)		X <sup>a</sup>	
Resident other than LOB issuing FCY-denominated bonds, notes, and <i>sukuk</i>		X <sup>b</sup>	
<b>Nonresident issuer</b>			
Nonresident nonfinancial institution	X <sup>c</sup>	X	X
Nonresident financial institution		X	
Nonresident issuing FCY-denominated bonds, notes, and <i>sukuk</i>			

BMS = Bursa Malaysia Securities, BNM = Bank Negara Malaysia, FCY = foreign currency, LOB = licensed onshore bank, SC = Securities Commission Malaysia.

<sup>a</sup> BNM approval required only if nontradable private debt securities are issued to nonresidents. (Details of the rules are in the Foreign Exchange Administration Notices.)

<sup>b</sup> BNM approval required under specific circumstances only. Please refer to Chapter II.F for details.

<sup>c</sup> SC approval required for issuance of retail bonds and *sukuk* only; offers aimed at Sophisticated Investors follow the prescriptions under the Lodge and Launch framework as explained in Chapter II.F.5.

Notes: X indicates approval required.

Source: ABMF SF1.

## 2. Overview of Regulatory Processes

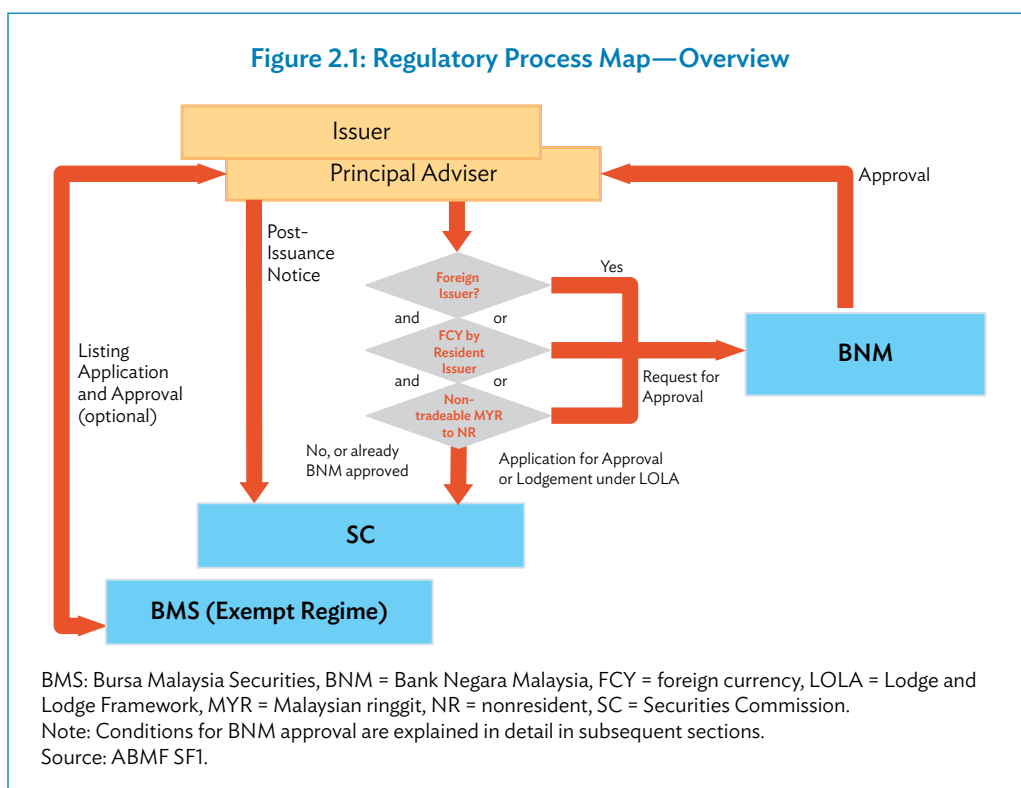
In the Malaysian market, issuers of proposed bonds, notes, or *sukuk* are required to appoint a Principal Adviser responsible for the lodgment with the SC (for offers to Sophisticated Investors) or submission to the SC for approval (for offers to retail investors). A Principal Adviser needs to be licensed by or registered with the SC.<sup>11</sup>

An issuer of bonds, notes, or *sukuk* is expected to submit all approval relevant information and necessary documents to the regulatory authorities via the Principal Adviser.

There is a distinction in the issuance process and related requirements between offers to retail investors (retail bonds) and issuances aimed at Sophisticated Investors. (for details, please refer to sections 4 and 5 in this chapter, respectively).

Foreign issuers may issue bonds, notes, and *sukuk* domestically in both ringgit and foreign currencies. MYR-denominated issuances are subject to approval by BNM prior to submitting an application for approval to the SC (retail bonds) or using the SC's Lodge and Launch Framework (wholesale bonds). BNM does not distinguish between offers to retail investors and Sophisticated Investors. Section 3 of this chapter gives further details on the application and approval process for a nonresident issuer.

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



<sup>11</sup> Since Principal Adviser is an official term in Malaysia, it is used in the relevant figures in this document.

### 3. Regulatory Process for Nonresident Issuer

A nonresident issuer must obtain approval from BNM before issuing MYR-denominated bonds, notes, or *sukuk* in Malaysia. Nonresident issuers are defined as a corporation under Section 2(1) of the CMSA, or as a foreign government. For the purpose of FEA Rules, nonresidents are defined in Section 213 of the Financial Services Act, 2013 and in the Islamic Financial Services Act, 2013. There are no quotas or allocations of issuance amounts for nonresident issuers.

The requirements for the application itself are set out in the Joint Information Note on the Issuance and Subscription of Ringgit and Foreign Currency-Denominated Sukuk and Bonds in Malaysia issued in July 2013 by both BNM and the SC.

The steps that need to be observed when a nonresident issuer wants to issue bonds, notes, or *sukuk* to retail investors—or to Sophisticated Investors under the Lodge and Launch Framework—are detailed below.

#### Step 1—Submission of Application for Approval to Bank Negara Malaysia

The nonresident issuer, of an MYR-denominated bond, note, or *sukuk* to be issued in Malaysia will need to submit an application for approval to the Foreign Exchange Administration Department at BNM. A submission to BNM may be made directly to BNM or through an adviser or the Principal Adviser to the nonresident issuer.

The application should include, among other items, the information outlined in the Appendix of the Joint Information Note on the Issuance and Subscription of Ringgit and Foreign Currency-Denominated Sukuk and Bonds in Malaysia issued in July 2013 by both BNM and the SC.<sup>12</sup>

- (1) profile of the issuer (e.g., business activities, country of incorporation, shareholders, board of directors, and financial report);
- (2) credit rating of issuer and name of credit rating agency (credit rating report);
- (3) type of *sukuk* or bonds;
- (4) size of issuance;
- (5) currency of issuance;
- (6) tenure;
- (7) benchmark or interest rate (e.g., fixed or floating) and frequency;
- (8) utilization of proceeds;
- (9) additional information to be provided if proceeds of issuance are to be on-lent wholly or partly (using the exact structure shown in the Appendix):
  - (a) name of borrower;
  - (b) relationship of issuer with borrower (if any);
  - (c) purpose of financing or loan utilization; and
  - (d) terms of financing and loan, including amount, tenure, benchmark or interest rate, repayment period, and prepayment or callable option;
- (10) lead manager, lead arranger, or adviser;
- (11) other manager (if any);

<sup>12</sup> Information provided is current at time of publication. Since BNM regularly reviews and updates the regulations relevant for the bond market, interested parties are asked to access and review the latest versions of these and other detailed information requirements prior to any submission to BNM.

- (12) guarantor or underwriter (if any);
- (13) listing details (if any);
- (14) method of issuance (e.g., open tender, book-building, or private placement);
- (15) past *sukuk* or bonds issuances (if any);
- (16) proposed hedging counterparty (if any); and
- (17) details of contact person in Malaysia or abroad.

The relevant transaction or offering documents accompanying the application for approval must clearly state the applicable governing law.

BNM does not levy a fee for this approval process.

#### Step 2—Approval from Bank Negara Malaysia

The Foreign Exchange Administration Department will review the application and applicable documents and may, at its discretion, require further clarification or additional information. Upon receipt of full information, BNM will respond to the application within 15 working days.

BNM will review the application and issue a formal approval or rejection letter in regard to the bond, note, or *sukuk* issuance. The approval letter contains a number of standard conditions referencing applicable laws and regulations.

The issuer is required to obtain approval from the SC for the issuance of PDS or *sukuk* within 2 years of the BNM approval. SC approval in the context of the issuance of wholesale bonds refers to the issuer having successfully lodged the required information and disclosure items with the SC, and being able to launch the underlying product as a result.

The issuer may use the MYR-denominated proceeds from the bond, note, or *sukuk* issuance in Malaysia, or swap the proceeds into foreign currency. The swap arrangement must be undertaken with a licensed onshore bank, or back to back with a licensed onshore bank in Malaysia. There is no restriction on the tenure of the swap transaction provided that it does not exceed the maturity date of the underlying transaction.

#### 4. Regulatory Process for Offers to Retail Investors

Section 212 of the CMSA states that all offers of debt securities and *sukuk* in the Malaysian market require the prior approval of the SC, with the exception of government securities and offers made to Sophisticated Investors. This approval requirement applies regardless of the domicile of the issuer.

Section 232 of the CMSA specifies the need for a prospectus for an offer for sale or subscription for debt securities or *sukuk*, unless such issuance would be exempt under Schedule 6 of the CMSA (equivalent to wholesale bonds, also see Section 5), or if prescribed by the Minister upon recommendation of the SC pursuant to Section 229 of the CMSA.

The format and contents of the prospectus itself is subject to the specifications by the SC in the Prospectus Guidelines, 2012 (updated as of 1 April 2013).<sup>13</sup> The provisions for

<sup>13</sup> Details from the Prospectus Guidelines, 2012 adapted for this document by ADB Consultants for SF1 and edited for context. The full document is available at [http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/prospectus/130104/guidelines\\_prospectus\\_130401.pdf](http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/prospectus/130104/guidelines_prospectus_130401.pdf)

minimum contents requirements in the Guidelines complement the prescriptions in Section 235 of the CMSA.

Please note that if the retail debt securities or *sukuk* are offered under an initiative of the ACMF, the prospectus must comply with the prescribed ASEAN Disclosure Standards, which are also detailed in the Guidelines.

The following steps describe the actions to be undertaken by the relevant parties in the course of the issuance application and approval process.

### Step 1—Submission of Application for Approval to the Securities Commission Malaysia

The Principal Adviser to an issuer of an offer to retail investors in Malaysia will need to submit an application for approval to issue to the SC. Both hardcopy and electronic submissions are accepted; in fact, a hard-copy submission of documents and correspondence is to be accompanied by text-searchable PDF files via email or removable media. The process is regulated in Part B of the Guidelines on Issuance of PDS and Sukuk to Retail Investors. The content requirements for applications for the respective types of bond, note, or *sukuk* issuance being applied for are detailed in Appendix 1. The key document to be submitted to the SC is the prospectus, which must be complete and fully comply with the requirements of Division 2 of the Prospectus Guidelines. The other key elements of the submission to the SC have to include

- application letter, containing
  - (a) background information on the issuer;
  - (b) profile of directors of issuer, including
    - (i) National Registration Identity Card numbers for Malaysian directors, and
    - (ii) passport numbers for non-Malaysian directors;
  - (c) description of the transaction and structure of the facility (one-time issue) or program, specifying whether it is a one-time issue or a debt program;
  - (d) details of the utilization of proceeds, including its schedule where applicable;
  - (e) primary and secondary sources of repayment;
  - (f) detailed breakdown of all upfront and recurring fees and expenses for the facility or program;
  - (g) waivers from complying with these Guidelines and other relevant guidelines of the SC obtained for the facility or program, if any;
  - (h) conflict-of-interest situations and appropriate mitigating measures, if any;
  - (i) detailed information on the existing PDS or *sukuk* issue or loans and financing to be refinanced by the facility or program, if applicable;
  - (j) details of approval from other relevant regulatory authorities, if any;
  - (k) any other material information in relation to the issuer, facility, or program;
  - (l) name, telephone number, facsimile number, and e-mail address of the officer-in-charge for the facility or program;
  - (m) name, designation, and contact details of the contact person of the issuer; and
  - (n) name, designation, and contact details of the contact person of the key management personnel of the issuer;

- principal terms and conditions of the proposal;
- parties to the transaction;
- rating letter;
- latest audited financial statements in accordance with accepted standards;
- copies of approval from all other relevant regulatory authorities, if any;
- compliance checklist with the Guidelines;
- Declaration by Issuer;
- Declaration by Trustee (if so appointed);
- Shariah pronouncement (including detailed reasoning or justification);
- diagram illustrating the flow of monies in the designated account(s), if applicable; and
- any other documents.

The requirements for the principal terms and conditions (PTC) of the proposal are outlined in Part 2 of Appendix 1. No specific format is prescribed for the PTC. In contrast, a specific format for the Declaration by Issuer is provided in Part 3 of Appendix 1.

The application for approval from the SC needs to be accompanied by the payment for the respective charges.

#### Step 2—Approval from Securities Commission Malaysia

The SC reviews the issuance application and information and documents provided, and may provide feedback as necessary. The SC may, at its discretion, ask the issuer or the Principal Adviser for additional documents or information.

The time frame for approval of retail PDS or *sukuk* is 40 business days, inclusive of the registration of the prospectus, counted from receipt of complete application documents and information.

The SC may approve the application, or approve it with revisions or under certain terms and conditions. The SC may also refuse the application for reasons stated under Section 214A of the CMSA, including false or misleading statements or if the approval might be detrimental to investors.

Provided that the documents are in order and the necessary information has been provided and the review is satisfactory, the SC will issue an approval letter to the issuer or Principal Adviser that the prospectus has been registered and the approval is effective, and state any conditions that may apply.

The issuance approval from the SC is valid for a period of 1 year for bullet issuances, or 2 years for debt programs.

Any revisions made to the principal terms and conditions of a proposed bond, note, or *sukuk* issuance that has already been approved by the SC, but not yet been issued, requires a fresh approval of the SC. In contrast, if a bond, note, or *sukuk* previously approved by the SC has already been issued, any change to the PTC will not require additional approval by the SC.



## 5. Regulatory Process for Wholesale Bonds and *Sukuk* under the Lodge and Launch Framework

Offers of bonds, notes, or *sukuk* aimed at Sophisticated Investors represent the wholesale, or professional, bond market in Malaysia. Sophisticated Investors are expected to be able to make their own informed investment decisions on the basis of available disclosure information. Hence, the SC has afforded the issuers of such instruments concessions from the regulatory process that would apply to retail offers.

Since 15 June 2015, issuers have been able to issue bonds, notes, or *sukuk* aimed at Sophisticated Investors once they have lodged the required documents and information with the SC. A formal approval from the SC is not required, provided all documentation and disclosure requirements specified in the Lodgement Kit, a supplement to the Lodge and Launch Guidelines, have been observed. The lodgement of necessary documents and information is to be done electronically, via the SC's dedicated Online Submission System.

The provisions of the Lodge and Launch Framework are also applicable for PDS and *sukuk* issued in Malaysia and offered only to investors outside Malaysia.

If a resident issuer intends to issue nontradable PDS or *sukuk* to nonresident investors, prior approval from BNM would need to be obtained. The process of issuance approval from BNM is comparable to the corresponding approval described in section 3 of this chapter.

The following steps will need to be observed when a corporate issuer wants to issue under the Lodge and Launch Framework in Malaysia.

### Step 1—Online Submission to Securities Commission Malaysia (Lodgement)

One of the prerequisites is the approval from other regulatory authorities, including BNM prior to lodgement. An approval from BNM may be taken up to 2 years prior to lodgement with the SC.

In the case of *sukuk* intended to be issued under the Lodge and Launch Framework, prior approval from the SC's Islamic Capital Market Department (Shariah Advisory Council) is required on the Shariah aspects of the *sukuk* before a lodgement may be done.

The lodgement is to be completed by the issuer (in the case of a multilateral development bank) or the Principal Adviser. This role is designated as the Lodgement Party. There must be a Lodgement Party at all times during the life cycle of PDS or *sukuk* issued under this framework.

The Lodgement Party is required to identify other Responsible Parties, which are the parties involved in the issuance, and their roles and responsibilities in the context of the product issuance.

Part 3, Section 1 of the Lodgement Kit supplement to the Lodge and Launch Guidelines lays out the detailed information requirements to be lodged via the SC Online Submission System. The Lodgement Kit specifies information depending on the nature of an instrument, since not all information requirements may be applicable for all types of instruments. In addition, the Lodgement Kit contains a number of prescribed forms

for submission, including a Declaration by the Issuer in the format prescribed by the SC.<sup>14</sup> The SC is expected to review and update the Lodgement Kit on a regular basis.

Since the actual lodgement is done via the SC Online Submission System, the prescribed documents need to be scanned and uploaded via the system.

For ease of reference, the complete regulatory process, including detailed documentation and disclosure requirements for issuances under the Lodge and Launch Framework is described in the AMBIF Implementation Guidelines for Malaysia, available on the *AsianBondsOnline* website. The AMBIF Implementation Guidelines also describe additional features of this professional bond market segment in Malaysia.

The lodgement may be done at any time prior to the launch of the product. For *sukuk*, the initial lodgement is prescribed to be done at least 10 business days prior to the targeted launch date, since it involves the approval of the Shariah aspects of the *sukuk* prior to the acceptance of the lodgement by the SC.

Any revision to the documents or disclosure information after an initial lodgement but prior to the launch would result in the need to resubmit the full set of documentation and disclosure information, and the timeline would reset.

Each lodgement must be accompanied by the relevant fees prescribed by the SC.

## Step 2—Launch of Products under the Lodge and Launch Framework

Under the Lodge and Launch Framework, no formal approval for the issuance of debt instruments or *sukuk* is required from the SC. Instead, provided that all documents and disclosure items required for a lodgement have been submitted online and were accepted by the system, the issuer and its Principal Adviser may launch the product, in this case debt securities or *sukuk*, for which the documents and information have been lodged with the SC.

In this context, the launch refers to (i) making available, (ii) offering for subscription or purchase of, or (iii) issuing of an invitation to subscribe for or purchase PDS or *sukuk*. This includes any issuance, publication, or release of any information, notice, or advertisement with respect to any of the activities specified above.

The debt securities and *sukuk* must be launched within 60 business days from lodgement date; otherwise, the launch authorization will be null and void, and another lodgement would have to be made. In the case of a debt or *sukuk* program, the first issuance under the program must be launched within 60 business days.

The ability to launch PDS and *sukuk* commences after the fee payment to SC has cleared.

<sup>14</sup> Information provided is current at the time of publication. Since the SC regularly reviews and updates its Guidelines, interested parties are asked to access the latest version of the Lodgement Kit to ensure they are aware of the effective information and disclosure requirements in force. The Lodgement Kit is available on the SC website at [http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/lola/lodgementKit\\_lola\\_150615.pdf](http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/lola/lodgementKit_lola_150615.pdf)

## 6. Obligations after Approval and after Issuance

The post-issuance obligations that apply to both offers to retail investors and issuances under the Lodge and Launch Framework are detailed below.

### (a) Offers to Retail Investors

In the case of offers to retail investors (retail bonds), the issuer is required to submit to the SC, through the Principal Adviser, documents and information after the SC approval has been obtained and before the issuance itself (or in the case of a debt program, the first issuance under the program). The requirements for this post-issuance notice, which are specified in Appendix 2 of the Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors, include the following items listed below.<sup>15</sup>

In the form of a softcopy via email, the following details:

- (a) date, size, and tenure of issue; and
- (b) documents (clean version in PDF format), including
  - (i) information memorandum, where applicable;
  - (ii) global medium-term note base prospectus and disclosure document, where applicable, if the information memorandum or offering circular is to be read together with the base prospectus;
  - (iii) executed trust deed, where applicable; and
  - (iv) PTC (in specified format).

The Principal Adviser must also submit in hard copy prior to the issue date documents that include the following information:

- (a) issue date;
- (b) maturity date;
- (c) issue amount (nominal value);
- (d) issue price (cash raised);
- (e) interest, coupon, profit, or rental rate;
- (f) yield-to-maturity;
- (g) mode of issue;
- (h) list of subscribers or successful tender panel members and amounts subscribed;
- (i) utilization of proceeds raised from the issue:
  - (i) purpose;
  - (ii) amount utilized;
  - (iii) details of condition imposed on the utilization, including conditions imposed by the Shariah Advisory Council, if any; and
  - (iv) confirmation from the Shariah Adviser that the conditions imposed on the utilization have or will be met;

<sup>15</sup> Information provided is current at the time of publication. Since the SC regularly reviews and updates its Guidelines, interested parties are asked to access the latest version of the Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors to ensure they are aware of the effective information and disclosure requirements in force. The Guidelines are available on the SC website at the following link: [http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/bondmkt/guidelines\\_retailsPDS\\_sukuk\\_150615.pdf](http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/bondmkt/guidelines_retailsPDS_sukuk_150615.pdf)

- (j) clearing and settlement platform;
- (k) a copy of the rating report;
- (l) a certified true copy of the executed trust deed, where applicable; and
- (m) names of all parties involved in the life cycle of the PDS or *sukuk* and their roles and responsibilities.

Additionally, a confirmation from the Principal Adviser that

- (a) designated accounts, if any, have been opened, the authorized signatories are signatories of the respective accounts, and the accounts are administered according to the terms;
- (b) prospective investors and relevant parties have been informed of any instance where a conflict of interest situation may arise together with the relevant mitigating measures, including the agreement from the Board of Directors of the issuer to proceed with such arrangements;
- (c) the Principal Adviser(s) have notified the SC of any variation to or substitution or replacement of the underlying assets, and confirmed to the SC that the Shariah Adviser has given its approval for the variation or the substitution or replacement;
- (d) the Principal Adviser(s) have undertaken the necessary internal measures that prior to each issuance or drawdown under the proposed *sukuk* program, the issuance or drawdown is in full compliance with Shariah principles; and
- (e) all other conditions of approval that have been or may be imposed by the SC have been or will be complied with.

*(b) Offers under the Lodge and Launch Framework*

Under the Lodge and Launch Framework, the Lodgement Party (issuer) must submit a post-issuance notice (as prescribed in the Lodgement Kit) to the SC within 7 business days from the date of issuance. In the case of a debt or *sukuk* program, the submission of the post-issuance notice would apply to each issuance under the program.

The contents requirements for the post-issuance notice are prescribed in the Lodgement Kit, Part 3, Section 2. As the SC is expected to review and update the Lodgement Kit on a periodic basis, interested parties are encouraged to visit the SC website for the latest version.<sup>16</sup>

The Lodgement Party also needs to advise the SC of all parties involved in the transaction and through the life cycle of the PDS or *sukuk*, and their roles and responsibilities. In the case of a *sukuk*, the Lodgement Party will also need to attach any necessary confirmation by the Shariah Adviser under the regulations.

The issuer must also update the SC of any revision to the PTC after issuance through the Lodgement Party within 14 business days of the proposed revision coming into effect. Such updates must follow specific information and format requirements stipulated in Appendix 4 of the Lodge and Launch Guidelines.

<sup>16</sup> Securities Commission Malaysia. [http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/lola/lodgementKit\\_lola\\_150615.pdf](http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/lola/lodgementKit_lola_150615.pdf)

In addition, the issuer must ensure that the actual utilization of proceeds is consistent with the proposed use of proceeds advised at the time of lodgement.

### **7. No Specific Issuance Process for a Domestic Financial Institution**

The regulatory processes for resident financial institutions, in case of both an offer to retail investors and an offer to Sophisticated Investors, are the same as shown in the previous sections.

This is mentioned here as a clarification since other markets may have specific approval requirements under banking or other relevant prudential regulations.

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

The regulatory process for foreign-currency (FCY)-denominated debt instruments and *sukuk* is distinguished by the place of issuance for the instrument.

#### *(a) Debt Instruments and Sukuk Issued in Malaysia*

In principle, the regulatory process for the issuance of FCY-denominated bonds, notes, or *sukuk* by a resident issuer is similar to the one for an MYR-denominated issuance by a resident issuer; in most cases, there is no requirement for approval from BNM.

At the same time, should a nonresident issuer wish to issue FCY-denominated bonds, notes, or *sukuk* in Malaysia, no additional or special approval is required. As such, the regulatory process would follow the description of the issuance approval detailed in sections 4 or 5 earlier, depending on the nature of the offer.

However, should a resident issuer wish to issue FCY-denominated bonds, notes, or *sukuk* to nonresident (professional) investors in an amount exceeding the prudential limit on foreign currency borrowing from nonresidents (MYR100 million equivalent based on the aggregate borrowing of the resident issuer and other resident entities within its group of entities with a parent–subsidiary relationship), the issuer will need to seek approval from BNM.

#### *(b) Debt Instruments and Sukuk Not Issued in Malaysia (Offer for Sale through a Roadshow)*

In case a nonresident issuer plans to offer for sale or subscription FCY-denominated PDS or *sukuk* issued in another jurisdiction (and offered to investors in at least one economy other than Malaysia), the issuance of FCY-denominated PDS or *sukuk* to Malaysian investors has to follow a specific process prescribed by the SC in the Lodge and Launch Guidelines and in other regulations relating to FCY-denominated PDS or *sukuk* through a roadshow. The roadshow concept is not available for offers to retail investors.

The regulatory process itself—and the necessary information and disclosure items—largely follows the process for wholesale bonds outlined in section 5. At the same time, the issuer, through its Principal Adviser, is expected to make a number of additional representations to the SC. Based on the Lodgment Form for Foreign Currency-Denominated Private Debt Securities or Sukuk through a Roadshow under the Lodge and Launch Framework, the Principal Adviser needs to confirm that the issuance satisfies the roadshow requirements as follows:

- (a) issued by a foreign issuer and the issuer is either a corporation within the meaning of Section 2(1) of the CMSA or a foreign government who is eligible to issue, offer, or make an invitation to subscribe or purchase *sukuk*;
- (b) not originated in Malaysia;
- (c) issued or offered to investors in Malaysia and at least one other country; or
- (d) an invitation to subscribe or purchase made to investors in Malaysia and at least one other country.

FCY-denominated debt securities and *sukuk* may be deposited and settled in RENTAS. In addition, an adviser or lead arranger or facility agent who is a RENTAS member shall be appointed to facilitate the process of depositing the debt securities and *sukuk* in RENTAS. Exemptions from the retirement to appoint a trustee and draw up a trust deed may apply (e.g., if a foreign issuer is rated AAA).

## G. Continuous Disclosure Requirements in the Malaysian Market

Continuous disclosure requirements for debt securities and *sukuk* issued in Malaysia are prescribed in the CMSA and further detailed in the SC Guidelines. Distinctions are made between offers of bonds, notes, or *sukuk* to retail investors and offers to Sophisticated Investors under the Lodge and Launch Framework.

The issuance documentation (e.g., a prospectus or Information Memorandum) and selected disclosure items are also available on the website of the SC. To access such information, market participants and interested institutional investors must register via the website. Institutional investors, including foreign investors, may register as long as their business falls under the definition of Sophisticated Investors (please refer to Chapter III.N).

In this context, please also refer to the SC's post-approval and post-issuance reporting requirements, which are detailed in section F.6 of this chapter.

### 1. Offers to Retail Investors

Obligations on issuers, or their agents, for the continuous disclosure of relevant information relating to offers to retail investors (retail bonds) are defined in Part 6, Division 4 of the CMSA, as well as Part C, Chapter 12 of the Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors. This chapter of the guidelines also lists a number of specific events that are expected to be made public immediately upon occurrence, including the provision of an audited financial statement, typically via the trustee. If the issuer is a foreign entity, the filing of the audited financial statement may follow the same intervals as filings to applicable regulators in the home market of the issuers, but should not exceed 180 days since the end of the financial year.

Where PDS or *sukuk* are to be offered OTC, the issuer must disclose any information that might have a material effect on the price or value of the PDS or *sukuk*—or an investor's decision on whether to invest in that PDS or *sukuk*—on the platform on which it was issued, typically FAST.

Where PDS or *sukuk* are to be offered on the stock exchange, the issuer must also comply with the continuous disclosure obligations set out in the Listing Requirements of BMS. If the issuer is a company already listed in Malaysia, no separate financial statement needs to be submitted to the SC.

In the case of a debt or *sukuk* program approved by the SC, the issuer must ensure that a pricing supplement is made available to the holders of its bonds or *sukuk* prior to each issuance under the debt or *sukuk* program.

## 2. Wholesale Bonds (under the Lodge and Launch Framework)

For debt securities and *sukuk* issued under the Lodge and Launch Framework, or wholesale bonds, the SC prescribes few specific continuous disclosure obligations. At the same time, the obligations prescribed in Part 6, Division 4 of the CMSA still apply.

### (a) MTN or iMTN Program

The issuer must ensure that a pricing supplement is made available to all bond- or *sukuk*-holders prior to each issuance under a medium-term note (MTN) or Islamic medium-term note (iMTN) program. This does not apply if the issuance is tendered through FAST, or if it is issued or offered on a primary subscription basis (under a bought-deal or private placement basis).

### (b) Call Option or Early Redemption

The issuer needs to ensure that immediate announcements will be made in the case of an early redemption or exercise of a defined call option on a debt securities or *sukuk* issue. Such announcements can be made via FAST, through BMS in case of Exempt Regime-listed debt securities or *sukuk*, or by any other means that the issuer or trustee deem appropriate.

The key disclosure document for a wholesale bond is the Information Memorandum or Offering Memorandum, which contains provisions agreed among parties involved (issuer, Principal Adviser, investors, and intermediaries) on terms and conditions, governing law and jurisdiction, as well as relevant supporting documentation and disclosure items. At the same time, the provision or use of an Information Memorandum is not mandatory and the SC does not prescribe a specific format for it.

Continuous disclosure for a wholesale bond or *sukuk* primarily depends on the conditions set in the Information Memorandum or Offering Memorandum, and may be based on market expectations among investors. In the Malaysian market, it is customary for the issuers of wholesale bonds to provide updated audited financial statements to the Sophisticated Investors on an annual basis.

There is no need to file an annual audited financial statement with the SC for wholesale bonds. Other than providing the pricing supplement, issuers are required to inform the SC of any revision made to the terms of the bond. In addition, under the Lodge and Launch Framework, any Responsible Party is also liable to inform the SC if they are aware of any change that may render any information or document to be false, misleading, or contain any material omission.

## H. Self-Regulatory Organizations in the Malaysian Market

The following SROs and quasi-SROs with relevance for the bond market are evident in Malaysia.

## 1. Financial Markets Association of Malaysia

The FMA is a market association for institutions and individuals involved in financial markets in Malaysia. The FMA is registered with the Registrar of Societies and was formerly known as the Forex Association of Malaysia before being renamed, effective 21 November 2014, to better reflect its significant responsibilities for financial market development, minimum standards setting, and member education in line with the typical remit of financial markets associations in other markets globally.

The FMA does not have official SRO status. At the same time, its role and functions in the Malaysian market come very close to those of a typical SRO. Several of the FMA's present functions have become an integral part of the bond market and the activities of its participants, and are referenced or relied upon in the regulations for the bond market. As such, the FMA is included in this section.

The FMA was established in 1974 with the objective of providing an association for those who are actively engaged in the wholesale financial markets in Malaysia. Besides offering a platform for social and friendly contact among its members, the FMA is also actively involved in education to develop and enhance the knowledge and skills of its members. The FMA has adopted a code of conduct for the industry and certifies market participant members to become bond dealers (for details, please refer to section I). The FMA also organizes talks, seminars, conferences, meetings, and related gatherings for its members and the general public to improve and update their knowledge.

### (a) Key Objectives

The FMA's key objectives are to

- (i) promote and develop any scheme that may elevate the status and/or advance the interests of the association;
- (ii) afford opportunities for social and friendly contact among members;
- (iii) establish liaison with associations or bodies overseas having similar objectives and seek their participation in any seminar, forum, conference, meeting, or gathering organized by the association overseas;
- (iv) organize talks, seminars, conferences, meetings, and similar gatherings for members and the public to improve and update their knowledge of financial markets;
- (v) educate, train, and assess by examination or otherwise members of the association; and award certificates to those who successfully complete the examinations, and prizes to outstanding candidates in examinations; and
- (vi) establish and maintain libraries and collections of publications, research papers, papers delivered at seminars and conferences, and other documents and effects whether in written form or otherwise.<sup>17</sup>

The other main objective of the FMA is to constantly review techniques and practices in the financial markets to develop, improve, and maintain high standards comparable to international practices and standards.

<sup>17</sup> Objectives of Persatuan Pasaran Kewangan Malaysia in Pasaran Kewangan Malaysia Certificate. Available at <http://www.ppkm.net/wp-content/uploads/2014/11/121228-PKMC.pdf>



### (b) Membership

The FMA's membership comprises dealers and trading staff from commercial banks; Islamic banks; investment banks; and the treasury operations of Malaysia's financial institutions, including insurance companies. There are six categories of membership:

- Provisional
- Broker
- Ordinary
- International
- Associate
- Honorary Member

As of May 2015, the total number of FMA members stood at 6,819.

## 2. Bursa Malaysia

BM is an exchange holding company approved under Section 15 of the CMSA.

It operates a fully integrated exchange, BMS, and offers a complete range of exchange-related services—including trading, clearing, settlement, and depository services—through its subsidiaries. BMS is one of the largest bourses in Asia with just under 1,000 listed companies offering a wide range of investment choices to the world. Companies are either listed on the BMS Main Market or the ACE Market. Debt securities and *sukuk* may also be listed for profiling on BMS under the Exempt Regime.

BM sets regulations for its members as well as listing and trading rules for the exchange markets as a whole (for details, please refer to section J). In this, BM is guided by a number of principles aimed at achieving regulatory goals and ensuring a consistent and cohesive approach to its actions and decisions. These principles are also embedded in the rules and regulatory framework of BM to ensure greater parity of regulatory actions across different market segments and parties, and to improve overall regulatory effectiveness. The following are the regulatory principles:<sup>18</sup>

- (1) Clear and easily accessible rules and requirements
- (2) No more regulation than necessary
- (3) Principles-based approach where appropriate
- (4) Outcome-focused
- (5) Innovative and competitive
- (6) Risk-based approach
- (7) Values-based approach
- (8) Transparency
- (9) Benchmarked and globally collaborative
- (10) Consultative approach

More information on BMS and its trading boards, with a focus on the bond market, can be found in other sections of this chapter as well as Chapters III and IV.

<sup>18</sup> See <http://www.bursamalaysia.com/market/regulation/regulatory-approach-philosophy/regulatory-principles/>

## I. Financial Markets Association Rules Related to Certification and Trading Conventions

Although not officially an SRO, the FMA awards the necessary certification to market participants and this certification is a prerequisite for the granting of the relevant license by the SC. The FMA also sets rules, market practices, and conventions for its members.

### (a) *Capital Market Services License*

In an effort to upgrade members' knowledge and skills, the FMA has imposed qualifying examinations for its new members since December 1995. Members must now pass the four modules of the FMA Certificate Examinations before they are licensed to participate in financial markets.

This certification by the FMA is the basis to be awarded a Capital Market Services Representative License for individual market participants. This license is an SC requirement and a prerequisite for an FMA member to participate in the bond market and be a bond dealer under the provisions of the SC. This is to ensure that all market participants comply with the same rules and standards as defined by the FMA and accepted in the market.

### (b) *Rules and Market Conventions*

The FMA sets rules and market conventions for its members (and the market at large) on, for example, trading hours, quoting and trading of debt securities, and interest calculations for the bond and money markets. At the same time, the FMA defines the documentation requirements for dealer-to-dealer and dealer-to-client trades in the bond and money markets, including telephone-recording conventions to avoid any misunderstandings in voice trading or brokering.

### (c) *Code of Conduct*

The FMA has issued a code of conduct for its members to ensure fairness and efficiency in all securities trading, including debt securities and sukuk. The code of conduct was issued as an addendum to BNM's Malaysian Code of Conduct for Principals and Brokers in the Wholesale Money and Foreign Exchange Markets. Misconduct can be addressed by the FMA or referred to BNM and other authorities. The FMA code of conduct also provides for a mechanism for dispute resolution between members.

## J. Bursa Malaysia Rules Related to Bond and Sukuk Listing, Disclosure, and Trading

BM, through its subsidiaries, issues and maintains clear, comprehensive, and accessible rules that govern, for example, the listing of issuers and products on its markets; obligations of issuers post-listing; trading, clearing, and settlement of products; and admission and post-admission obligations of its participants.<sup>19</sup>

BM sets rules and regulations with regard to the following segments in the Malaysian bond market.

<sup>19</sup> Information in this section adapted by ADB Consultants for SF1 and edited for context and relevance.

### (a) *Bursa Malaysia Securities (Main Board)*

The Rules of BMS, as amended from time to time, govern the participation (of Participating Organisations and Registered Persons), dealing, trading, clearing, settlement, and delivery practices for the securities listed and traded on BMS, including ETBS.<sup>20</sup>

### (b) *Electronic Trading Platform (Bursa Bonds)*

Bursa Bonds, a subsidiary of BM, governs the participants in the OTC trading of debt securities and *sukuk* on ETP. These participants are referred to as Bond Members under the Rules of Bursa Bonds, which include eligibility criteria for participants and trading conventions, as well as practices for announcement and selected disclosure.<sup>21</sup>

### (c) *Exempt Regime (Profile Listing)*

The Exempt Regime of BMS, which pertains to the profile listing of debt securities and *sukuk* that are aimed at Sophisticated Investors and not traded on BMS, is governed under Section 4B (Listing of Sukuk and Debt Securities) of the BMS Listing Requirements.<sup>22</sup> In addition to the Listing Requirements, BMS issues Amendments to the Listing Requirements (e.g., on the introduction of a Goods and Services Tax), Practice Notes, and Directives or Clarifications for details on specific subjects.

The Listing Requirements also contain provisions for Continuing Listing Obligations and Continuing Disclosure in Sections 8 and 9, respectively.

For further details on individual market segments for the listing and trading of debt securities and *sukuk* mentioned above, please refer to Chapter IV.

## K. Market Entry Requirements (Nonresidents)

### 1. Nonresident Issuers

There are no specific market entry requirements for nonresident issuers in the Malaysian bond market. There is no quota for the issuance of an MYR- or FCY-denominated debt instruments or *sukuk* by a nonresident issuer. Foreign issuers may issue debt securities or *sukuk* denominated in ringgit or foreign currency in Malaysia, subject to the approval of the relevant authorities (for details, please refer to section F). The ringgit and foreign currency funds raised from such issuance may be used either in Malaysia or overseas. Nonetheless, the remittance of such funds overseas must be made in a foreign currency other than the currency of Israel. There is no restriction for foreign issuers to open and maintain ringgit or foreign currency accounts with licensed onshore banks in Malaysia.

<sup>20</sup> See <http://www.bursamalaysia.com/market/regulation/rules/bursa-malaysia-rules/securities/rules-of-bursa-malaysia-securities/>

<sup>21</sup> See <http://www.bursamalaysia.com/market/regulation/rules/bursa-malaysia-rules/bonds-otc/rules-of-bursa-malaysia-bonds/>

<sup>22</sup> See <http://www.bursamalaysia.com/market/regulation/rules/listing-requirements/main-market/listing-requirements>

Foreign issuers may also manage their foreign exchange and interest or profit rate exposures arising from the bond or *sukuk* issuance with licensed onshore banks or nonresident financial institutions. Nevertheless, all ringgit exposures shall be managed only with licensed onshore banks or through an appointed overseas office of a licensed onshore bank with a back-to-back arrangement.

## 2. Foreign Investors

There are no specific market entry requirements for foreign investors in the Malaysian bond market.

Foreign investors are free to invest in Malaysia in any form, including the purchase of debt securities or *sukuk* denominated in ringgit or foreign currency. Investment in ringgit debt securities and *sukuk* by foreign investors may be funded from

- the conversion of foreign currency into ringgit with a licensed onshore bank (excluding licensed international Islamic banks) or through an appointed overseas office of a licensed onshore bank with a back-to-back arrangement; or
- the conversion of foreign currency borrowings obtained from a licensed onshore bank into ringgit undertaken with the licensed onshore banks. Relevant details on the applicable FEA Rules are discussed in section M.

## L. Market Exit Requirements (Nonresidents)

### 1. Foreign Issuers

There are no specific market exit requirements for foreign issuers.

The required funds for redemption of, or interest or profit payments on, bonds, notes, or *sukuk* issued in Malaysia may be remitted into Malaysia without limitations. Any purchase of Malaysian ringgit must be transacted with, or conducted back to back with, a licensed onshore bank or through an appointed overseas office of a licensed onshore bank with a back-to-back arrangement. Cross-currency swaps undertaken at the time of bond, note, or *sukuk* issuance may be undertaken without restriction.

### 2. Foreign Investors

There are no specific market exit requirements for foreign investors.

There are no restrictions for foreign investors to repatriate funds from divestment of ringgit assets or profits and dividends arising from the investments. However, repatriation must be made in a foreign currency other than the currency of Israel. Foreign exchange conversions from Malaysian ringgit must be transacted with a licensed onshore bank or an appointed overseas office of a licensed onshore bank with a back-to-back arrangement.

## M. Regulations Relevant for Nonresidents

The FEA Rules issued by BNM stipulate a few notable requirements to be observed with regard to transactions in Malaysian ringgit for residents and nonresidents alike, and a limitation for the borrowing of Malaysian ringgit by residents from nonresidents. The salient

requirements are detailed by topic below and are also available in more detail on a dedicated FEA microsite of BNM.<sup>23</sup>

### 1. No Foreign Currency Restrictions

There is no restriction on the amount of foreign currency that may be remitted into or out of Malaysia by nonresidents. Any person receiving foreign currencies from abroad may deposit the funds into a foreign currency account maintained with a licensed onshore bank. Nonresidents may also carry into or out of Malaysia any amount of foreign currency in notes.

The purchase or sale of foreign currency or hedging involving foreign currency is widely available with licensed onshore banks where a genuine underlying current or capital transaction exists.

### 2. Local Currency Restrictions

Outbound remittance of ringgit must be converted into foreign currency other than the currency of Israel with a licensed onshore bank prior to remittance.

Any person traveling to or from Malaysia may carry ringgit up to an equivalent of USD10,000.

### 3. Foreign Currency Funding

Nonresidents are free to obtain foreign currency financing from licensed onshore banks. Proceeds of the borrowing can be utilized in or outside Malaysia. Nonresidents are also allowed to issue FCY-denominated debt securities and *sukuk* in Malaysia to any investors for use of proceeds in or outside Malaysia.

### 4. Local Currency Funding

Nonresidents other than financial institutions may obtain ringgit financing from licensed onshore banks in any amount for the purpose of financing real-sector activities in Malaysia such as manufacturing, other commercial activities, or trade.

Foreign (global) custodians or brokers acting on behalf of foreign institutional investors may obtain ringgit overdraft financing from licensed onshore banks for the purpose of facilitating the settlement of shares or MYR-denominated instruments traded on BMS or through RENTAS to avoid settlement failure due to inadvertent delays of payment by the nonresident. The overdraft facility shall not exceed 2 business days and shall not include a rollover option.

## N. Regulations on Credit Rating Agencies

This section covers the regulations and requirements applicable to credit rating agencies (CRAs) operating in Malaysia. For the actual credit rating requirements in Malaysia and the application of such credit ratings in the issuance process of bonds, notes, and *sukuk*, please refer to Chapter III.N.

<sup>23</sup> Please see [http://www.bnm.gov.my/index.php?ch=en\\_newfea&pg=en\\_newfea\\_overview&ac=355&lang=en](http://www.bnm.gov.my/index.php?ch=en_newfea&pg=en_newfea_overview&ac=355&lang=en)

Malaysia was one of the first countries in the world in which the securities market regulator required the recognition of a CRA for rating a bond, note, or *sukuk* issue. This requirement is an acknowledgment of the vital role of CRAs in evaluating the probability of default of debt securities or *sukuk*, and the importance investors place on ratings for their investment decisions despite the fact that all rating reports carry a disclaimer expressly stating that “a rating is not a recommendation to purchase, sell or hold a security’s market price or its suitability for a particular investment, nor does it involve any audit by the rating agency.”

CRAs are required to be registered with the SC for rating debt instruments or *sukuk* in Malaysia, pursuant to the Guidelines on Registration of Credit Rating Agencies, which was issued as a Practice Notice in 2006 and revised into Guidelines in March 2011. With the introduction of the CMSA as the comprehensive securities market legislation in September 2007, CRAs are regulated as registered persons pursuant to Section 76(1)(a) of the CMSA.

In the abovementioned Guidelines, the SC requires that CRAs adhere to international standards and best practices in all their business activities. A CRA is required to adopt the International Organization of Securities Commissions (IOSCO) CRA Code in its own code of conduct, and to disclose this on its website. Where the CRA’s code of conduct differs in substance from the provisions of the IOSCO CRA Code, the rating agency must explain where and why these differences exist, and fully disclose such explanation on its website.

Other than the need for robust and systematic rating methodologies and policies and their consistent application, the SC Guidelines also specify minimum capital requirements and a conducive shareholding structure. Provisions on transparency, objectivity, and independence prescribe full disclosure of approaches and processes and a sound governance structure in line with the Malaysian Code of Corporate Governance.

The registration criteria for credit rating agencies contain a number of specific expectations for the rating review of bonds (Section 2, VI). In addition, the CRA is expected to maintain and report to the SC a list of defaults by rating category on an annual basis.

Pursuant to the abovementioned Guidelines, the SC has approved two domestic CRAs for the conduct of credit rating business in Malaysia: Rating Agency Malaysia (now known as RAM Holdings [RAM]) was established in November 1990, and Malaysian Rating Corporation (MARC) was incorporated in October 1995.