III

Characteristics of the Malaysian Bond Market

Under the guidance of the SC, the Malaysian bond market is rapidly evolving. Since this Bond Market Guide was first issued in 2012, there have been and continue to be substantial changes in market characteristics that are not limited only to the regulatory environment.

Since 2012, the SC has announced and set into motion plans to liberalize credit rating requirements for the issuance of debt instruments and *sukuk*, and revised its regulatory framework to give greater emphasis to issuance avenues for retail-oriented and wholesale debt instruments and *sukuk*. The transformation of the wholesale bonds issuance process was completed with the introduction of the Lodge and Launch Framework in June 2015, and further credit rating changes will take effect in 2017. In addition, BMS now offers ETBS aimed at the retail sector.

These and many other characteristics of the Malaysia bond market are described in this chapter and (to a certain degree) in subsequent chapters.

A. Definition of Securities

The definition of securities in Malaysian is anchored in the CMSA and also referenced in other pertinent laws and regulations as detailed below.

1. Definition in the Capital Markets and Services Act, 2007

Under Part I, Section 2(1), Interpretation, of the CMSA, in the version that includes amendments up to 15 September 2015, securities are defined verbatim as

(a) debentures, stocks, or bonds issued or proposed to be issued by any government;
(b) shares in or debentures of a body corporate or an unincorporated body; or
(c) units in a unit trust scheme or prescribed investments, and includes any right, option, or interest in respect thereof.

While this definition represents a slightly amended version from the one reflected in earlier instances of the CMSA, particularly under (b) and (c), there is no impact on the relevance for the Malaysian bond market or for purposes of this Bond Market Guide.

In turn, the term debenture is further interpreted in the same Section 2(1) verbatim as including debenture stock, bonds, notes, and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property, or services or any contract of hire in the ordinary course of business;

(b) a cheque, banker's draft, or any other bill of exchange or a letter of credit;

(c) a banknote, guarantee, or an insurance policy;

(d) a statement, passbook, or other document showing any balance in a current, deposit, or savings account;

(e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or

(f) any instrument or product or class of instruments or products as the Minister may, on the recommendation of the Commission, prescribed by order published in the Gazette.

2. Debentures in the Companies Act 1965

Reference to debentures and their issuance is also made in the Companies Act, 1965. The version that includes amendments up to 1 January 2006 reads

> "debenture" includes debenture stock, bonds, notes, and any other securities of a corporation whether constituting a charge on the assets of the corporation or not.

B. Types of Bonds, Notes, and *Sukuk*

The Malaysian bond market is very active for both conventional and Islamic bonds and notes, and features a large variety of issuance forms and formats, reflecting the needs of different issuer and investor types for both ringgit and foreign currencies.

There is no specific definition in the CMSA or other laws for bonds relative to notes; instead, Malaysian laws and regulations tend to refer to debenture(s). For all intents and purposes, the use of the term "debentures," or sometimes "debt instruments," subsumes all forms of bonds and notes, regardless of tenure.

Sukuk are structured to comply with Shariah principles. Malaysian policy bodies and regulatory authorities have taken the lead in developing and innovating new Islamic securities structures and in pioneering the Islamic capital market.

1. Public Sector Securities

In Malaysia, public sector securities include debt securities issued by the Malaysian government, BNM as the central bank, statutory boards, and other government-linked entities.

The issuance of MGS and MGII by the government is governed under the Loan (Local) Ordinance, 1959 and Government Funding Act 1983, respectively. In the context of MGS and other government securities issuance, BNM acts as an agent of the government under Section 5(2)(i) of the Central Bank of Malaysia Act, 2009.[24]

[24] Adapted by ADB Consultants for SF1 from a BNM presentation.

Public sector securities issued in Malaysia feature a range of forms and formats:

(a) Malaysian Government Securities

MGS are long-term bonds issued by the Government of Malaysia to raise funds from the domestic financial market. These coupon-bearing bonds pay interest on a semiannual basis and are the most actively traded bonds in the Malaysian bond market.

The Government of Malaysia is committed to regularly issue 3-, 5-, 7-, and 10-year MGS as benchmark securities as part of efforts to develop a benchmark yield curve. Benchmark issues may be reopened to enlarge outstanding issue sizes in order to promote market liquidity. In addition, 15- and 20-year MGS have also been issued to lengthen the benchmark yield curve. The standard transaction lot size for MGS is MYR10 million.

Aside from conventional MGS, callable MGS have also been issued since 2006 to provide the government with an opportunity to redeem such bonds ahead of their maturity dates. Callable MGS are redeemed at par and may be called with notice to bondholders of 5 business days.

(b) Malaysian Treasury Bills

Malaysian Treasury bills (MTB) are short-term securities issued by BNM on behalf of the Government of Malaysia. Treasury bills are used for the effective management of the short-term funding needs of the government.

MTB are issued at discount via competitive auction and carry original tenures of 3 months, 6 months, and 1 year. Redemption of MTB is at par. The standard transaction lot size for MTB is MYR5 million.

(c) Malaysian Islamic Treasury Bills

MITB are short-term securities based on Islamic principles issued by BNM on behalf of the Government of Malaysia. MITB are usually issued on a weekly basis, with an original maturity of up to 1 year.

MITB are tradable on a yield basis (discounted rate), based on bands of remaining tenure (e.g., Band 4 = 68–91 days to maturity). The standard trading amount is MYR5 million and MITB are actively traded in the secondary market based on the *bai al-dayn* (debt trading) principle.

(d) Malaysian Government Investment Issues

MGII are non-interest-bearing government securities based on Islamic principles issued by the Government of Malaysia and placed via competitive tender with maturities of 3, 5, 7, 10, 15, and 20 years. The MGII issuance program is preannounced in the official auction calendar with the issuance size ranging from MYR1.5 billion to MYR4 billion. Funds from MGII are typically used for development expenditures.

Effective 22 July 2013, MGII are issued based on the *murabahah* concept, which is essentially a certificate of indebtedness arising from the deferred mark-up sale transaction of an asset, such as a commodity (mainly crude palm oil), that complies with Shariah principles. MGII issued under a *murabahah* contract involve commodity transactions to create indebtedness between the *sukuk* issuer and the investors.

MGII issued prior to 22 July 2013 were based on a *bai al-inah* contract, which is essentially a trust certificate arising from the sale and buy back of an asset. Under this Islamic principle, the government will sell a specified nominal value of its assets and subsequently buy back the assets at the nominal value plus profit through a tender process.

(e) Sukuk 1Malaysia 2010

Sukuk 1Malaysia 2010 is an investment instrument based on Shariah principles for Malaysian citizens who are aged 21 years and above. Sukuk 1Malaysia 2010 has a resale feature that allows investors to sell and purchase the *sukuk* before the maturity date.

(f) Sukuk Perumahan Kerajaan

Sukuk Perumahan Kerajaan are Shariah-compliant, long-term, profit-based government securities. In the primary market, they are issued under the *sukuk* structure of commodity *murabahah* (cost-plus sale) via the Principal Dealers network. In the secondary market, they are tradable under the *bai al-dayn* principle. Sukuk Perumahan Kerajaan pay a periodic profit payment on a semiannual basis and are redeemable at par upon maturity.

Sukuk Perumahan Kerajaan are issued by the Government of Malaysia under the Housing Loan Fund Act 1971 to refinance funding for housing loans to government civil servants and to extend new government housing loans. The funding of this scheme was previously raised through loans but has since shifted to *sukuk* issuances, consistent with the government's support for the development of an Islamic capital market in Malaysia.

(g) Sukuk Simpanan Rakyat

Sukuk Simpanan Rakyat, issued on a scripless basis by BNM on behalf of the Government of Malaysia, are an investment instrument for Malaysian citizens who are aged 21 years and above.

(h) Merdeka Savings Bonds

These are scripless bonds issued by the Government of Malaysia structured on Shariah principles. These bonds represent an additional savings instrument for Malaysian citizens who are aged 56 years and above. Merdeka Savings Bonds offer slightly higher returns than the market interest rate and benefit from an exemption from tax on profit-sharing benefits paid to bondholders. The purpose of this specialized issuance to provide an income alternative to retirees who may depend primarily on interest income from deposits placed with banking institutions.

Merdeka Savings Bonds are unique among the Government of Malaysia's debt securities in that they are based on the Islamic banking concept of *bai al-inah* (sell and buy back).

2. Bank Negara Malaysia Instruments

(a) Bank Negara Monetary Notes

Bank Negara Monetary Notes (BNMN) are discounted or coupon-bearing government securities issued by BNM with maturities of 91, 182, and 364 days, and 1–3 years. BNMN are issued for the purpose of managing liquidity in both conventional and Islamic financial markets. BNMN are placed with primary dealers via competitive auction. BNMN replaced the previously issued Bank Negara Bills and Bank Negara Negotiable Notes.

(b) Bank Negara Monetary Notes-i

Bank Negara Monetary Notes-Islamic (BNMN-i) are Islamic securities issued by BNM replacing the existing Bank Negara Negotiable Notes (BNNN) for purposes of managing liquidity in the Islamic financial market. The maturity of these issuances has been lengthened from 1 year to 3 years.

BNMN-i may be issued on a discounted or coupon-bearing basis depending on investors' demand. Discount-based BNMN-i will be traded using the same market convention as the existing BNNN and MITB, while profit-based BNMN-i adopt the market convention of MGII.

(c) Floating-Rate Bank Negara Monetary Notes

Floating-Rate Bank Negara Monetary Notes (BNMNF) are instruments used for implementing monetary policy and to manage liquidity in the financial market. BNMNF issuance is conducted through competitive Dutch auction (uniform price, bids on spread) via Principal Dealers.

(d) Sukuk Bank Negara Malaysia Issues

Sukuk Bank Negara Malaysia Ijarah (SBNMI) are zero-coupon Islamic bonds with a maturity of 1–2 years. SBNMI are based on the *al-ijarah* (sell and lease back) principle. A special purpose vehicle has been established to issue SBNMI.

3. Government-Related Bonds

(a) Khazanah Bonds

Khazanah bonds are issued by Khazanah National, the investment holding arm of the Government of Malaysia. These unsecured zero-coupon bonds are based on the Islamic principle of *murabahah* and carry maturities of 3, 5, 7, and 10 years.

The composition of government and government-related issuances in Malaysia are set to change significantly between 2015 and 2019 (Figure 3.1). At the same time, the total issuance volume is not expected to change drastically.

4. Corporate Bonds, Notes, and *Sukuk* (Private Debt Securities)

Bonds, notes, or *sukuk* issued by corporates in the private sector in Malaysia are generally collectively described as PDS, in contrast to government issuances, including in the SC's guidelines and in the notices of other regulatory authorities. Issuers include Cagamas and may be listed or nonlisted Malaysian companies, including the local subsidiaries, branches, or affiliates of regional or global corporates. Foreign corporates may also directly issue bonds, notes, or *sukuk* in Malaysia, subject to specific approvals (for details, please refer to Chapter II).

PDS issued in the Malaysian capital market take many forms, including short-term notes and long-term straight or convertible bonds, Islamic bonds, bonds with warrants or floating-rate bonds, zero coupon bonds, asset-backed and mortgage-backed securities, secured and unsecured bonds, and guaranteed bonds.

Other than straight bonds, the typically observed issuance forms include

(a) Cagamas Bonds

Securities issued by Cagamas, the national mortgage corporation established in 1986 to promote the secondary mortgage market in Malaysia, are called Cagamas bonds in the domestic market. Cagamas bonds are unsecured bearer bonds. Cagamas issues debt securities and *sukuk* to finance the purchase of housing loans and other consumer receivables from financial institutions, selected corporations, and the government. It is the second largest issuer of securities after the Government of Malaysia, and the major issuer of asset-backed securities in Malaysia. Various types of Cagamas bonds are available in the market:

(i) **Cagamas fixed-rate bonds** have tenures of 1.5–10 years with fixed coupon rates determined through tenders submitted by Principal Dealers. Interest is paid semiannually.

(ii) **Cagamas floating-rate bonds** have tenures of up to 10 years and an adjustable interest rate pegged to the 3- or 6-month Kuala Lumpur Interbank Offered Rate. The interest rate is reset either every 3 or 6 months, with interest paid in those intervals.

(iii) **Cagamas notes** are short-term instruments with maturities of 1–12 months and are issued at a discount to reflect the implied interest rate.

(iv) **Sanadat Mudharabah Cagamas** are Islamic bonds issued under the Islamic principle of *mudharabah* (profit sharing) to finance the purchase of Islamic home-financing debts, granted on the basis of *bai bithaman ajil* and the purchase of Islamic hire–purchase debts, which are allowed under the principle of *ijarah thumma al-bai*. They are redeemable at par at maturity unless there is principal diminution. Tenures extend up to 10 years.

(v) **Cagamas Bithaman Ajil Islamic Securities** are securities formerly known as Sanadat ABBA Cagamas, which are Islamic bonds issued under the Islamic principle of *bai bithaman ajil* to finance the purchase of Islamic home-financing debts and Islamic hire–purchase debts. The bonds are redeemable at par together with the dividend due on maturity date. They also have tenures of up to 10 years.

(b) Medium-Term Notes (MTN Programs)

As the name implies, MTN are debt paper with a medium-term maturity, generally tenures of more than 1 year that are redeemable at par on maturity. This type of instrument was introduced to bridge the gap between short-term commercial paper and long-term corporate bonds.

MTN are often issued in the form of a program, meaning that a number of MTN may be issued under one prospectus or issuance document and granted approval by the SC over a certain period, allowing the issuer to tap the market in line with capital needs and beneficial market conditions. The SC's Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors and the Guidelines on Unlisted Capital Market Products under the Lodge

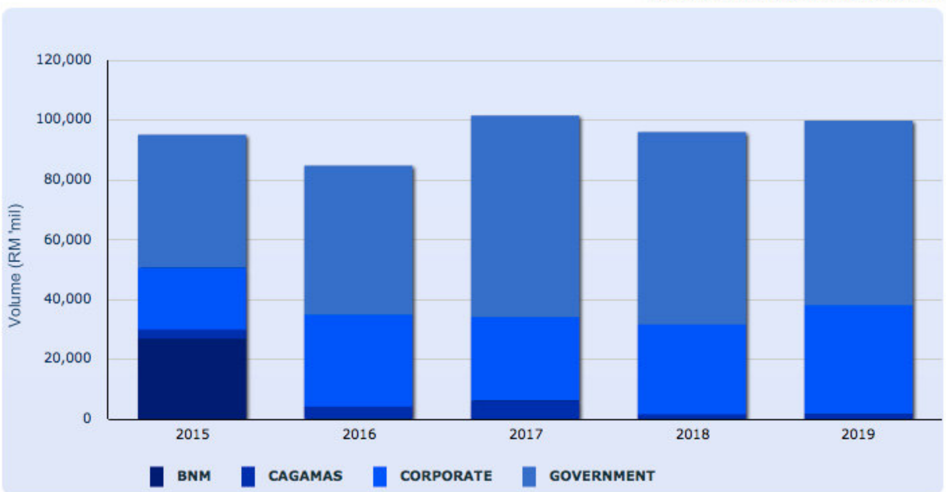
Figure 3.1: Change in Composition of Government Issuances, 2015–2019

DEBT DISTRIBUTION

Year: 2015 To: 2019 Issuer: All Principle: Both
Instruments: RM Generate Chart Search

Year	BNM (RM 'mil)	CAGAMAS (RM 'mil)	CORPORATE (RM 'mil)	GOVERNMENT (RM 'mil)
2015	26,800.00	3,130.00	20,769.93	44,312.70
2016	-	4,095.00	30,717.49	49,863.38
2017	-	6,190.00	27,793.37	67,500.00
2018	-	1,580.00	30,004.44	64,326.55
2019	-	1,762.00	36,224.82	61,815.54

Last updated: Mon 08/06/2015 5:13:37 PM



Source: Bond Info Hub. Debt Distribution. http://bondinfo.bnm.gov.my/portal/server.pt?open=514&objID=41920&parentname=CommunityPage&parentid=2&mode=2

and Launch Framework, both of which were issued in June 2015, refer to such note issuance programs as debt programs. If a debt program involves an issuance of commercial paper or a combination of MTN and commercial paper, the tenure for such programs must not exceed 7 years. For a standalone MTN program, the 7-year tenure restriction does not apply.

MTN and MTN programs may carry fixed- or floating-rate coupons, and may be issued both in conventional form and under Islamic principles by direct placement or tender.

Nonresident issuers may also issue MTN or MTN programs; a number of nonresident issuers have done so already.

(c) Islamic Medium-Term Notes (iMTN Note Programs)

Islamic MTN and iMTN programs principally function just like MTN and MTN programs but follow Islamic principles. Instead of interest, iMTN pay semiannual dividends, depending on the structure used.

(d) Floating-Rate Notes

Floating-rate notes (FRN) are debt securities with variable (floating) interest rates that are linked to those in the money market. Their tenures range from 3 to 7 years. FRN are usually pegged at a fixed spread to interbank rates corresponding to the maturity periods of the notes. In contrast to a coupon rate that is fixed for the entire life of the bonds, the coupon rate for FRNs is pegged to an agreed benchmark. It is periodically reset at a stated margin over a reference rate, usually the KLIBOR (e.g., the 6-month KLIBOR for semiannual coupons or the 12-month KLIBOR for coupons payable annually).

FRN investors are usually financial institutions with floating-rate liabilities. Other investors use FRN as substitutes for money market instruments and as hedges against rising interest rates.

(e) Notes Issuance Facility

Under this facility, a borrower can issue short-term notes with a maturity of less than 1 year, with common tenures being 1, 3, and 6 months. The tenure of the facility typically range from 3 to 5 years. The notes are issued in specific denominations and sold at a discount to their face value. The total amount of outstanding notes is capped by the approved facility amount.

The notes are subscribed by participating investors, normally financial institutions. Upon maturity, the notes are either redeemed at par or the principal is rolled over with the issuance of new notes. In the latter scenario, the discounted interest is paid to note holders at the time of the rollover.

The notes issuance facility is a low-cost substitute for syndicated bank loans since its rates are pegged to the KLIBOR and not to the base lending rate as in the case of bank loans.

(f) Revolving Underwritten Facility and Revolving Underwritten Notes Issuance Facility

When the notes issuance facility includes underwriting services, the arrangement takes the form of a revolving underwritten facility or a revolving underwritten notes issuance facility. In the event that the notes are undersubscribed, the underwriters are committed to take up the unsold portion at a predetermined rate.

(g) Foreign-Currency-Denominated Bonds and Sukuk

Both resident and nonresident issuers are able to issue bonds, notes, or *sukuk* in a foreign currency. At of the end of December 2015, the total outstanding amount of FCY-denominated bonds and *sukuk* in US dollars, Chinese renminbi, and Singapore dollars stood at USD90 billion, CNY1.5 billion, and SGD900 million, respectively. Information on FCY-denominated bonds is available from the FAST website (where they are listed as FX-BONDS and FX-IBONDS), in selected statistics on the Bond Info Hub website, and on *AsianBondsOnline*.

C. Money Market Instruments

Money market instruments are short(er)-term debt instruments issued by either the Government of Malaysia, BNM, or private sector. Money market instruments are generally limited to instruments with a maturity of less than 1 year.

The money market instruments observed in the Malaysian capital market comprise both conventional and Islamic instruments, and can be categorized based on issuance by either the government or a government entity, or the private sector.

1. Issued by the Government or Government Entities

(a) Malaysian Treasury Bills and Malaysian Islamic Treasury Bills

In addition to their nature as short-term government funding instruments, Treasury bills, both conventional and Islamic, may also be issued as practical instruments to absorb money market liquidity as part of BNM's open market operations (for details, please refer to section B.1).

MTB and MITB are also used as liquidity instruments by financial institutions or asset managers to place excess funds for short periods of time.

(b) Bank Negara Monetary Notes

Both conventional and Islamic BNMN may be issued and used as practical instruments to absorb or invest money market liquidity, either through BNM's open market operations or in dealings between financial market participants (for details, please refer to see section B.2).

2. Issued by the Corporate Sector

(c) Commercial Paper

Commercial paper is a short-term revolving promissory note, either conventional or in line with Islamic principles, with original tenures from 1 month to 1 year. In practice, commercial paper is often rolled over upon maturity until the expiry of an issuance program. Most investors hold commercial paper until maturity, as these instruments are short-term in nature.

(d) Bankers Acceptance

A bankers acceptance is a bill of exchange, in effect a bank draft requiring the issuing bank to pay to the holder the amount specified on the instrument. Bankers acceptances have a typical tenure of 90 days, but may also be issued with tenures of up to 180 days.

(e) Negotiable Instruments of Deposit

Negotiable instruments of deposit (NID) are issued by financial institutions, in both ringgit and foreign currency. NID are issued and traded in the Malaysian market can be based on either a fixed rate, zero coupon, or floating rate, or a combination of the three. NID are to be issued with a nominal value of more than MYR60,000 (or the equivalent in a foreign currency) per account and per customer. NID may be issued at par, at a discount, or at a premium. The issuer may act as the authorized depository for the NID.

(f) Islamic Negotiable Instruments

Islamic negotiable instruments of deposit are the Islamic money market equivalent of NID. Islamic Negotiable Instruments are structured under the concept of *bai' bithaman* *ajil* (deferred payment sale) for Negotiable Islamic Debt Certificates and the concept of *mudharabah* (profit-sharing) for Islamic Instruments of Deposits.

(g) Repurchase Agreements

A repo is a contract to sell and, subsequently, repurchase securities at a specified date and price. It is also known as a buyback arrangement. Details on the Malaysian repo market and its practices are provided in Chapter IV.

D. Segmentation of the Market

To provide a better illustration of the segmentation of the different types of debt securities issued in the Malaysian market, Table 3.1 provides an overview of the outstanding values of the types of securities detailed above. Table 3.2 shows the outstanding values of these securities by type of issuer.

More information on outstanding bond, note, and *sukuk* issues and statistics on the Malaysian bond market can be found on the websites of BNM; Bond Info Hub; and the Bond Pricing Agency Malaysia (BPAM); as well as on *AsianBondsOnline*, a bond information portal operated by ADB under an initiative of ASEAN+3. At the same time, detailed information on Malaysian public debt can be obtained primarily from the BNM and Bond Info Hub websites. Relevant links are provided in this Bond Market Guide in both Chapter VII and Appendix 2.

Table 3.1: Segmentation of the Market—Outstanding Value by Type of Bond, Note, or *Sukuk*

Type of Instrument	Conventional (MYR million)	Islamic (MYR million)	Outstanding Amount (MYR million)	% of Total
Government				
MGS, MGII	340,063	242,400	582,463	51.67
MTB, MITB	3,000	1,700	4,700	0.42
Quasi-Government	16,319	131,332	147,651	13.10
BNMN, BNMNI	24,000	500	24,500	2.17
PDS: Long-Term Instruments				
AAA	21,698	81,163	102,861	9.12
AA	73,708	103,680	177,388	15.73
A	3,719	3,887	7,606	0.67
BBB	4,264	5,442	9,706	0.86
No Rating	24,278	36,837	61,115	5.42

continued on next page

Table 3.1 continued

Type of Instrument	Conventional (MYR million)	Islamic (MYR million)	Outstanding Amount (MYR million)	% of Total
PDS: Short-Term Instruments				
P1	6,255	1,685	7,940	0.70
P2	0	0	0	0.00
P3	0	0	0	0.00
NP	80	922	1,002	0.09
No Rating	400	40	440	0.04
TOTAL	**517,784**	**609,588**	**1,127,372**	**100.00**

BNMN = Bank Negara Monetary Notes, BNMNI = Bank Negara Monetary Notes Islamic, GII = Government Investment Issues (Islamic), MGS = Malaysia Government Securities (Conventional), MTB = Malaysia Treasury Bills, MITB = Malaysia Islamic Treasury Bills, PDS = private debt securities.
Notes: Data as of end of December 2015. An entity rated NP has doubtful capacity to meet its short-term financial obligations.
Source: Bond Pricing Agency Malaysia.

Table 3.2: Segmentation of the Market—Outstanding Value by Type of Issuer

Issuer Classification	Conventional (MYR million)	Islamic (MYR million)	Outstanding Amount (MYR million)	% of Total
Government	343,063	244,100	587,163	52.08
Quasi-Government	16,319	131,332	147,651	13.10
Bank Negara Malaysia	24,000	500	24,500	2.17
Financial	63,815	18,225	82,040	7.28
Corporate-Guaranteed	14,873	34,710	49,583	4.40
Corporate	47,517	176,478	223,995	19.87
Asset-Backed Securities	8,197	4,243	12,440	1.10
TOTAL	**517,784**	**609,588**	**1,127,372**	**100.00**
Government	383,382	375,932	759,314	67.35
PDS	134,402	233,656	368,058	32.65
TOTAL	**517,784**	**609,588**	**1,127,372**	**100.00**

PDS = private debt securities.
Note: Data as of end of December 2015.
Source: Bond Pricing Agency Malaysia.

As a result of the broad availability of current bond market statistics for Malaysia, this Bond Market Guide no longer carries a chapter on statistics since the shelf life of said statistics is limited and may not be of use to the reader soon after publication.

E. Methods of Issuing Bonds, Notes, and *Sukuk* (Primary Market)

There are a number of different methods to issue debt securities and *sukuk* in the Malaysian bond market for both government and private sector instruments.

1. Government Securities Offering

Most MGS and other debt instruments issued by the Government of Malaysia and BNM are issued through the auction method. Auctions for government securities are conducted by BNM with the participants being Principal Dealers. Non-Principal Dealer market participants may submit their bids through a Principal Dealer. Investors are not able to participate directly at auction but instead need to use the services of a licensed bond dealer to make their investment in bonds, notes, or *sukuk*.

(a) Competitive Auction by BNM

BNM issues government bonds, notes, and *sukuk* on behalf of the government via competitive auction. MGS auctions are open to Principal Dealers only, while MGII auctions are open to both Principal Dealers and Islamic Principal Dealers. The tender basis would be yield (or price in case of reopenings) for conventional debt securities and profit rate for Islamic debt securities. Successful bidders are determined according to the lowest yields (price) offered, and the coupon rate is fixed at the weighted average yield (price) of successful bids (for details on the auction or tender process, please refer to section 3).

(b) Noncompetitive Auction Involving BNM

BNM may itself participate in MGS auctions for the purpose of obtaining securities for its open market operations. Bidding is conducted in a noncompetitive manner, with BNM being allotted at the weighted-average yield (price for reopenings) of the successful bids of other market participants to ensure fairness and market transparency. The maximum allotment limit for BNM is currently capped at 10% of the total issue amount.

(c) When-Issued Trading

When-issued trading is a specific feature of the Malaysian bond market. When-issued trading covers the period from formal announcement of a government issuance to the actual issue date and, basically, serves as a price discovery mechanism for both the issuer and Primary Dealers.

The value date for settlement of when-issued trades must be on or after the government securities issue date but the standard value date is 2 business days (value spot).

Bids are submitted by the Principal Dealers via FAST (see section 3). Non-Primary Dealers or other institutions can also submit bids via a Primary Dealer with a maximum allotment limit of 30% per bidder. If bids are successful, Real Time Electronic Transfer of Funds and Securities (RENTAS) will allot the securities to the bidder by lodging the securities with their appointed Authorized Depository Institutions (ADIs). Settlement would then take place automatically in RENTAS on a delivery-versus-payment basis.

2. Corporate Bond, Note, and *Sukuk* Offering Methods

Bonds, notes, and *sukuk* issued by other statutory bodies and government-owned corporations, as well as corporate debt securities and *sukuk* (PDS), can be issued via direct placement or tender. Direct placements are subject to an appropriate lodgement of issuance documentation and disclosure information with the SC. Tender offers of corporate debt securities and *sukuk* in the Malaysian market are subject to issuance approval by the SC. The regulatory framework and the relevant regulatory processes for these offering methods are described in Chapter II.

(a) Tender Offers to Retail Investors

Tender offers of debt securities and *sukuk* in Malaysia are conducted via FAST (for details, please refer to section 3). The tender basis for government issuances would be yield (or price in case of reopenings) for conventional debt securities and profit rate for *sukuk*. Similarly, the tender basis for PDS would be yield (or price in case of reopenings) for conventional debt securities and profit rate for *sukuk*.

Bonds, notes, and *sukuk* offered to retail investors may be listed as ETBS on BMS or traded OTC.

(b) Book Building

Book building is a method used to achieve suitable price discovery and a realistic picture of the demand of investors for a particular bond, note, or *sukuk* issue or program. It is used only for corporate bonds since the possible investor universe is not limited to Principal Dealers and their account holders only. Usually, the issuer appoints a major bank to act as a book runner.

The book runner collects bids from investors, both institutional and retail, over a limited subscription period at various prices. The actual issue price is determined once the book has closed and is based on specific criteria set out in the offer documentation.

(c) Private Placement

Private placement is not defined as a specific issuance type in Malaysian regulations with distinct features (as is the case in other markets); instead, private placement in Malaysia is simply an issuance method.

In a private placement, a bond, note, or *sukuk* is issued or offered to a limited target group of investors. In Malaysia, private placements are often undertaken for wholesale bonds aimed at Sophisticated Investors—including institutional investors and high net worth investors—such as banks, insurance companies, unit trusts, and pension or provident funds.

A bond, note, or *sukuk* offered through a private placement is negotiated and traded in the OTC market and settled via RENTAS (for details, please refer to section I or refer to Chapter IV).

3. Bond, Note, and *Sukuk* Issuance Procedure (via FAST)

FAST is the prescribed platform for the issuance and tendering of debt securities and *sukuk* in the Malaysian market. Auctions are also conducted using FAST facilities. FAST is directly connected to the settlement system RENTAS.

The listing of debt securities and *sukuk* upon issuance is not covered by FAST. For details on the listing process, please refer to section H in this chapter.

An issuer, through their Principal Adviser, announces via FAST the issuance details (e.g., issuance size and date) at least 5 business days prior to the actual issuance date so that participants can conduct their own assessment. The same information will also be transmitted from FAST to information providers such as Bloomberg and Reuters. A sample screenshot for an announcement can be found in Figure 3.2.

Bids are entered into FAST by participants through their dedicated FAST terminal access, via login on the website or approved interfaces.

Successful bids are automatically allotted in RENTAS to the bidder by lodging the securities with the bidder's appointed ADIs. Settlement takes place in RENTAS on a delivery-versus-payment basis.

Figure 3.2: Fully Automated System for Issuing/Tendering Website—Sample Announcement


BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA
14 March 2016 1:12:59 PM AEDT
FAST
FULLY AUTOMATED SYSTEM FOR ISSUING/ TENDERING
HOME • MALAYSIA BOND MARKET • RULES & GUIDELINES • ALL ANNOUNCEMENTS • CONTACT US • FAQ

LOGIN
User ID
Password
LOGIN
Forgot Your Password?

FACTS & FIGURES
- Consolidated IYTM
- Individual IYTM
- MGS Indicative Price
- Outstanding Amount
- Historical Outstanding Amount
- Facility Information
- Stock Information
- List of Membership
- List of Issuer
- List of Instrument

MGS YIELD CURVE
0
1 YEAR 3 YEARS 5 YEARS 7 YEARS 10 YEARS
MORE

AUCTION CALENDAR
Last Update:11 March 2016
MORE

HYPERLINKS
- BNM Website
- Ministry of Finance
- Bursa Malaysia
- Securities Commission

Latest Announcement
News ID : 2016030100036
Subject : Tanjung Bin Energy Issuer Berhad (TBEI)

Tanjung Bin Energy Issuer Berhad (TBEI)

Organisation Name:	HSBC BANK MALAYSIA BERHAD
News Type:	NEWS FROM MEMBERS
Reference Site:	None
Embargo Date:	09/03/2016
Embargo Time:	09:00 AM
Expiry Date:	09/04/2016
Priority:	Medium
Summary:	Sukuk Murabahah under the Islamic principle of Tawarruq (Commodities Murabahah)of up to RM4,500 million in nominal value
Attachments:	No attachment available.
Disclaimer:	The user, including a user who is also a FAST Participant, expressly agrees that the use of this website which is accessible at https://fast.bnm.gov.my/ is at the user's sole risk. The information contained in this FAST website is compiled by MyClear Sdn. Bhd. (MyClear) and is provided on an "as is" basis without any representations or warranties of any kind, either expressed or implied. While MyClear makes every effort to ensure that information contained in the FAST website are accurate and disseminated in a timely and efficient manner, the user acknowledges that delays, errors, omissions or inaccuracies may occur. MyClear disclaims any liability pertaining to the consequences of any delays, errors, omissions or inaccuracies arising out of or relating to the FAST website or information, including but not limited to, any decision made or action taken by a user in reliance upon such information, or for damages suffered, whether direct, consequential, special, punitive, indirect or otherwise, notwithstanding having been advised of the possibility of such damages. In the event of any dispute, the official records of MyClear shall prevail. MyClear, Bank Negara Malaysia or any of its affiliates, officers, directors, agents or any other party involved in creating, producing or delivering the FAST website, shall not be liable for any direct, consequential, special, punitive, indirect, incidental or other damages arising out of or in any way connected with the use or inability to use the FAST website or information, whether based on contract, tort, liability or otherwise, even if advised on the possibility of any such damages.

Source: Fully Automated System for Issuing/Tendering (FAST). https://fast.bnm.gov.my/fastweb/public/MainPage.do

F. Governing Law and Jurisdiction (Bond, Note, and *Sukuk* Issuance)

The governing law and jurisdiction for a bond, note, or *sukuk* issuance is of significance since potential issuers may consider issuing under the laws or jurisdiction of a country or market other than the place of issuance. The choice of governing law and the contractual preferences of stakeholders can affect the accessibility to a specific investor universe that may otherwise not be accessible if a bond, note, or *sukuk* was issued under the laws of the place of issuance.

Malaysian law permits the use of governing law other than Malaysian law and jurisdictions other than Malaysia in contracts provided that such provisions do not contravene any existing Malaysian laws. The decision on the governing law and jurisdiction for bonds, notes, or *sukuk* issued to investors in Malaysia tends to be investor driven; offers aimed at Sophisticated Investors may be more flexibly considered.

The key question in the setting of the underlying law or jurisdiction is the enforcement in case of a dispute arising. For example, in the case of a secured bond or note, regulations prescribe that the governing law must follow the jurisdiction in which the underlying assets are located. In this manner, governing law and jurisdiction provisions in bond, note, and *sukuk* issuance documentation follow the standard practices in common loan documents.

In the case of issuance of MYR-denominated bonds, notes, or *sukuk* in Malaysia, even in cases when the contracting parties choose a governing law other than Malaysian law for the contract, it is expected that Malaysian law would prevail with respect to issuance- and settlement-related matters.

Should the parties involved in a bond, note, or *sukuk* issuance choose to use Malaysian law, the jurisdiction of the issuance would fall to Malaysian courts by default. If, in contrast, parties involved in the issuance agree on another governing law, the parties would also have to specifically determine the jurisdiction of a court in which provisions of the bond, note, or *sukuk* issuance could be enforced and any disputes would be heard and decided.

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

G. Language of Documentation and Disclosure Items

Contracts or agreements in the context of a bond, note, or *sukuk* issuance; the issuance documentation and disclosure items; and all applications, approvals, and correspondence with regulatory authorities and market institutions can be in English in Malaysia.

H. Registration of Debt Securities and *Sukuk*

There is no concept of registration of debt securities or *sukuk* in the Malaysian market. The typical functions associated with a registration concept—such as provision of bond information, continuous disclosure, and the determination of a fair market price—are carried out by institutions that are mandated for such functions, including BNM through a number of related institutions, BMS and its subsidiaries, and BPAM. Their roles and the corresponding functions are explained elsewhere in this document.

I. Listing of Debt Securities and *Sukuk*

A listing of debt securities or *sukuk* is possible in Malaysia for the purpose of quoting and trading (similar to equities) or for the purpose of profile listing (e.g., to achieve visibility or to reach out to a different or larger investor universe).

The listing of a bond, note, or *sukuk* is not a regulatory requirement of the SC or BNM for either domestic and foreign issuers, including in the event of an offer to retail investors.

1. Exchange-Traded Bonds and Sukuk

ETBS are debt instruments and *sukuk* authorized to be quoted and traded on BMS' main board. For that, the issuer or its agent needs to obtain approval under the BMS Main Market Listing Requirements. In Malaysia, only certain types of offered government and some corporate bonds or *sukuk*, which are offered to retail investors, are quoted and traded on an exchange.

Once a government bond or *sukuk* is tendered or issued through FAST (for details, please refer to section D), these instruments can be quoted on BMS and traded in the secondary market. In contrast, bonds or *sukuk* not offered to retail investors, including those issued under the Lodge and Launch Framework, are not quoted and traded on BMS.

More information on rules related to bonds, notes, and *sukuk* quoting and trading can be found on the BM website.[25]

2. Profile Listing under the Exempt Regime

To promote the Malaysian debt securities and *sukuk* market, while enhancing the breadth and depth of investment options in the Malaysian capital market, the debt securities and *sukuk* of both listed and nonlisted issuers can also be listed for profiling on BMS under the Exempt Regime.

The Exempt Regime refers to debt securities or *sukuk* that will be listed, but not quoted or traded, on BMS. The Exempt Regime is specifically for issuers intending to list debt securities or *sukuk* to obtain listing status and for profiling purposes, and where the targeted group of investors comprises Sophisticated Investors. Debt securities or *sukuk* listed on the exchange may be denominated in foreign currencies but must have an original maturity of more than 1 year. The trading of debt securities and *sukuk* under the Exempt Regime takes place in the OTC market and is inaccessible to retail investors.[26]

The listing application and approval process for the Exempt Regime is described in the following.

[25] Bursa Malaysia. http://www.bursamalaysia.com/market/securities/bonds/products/exchange-traded-bonds-and-sukuk-etbs/

[26] Reference is made to an FAQ document in relation to the BMS Listing Requirements, from which part of the text has been adapted. See https://www.fimm.com.my/wp-content/uploads/latest-news/Appendix%202%20-%20Q&As%20in%20relation%20to%20Bursa%20Malaysia%20Securities%20Berhad%20Listing%20Requirements%20for%20The%20Main%20Market.pdf

Step 1—Listing Application to Bursa Malaysia Securities

In the event an issuer wishes to list its bonds, notes, or *sukuk* for profiling in Malaysia, BMS offers the Exempt Regime listing feature (for more details, please refer to Chapter I).

Issuers already listed as entities on BMS, as well as nonlisted entities, may list bonds, notes, or *sukuk* under the BMS Exempt Regime. An issuer may submit an application before or after the issuance of the bonds, notes, or *sukuk*. For a pre-issuance submission, an issuer may submit its listing application to BMS at the same time it lodges its documentation with the SC under the requirements of the Lodge and Launch Framework. However, BMS approval for listing, if granted, will be conditional upon the ability to actually launch products under the framework.

Any issuer intending to list under the BMS Exempt Regime will need to submit, through their Principal Adviser, a Listing Application, accompanied by the prescribed documentation and disclosure items.

The Exempt Regime market-specific documentation and initial disclosure requirements, which differ significantly from the requirements for retail offers on the BMS main board, need to be observed when submitting the application. These requirements are defined in Chapter 4B (Part D) of the BMS Listing Rules, as well as in Part B of BMS Practice Note 26-A.

BMS charges initial and annual listing fees, as per the prevailing tariff in the Listing Rules and related conditions, which are accessible via its website (for a link, please refer to Appendix 2).

Step 2—Listing Approval from Bursa Malaysia Securities

BMS will check the listing application, following the submission of the relevant information in documentation and disclosure items. BMS may, at its discretion, request from the issuer or Principal Adviser supplementary information, if so required. BMS is committed to provide a response to a listing application to the issuer or Principal Adviser within 5 business days.

Provided that the information in the listing application and enclosed documents is in order and the review is satisfactory, BMS will issue an approval letter to the issuer or Principal Adviser, indicating that the listing has been approved or stating any conditions that may apply.

The listing approval from BMS does not have an expiry date since the listing becomes effective once approved.

3. Other Listing Places

In principle, bonds or notes issued in the Malaysian market may also be listed outside Malaysia. Some issuers may take the step of obtaining a profile listing, or additional profile listing, of their bonds, notes, or *sukuk* in regional markets in ASEAN+3, with the intention to access different or larger investors universes in this manner.

The process of such a listing is beyond the purview of SC Malaysia and is subject to separate, applicable approvals and listing rules and regulations at the listing place.

At the same time, SC regulations specify that if a bond, note, or *sukuk* issued in Malaysia is offered for sale or subscription in other markets, the issuer and the Principal Adviser must ensure that all laws, regulations, and application provisions under the jurisdiction of the listing place market must be complied with.

J. Methods of Trading Bonds, Notes, and *Sukuk* (Secondary Market)

Investors in the Malaysian bond market may choose from a number of secondary bond market trading methods. In addition to the traditional OTC market, the ETP provides an alternative through the execution of OTC trades on a market platform. At the same time, specific bonds, notes, and *sukuk* can also be traded on BMS. The potential investors' focus, market participants, and choice of instruments distinguish these trading methods.

The individual methods are briefly described in the sections below and are further detailed in the applicable sections of Chapter IV.

1. Over-the-Counter Market

The OTC market is the main trading venue for bonds, notes, and *sukuk* issued or offered for sale in Malaysia. OTC market participants, or bond dealers, require a Capital Markets Services License (institutions) or Capital Markets Services Representative License (individuals) for the dealing of debt securities and *sukuk*. The governing body for bond dealers is the FMA, which administers the certification of bond dealers and defines and enforces the Code of Conduct for all entities engaged in securities trading. Market participants seeking to transact in the OTC market are required to be FMA members (for more details, please refer to Chapter I.H.1).

Bonds, notes, and *sukuk* are traded in the OTC market between dealers, using large denominations, with the buyer and seller negotiating either via trading systems, directly over the telephone, or through a money broker. All trades concluded between participants in the OTC market need to be captured in the ETP, which is operated as a market service by Bursa Bonds, a subsidiary of BM. This trade reporting feature is further explained in Chapter IV.

2. Exchange-Traded Bonds and Sukuk

The trading of debt securities and *sukuk* for retail investors is also available on BMS. These retail bonds or *sukuk*, referred to as ETBS, are listed on the main board of the exchange and traded in small denominations more suitable for retail investors. ETBS are quoted and reported in real-time on BMS, giving investors a continuous update on the value of their securities.[27]

Trading is facilitated by participants of the exchange, being securities firms only, who are governed by the trading rules of BMS.

K. Bond, Note, and *Sukuk* Pricing

To boost the transparency and quality of price discovery mechanisms and valuation practices in the Malaysian bond market, BPAM was established in 2004 and mandated pursuant to

[27] See http://www.bursamalaysia.com/misc/system/assets/4105/Market_Securities_Bonds_ETBS_The_Marketplace.pdf

the SC Guidelines on Registration of Bond Pricing Agencies, 2006. BPAM is currently the only bond pricing agency registered with the SC.

BPAM provides bond pricing and data for MYR-denominated fixed-income instruments and *sukuk* (Figure 3.3).

Figure 3.3: Bond Pricing Agency Malaysia Homepage

	Gov	Non-Gov
Total Number of Issues Traded	38	31
Issues where Yield Increased	19	8
Issues where Yield Decreased	17	23
Issues with Yield Unchanged	2	0
Issues with Year High Yield	0	0
Issues with Year Low Yield	6	5
MYR Trading Volume (in Million)	2,249	746

Source: Bond Pricing Agency Malaysia. http://www.bpam.com.my

BPAM provides daily evaluated prices on bonds, notes, and *sukuk* on the basis of information obtained from FAST (primary market and tender results) and RENTAS (settled trades), broker quotes, and actual traded prices as reported via the ETP. In the event that a bond, note, or *sukuk* issued in the Malaysian market is inactive or not frequently traded, BPAM will use valuation methodologies in line with global standards to determine fair market value.

BPAM provides evaluated prices for more than 2,000 MYR-denominated unlisted debt instruments on a daily basis, across both conventional and Islamic instruments, including rated and unrated long-term bonds, *sukuk*, and short-term paper (e.g., commercial paper, bills, and notes). Historical prices are available dating back to August 2005.

BPAM prices are widely used by market participants for portfolio valuation, trading guidance, risk management, and determination of collateral values and haircuts. For unit trusts (or mutual funds) investing in debt instruments, the prices published by BPAM are used to calculate the net asset value of the funds.

In addition, BPAM generates a comprehensive set of bond and *sukuk* indexes that are widely used in the market for benchmarking purposes. BPAM also supports issuers and their agents in the price discovery process for new issues via the Reference Pricing Service.

The data provided by BPAM are disseminated to registered users via the BPAM website and *BondStream* (a proprietary data mining application). Real-time market data are also available on BPAM's free mobile applications. For casual viewers, the BPAM website carries examples of the data and charts available, as well as descriptions of BPAM's approach and processes.

Starting in 2013, BPAM has also been publishing the Malaysia Bond and Sukuk Almanac, a compendium of useful information and historical prices and data on unlisted bonds, notes, and *sukuk* in the Malaysian market and their performance in a given calendar year. Past and present editions of the Malaysia Bond and Sukuk Almanac are available for free download from the BPAM website.[28] In addition, BPAM offers a wide range of supplementary research publications, including quarterly credit rating default studies.

Through its applications and its website, BPAM also provides access for registered users to current and historical data of its ASEAN partner institutions: the Indonesia Bond Pricing Agency, a subsidiary of the Indonesia Stock Exchange; PDS Group, the operator of the Philippine exchange-like bond market; and the Thai Bond Market Association, the SRO supervising and servicing the Thai OTC bond market as a pricing agency.

L. Transfers of Interest in Bonds, Notes, and *Sukuk*

1. General Rule

Malaysian government debt securities and *sukuk*, as well as corporate debt securities and *sukuk*, are scripless, which results in the securities transfer being electronic. In RENTAS, which is operated by MyClear, a wholly owned subsidiary of BNM, transfer instructions are processed on a delivery-versus-payment or trade-by-trade basis, with the transfer of securities running simultaneous to the transfer of funds for payment.

[28] Bond Pricing Agency Malaysia. Bond and Sukuk Almanac. http://www.bpam.com.my

2. Actual Registration and Transfer Process

BNM has appointed MyClear as its agent in carrying out BNM's functions as the operator of RENTAS and FAST, and the central securities depository and paying agent for scripless, unlisted securities deposited in RENTAS. These securities include bonds issued by the government, BNM, and corporates that are denominated in either ringgit, renminbi, or US dollars. At the end of May 2015, the total amount of outstanding debt securities in RENTAS stood at MYR1.08 trillion. Securities from a settled purchase can be redelivered on settlement date.

ETBS are settled through the Institutional Settlement Service and safekept by BMD since they are traded and cleared on BMS and BMS Clearing, respectively, and subject to BMS limits and procedures.

Securities are held on behalf of investors by intermediaries who are participants of either MyClear or BMD, and are registered under a combination of the nominee name of the participant and the investor. For debt securities and *sukuk*, participants are able to maintain omnibus accounts based on investor type. Accounts are differentiated between residents and nonresidents. Any transfer of securities will be reflected both in the seller (reduced holdings) and buyer (increased holdings) securities accounts, respectively, regardless of investor type or status.

3. Custodian Point of View

Participants in MyClear (ADIs) and BMD (Authorised Depository Agents [ADA] and Authorised Depository Members), typically commercial banks and brokers acting as custodians, recognize only the owner of the securities as reflected in their books. For the transfer of securities, custodian banks only act upon the instruction of their clients as registered in their books.

M. Market Participants

1. Issuers

The Malaysian market comprises a very wide range of issuers and a large variety of debt instruments from these issuers.

(a) Government

The Malaysian federal government, its statutory bodies, and BNM are the main issuers of public debt. Issuances cover both conventional debt securities and instruments under Islamic principles and are mostly denominated in ringgit.

(b) Corporate

Financial institutions, nonbank financial institutions, listed and unlisted corporations, and government-linked or -related institutions such as Khazanah and Cagamas issue straight bonds and notes as well as asset-backed securities, commercial paper, and MTN under conventional and Islamic principles and in both ringgit and foreign currencies.

(c) Multilateral Development Banks

Multilateral development banks, including ADB, issue debt securities in the Malaysian market, both conventional and under Islamic principles, to finance long-term loans and very long-term development projects in their areas of coverage.

2. Investors

Institutional investors dominate the Malaysian bond market. Institutional refers to juristic person investors, while individuals are designated retail investors, unless they qualify as high net worth investors. Institutional (professional) investors and their participation in the Malaysian bond market are further explained in section N.

Government investment issues are bought mostly by banks and Islamic banks investing on behalf of Islamic funds. The key investors in MTB are banks, finance companies, and insurance companies. BNM is the largest holder of Cagamas bonds and *sukuk*, which are also held by commercial banks, finance companies, and merchant banks.

Significant investors in the Malaysian bond market include the following:

(a) Pension Funds

The Malaysian pension system comprises a series of provident funds. The Employee Provident Fund is the largest provident fund in Malaysia, accounting for over 85% of the total assets of the Malaysian provident fund system. It is a significant investor in the bond market and is required to invest 30% of its assets in MGS.

The Social Security Organisation, which provides benefits to workers through the Employment Injury Insurance Scheme and the Invalidity Pension Scheme, invests at least 40% of its funds in government bonds and bonds issued by government-linked organizations. The Pension Trust Fund, which was transformed into the Retirement Fund under the Retirement Fund Act of 2007, also invests considerable amounts in Malaysian government bonds and other types of fixed-income securities.

(b) Insurance Companies

Private insurance companies dominate Malaysia's nonbank financial sector. After the 1997/98 Asian financial crisis, a merger program reduced the number of insurers to 39 by the end of 2010.

The *takaful* sector has also experienced rapid growth. *Takaful* adheres to Islamic principles in offering insurance, with participants mutually agreeing to guarantee each other against defined loss or damage through donations to *takaful* funds. The number of *takaful* operators had increased to 11 at the end of 2014 from only 3 in 2003. The total amount of *takaful* fund assets reached MYR22.7 billion at the end of 2014, up from MYR4.4 billion in 2003.

(c) Asset Management Institutions

The SC began liberalizing Malaysia's unit trust industry in 1997. Since then, the investment management industry has expanded significantly and now features 75 licensed fund management companies. The SC reported that as of 31 December 2015, total funds managed by licensed fund management companies in Malaysia amounted to MYR668 billion, compared with MYR377 billion at the end of 2010.[29]

(d) Retail Investors

While comparatively small as a proportion of the total market, retail investment in the Malaysian bond market has grown in recent years, spurred by the increased number of bond, note, and *sukuk* offerings aimed at the retail market, particular from the government and BNM. In addition, the introduction of ETBS in 2013 has given retail investors the ability to actively trade and follow their investments' price development.

Retail investors may also participate in the government and corporate bond market by, for example, investing in unit trusts with a focus on debt securities.

At the end of December 2015, the Employee Provident Fund, other social security institutions, insurance companies, and banks and nonbank financial institutions comprised approximately 67% of all holders of MGS (including MGII), while approximately 32% of MGS (including MGII) were held by foreign investors.[30]

3. Parties Involved in Debt Securities and *Sukuk* Issuance

A number of intermediaries provide services to issuers and investors in the context of issuance of debt securities or *sukuk* in the Malaysian market. The following provides a brief description of the type of intermediaries and their specific functions:

(a) Principal Dealers and Islamic Principal Dealers

The Principal Dealer system in Malaysia was introduced in 1989 as part of initiatives to develop the primary and secondary markets of public debt securities. This includes building a stable demand for government and BNM issuances, and trading these debt securities and *sukuk* in the secondary market to create liquidity.

The increasing importance of Islamic finance and the prominent role played by Islamic banks in supporting this development prompted BNM to introduce the Islamic Principal Dealer system in July 2009 to complement the role played by Primary Dealers. Under both systems, BNM appoints selected banking institutions as either Primary Dealers or Islamic Primary Dealers based on a set of criteria, including their ability to handle large-volume transactions as measured by their participation in the primary auctions, secondary market trading volumes, and overall risk management capabilities.

Primary Dealers and Islamic Primary Dealers have the obligation of bidding for all government and BNM paper in the primary market (Islamic Primary Dealers are required to bid for only Islamic government and BNM paper), and to provide two-way price quotations for benchmark securities under all market conditions to ensure liquidity in the secondary

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29 Securities Commission Malaysia. http://www.sc.com.my/data-statistics/statistics-for-fund-management-industry/

30 Bank Negara Malaysia. Monthly Statistical Bulletin May 2015. Sections 3.1.5 and 3.2. http://www.bnm.gov.my/index.php?ch=en_publication_catalogue&pg=en_publication_msb&mth=4&yr=2015&lang=en

market. Primary Dealers, however, are also required to bid for the money market and repo auctions conducted by BNM from time to time.

For the obligations that Primary Dealers or Islamic Primary Dealers undertake, they are accorded certain privileges which, among others, include the ability to deduct the entire holdings of government and BNM paper based on acquisition cost from the eligible liabilities base for statutory reserve requirement computation, and the eligibility to participate as both borrower and lender for securities that are specified by BNM under its securities borrowing and lending (SBL) program.[31]

(b) Principal Adviser

Principal Adviser is the term used in the Malaysian market and in the prevailing Guidelines issued by the SC—as well as in other regulations, in particular the Principal Adviser Guidelines (issued on 8 May 2009)—for the key adviser to and issuer of a bond, note, or *sukuk*. Only institutions registered with the SC, and listed in the Principal Adviser Guidelines can act as Principal Adviser.[32] The appointment of a Principal Adviser is mandatory under Malaysian law, including for foreign issuers aiming to offer debt instruments issued in other markets to Malaysian investors through a roadshow.

The Principal Adviser may not necessarily be an underwriter or arranger themselves, although they often are in practice. The Principal Adviser will structure the debt securities or *sukuk* proposal, together with any other arrangers or underwriters, and submit the application for issuance approval, or effect the lodgement of relevant documentation and disclosure information under the Lodge and Launch Framework, to the SC.

The categories of Principal Advisers and the types of corporate proposals they are permitted to submit to the SC are detailed in the Principal Adviser Guidelines and shown in Table 3.3.

(c) Underwriter(s)

Investment banks and commercial banks, as well as their Islamic counterparts, are the main underwriters of debt securities and *sukuk* in the Malaysian market. An underwriter is appointed by the Principal Adviser. The lead arranger or Principal Adviser of an issue, besides inviting licensed financial institutions to subscribe to or underwrite the issue, can themselves be an underwriter.

The CMSA defines underwriter as a licensed institution or licensed person—a party holding a Capital Markets Services License (CMSL) or a Capital Markets Services Representative's License (for details, please refer to Chapter II). Underwriters in the context of a bond, note, or *sukuk* issuance can be banks, brokers, or securities firms.

The appointment of an underwriter is not mandatory under Malaysian law, including for an offer of debt securities to retail investors. The SC does not maintain a list of approved underwriters on its website.

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[31] Adapted by ADB Consultants for SF1 from information provided on Bond Info Hub.

[32] The Principal Adviser Guidelines, an FAQ document, and a current list of Principal Advisers are available on the SC website at http://www.sc.com.my/legislation-guidelines/principal-advisers/

Table 3.3: Categories of Principal Advisers and Types of Corporate Proposals

Categories of principal advisers	Types of Corporate Proposals
Investment banks, licensed merchant banks, and universal brokers	All types of corporate proposals
1+1 brokers	All types of corporate proposals except for those involving private debt securities, Islamic securities and structured products
Special scheme brokers	**Issue of Structured Warrants** Proposals for the issue of structured warrants **Offering of Foreign Securities** Proposals for the offering of equity securities, private debt securities or Islamic securities of listed or unlisted foreign issuers to investors identified under Schedules 6 and 7 of the Capital Market and Services Act, 2007
Islamic banks	All types of corporate proposals in respect of Islamic products
Licensed banks	**Offering of Private Debt Securities** All proposals for the offering of private debt securities, except for any of the following: • private debt securities of Malaysian-incorporated public companies or foreign corporations that are capable of being converted into equity; and • private debt securities of Malaysian-incorporated public companies or foreign corporations that are issued together with warrants **Offering of Islamic Securities** All proposals for the offering of Islamic debt securities, except for any of the following: • Islamic securities of Malaysian-incorporated public companies or foreign corporations that are capable of being converted into equity; and • Islamic securities of Malaysian-incorporated public companies or foreign corporations that are issued together with warrants Offering of Structured Products Proposals for the offering of structured products.
Bank Pembangunan Malaysia	Proposals on infrastructure project companies for the purposes of listing such companies or otherwise

Source: Securities Commission Malaysia.

(d) Facility Agent

The facility agent is responsible for all administrative matters pertaining to the bond, note, or *sukuk* issuance, such as facilitating the creation of the issue and the stock code in FAST. Facility agents are licensed investment banks, commercial banks, Islamic banks, and other institutions approved by regulatory authorities. In many cases, the Principal Adviser also acts as the facility agent. BNM acts as the facility agent for both the government and its own issues.

A facility agent receives debit notifications from RENTAS and payment instructions from issuers, and then sends payment instruction to the paying agent, who will carry out the interest and redemption payments.

(e) Paying Agent

The paying agent is responsible for the cash flow involved in a bond, note, or *sukuk* transaction, specifically in receiving the proceeds from the issuance on behalf of the issuer and remitting the proceeds to the issuer, as well as the payment of interest or consideration and redemption amounts to investors. The function includes the withholding of taxes and duties, as may be applicable.

BNM acts as the paying agent for securities and *sukuk* deposited in RENTAS

(f) Shariah Adviser

A Shariah Adviser will advise the issuer on the appropriate and acceptable Islamic concept(s) and principle(s) to be used in the issuance of a *sukuk*. The Shariah concepts and principles to be used must be approved by the Shariah Advisory Council (SAC) of the SC. The Shariah Adviser is appointed by the issuer in concurrence with the Principal Adviser.

The appointment process and the roles and responsibilities of Shariah Advisers are set out in the SC Guidelines for retail bonds and the Lodge and Launch Framework, respectively, depending on the type of issuance. In addition, the Registration of Shariah Advisers Guidelines (issued and effective on 10 August 2009) set out the general functions, eligibility criteria, academic qualifications, and experience requirements for Shariah Advisers.[33]

For a detailed description of the role and functions of the SAC, please refer to Chapter II.D.

(g) Bond Trustee

The CMSA (Section 258 and subsequent sections) stipulates the appointment of a trustee for any issuance of bonds, notes, or *sukuk* in the Malaysian market, and the drawing up of a Trust Deed. Certain exceptions to this requirement exist, such as government bonds and BNM issues, and in cases the bond, note, or *sukuk* is offered exclusively to foreign investors, or other entities or circumstances specifically mentioned in Schedule 8 of the CMSA.

The Bond Trustee is to be appointed by the issuer, typically on the advice of the Principal Adviser. Bond Trustees must be registered with the SC and are licensed trust companies or public companies. Bond Trustees are expected to be actively involved in the bond, note, or *sukuk* issuance and documentation process.

The SC, in its Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors and the Lodge and Launch Framework, prescribes the need for a Trust Deed unless an exemption is applicable (see above). At the same time, the minimum content requirements of a Trust Deed are detailed in the separate Guidelines on Trust Deeds.

For a detailed description of the role and functions of the Bond Trustee, please refer to section Q in this chapter.

[33] See http://www.sc.com.my/legislation-guidelines/shariah-advisers/

(h) Authorised Depository Institution(s) and Authorised Depository Agent(s)

To subscribe to or trade in debt securities and *sukuk*, an investor must open an account with an ADI, which are licensed financial institutions that are members of RENTAS and/or are allowed by BNM to hold securities on behalf of investors that are not members of RENTAS. For members of RENTAS, BNM—represented by its subsidiary, MyClear—is the authorized depository, transferring scripless bonds, notes, and *sukuk* among account holders according to the Code of Conduct and Market Practices for Scripless Trading, and recording the holdings and transactions of each RENTAS member institution.

ADIs are required to segregate their securities account in RENTAS between their own holdings and investors (residents and nonresidents). ADIs are also required to maintain a separate account for each investor client in their books.

ADIs, as custodians, distribute payments of interest, consideration (profit), and redemption proceeds received from BNM as the paying agent via RENTAS. Custodians may also offer a range of value-added products and services in relation to the bond market, such as securities or repo lending.

An ADA, the term for custodian or broker participants at BMD, is the settlement agent for ETBS. The roles and functions of an ADA are, for all intents and purposes, equivalent to those of an ADI on MyClear. In fact, many domestic intermediaries are participants in both settlement systems. ADAs are governed by the Rules of Participating Organisations of BMD.

(i) Legal Adviser (Legal Counsel)

Before the finalization of debt securities or *sukuk* issues, a legal due diligence exercise is conducted on the issuer, related projects, and project information pertaining to the debt securities issue or *sukuk*. This is done by legal counsel appointed by the issuer, which in the Malaysian market is also referred to as a legal adviser. In the case of a planned *sukuk* issuance, a legal adviser has to certify that a Trust Deed for the trust underlying the *sukuk* is enforceable under Malaysian law.

Law firms involved in the bond, note, or *sukuk* issuance process in Malaysia are not required to obtain a specific license or accreditation with the SC. There is no positive or negative list for law firms maintained or published by the SC.

A limited financial due diligence exercise is also undertaken to ascertain the credibility of the financial projections and financial data of the issue. The primary purpose of these due diligence exercises is to ensure that no misleading and/or inaccurate information is furnished to the regulatory authorities and investors in general.

The SC issued a set of guidelines on the standards expected from such due diligence exercise, the Guidelines on Due Diligence Conduct for Corporate Proposals, which came into effect on 1 February 2008.

(j) Accounting Firms

Accounting firms involved in the bond, note, or *sukuk* issuance process in Malaysia are not required to obtain a specific license or accreditation with the SC. However, where the issuer is a Public Interest Entity or a Schedule Fund as categorized under Schedule 1 of the CMSA, the accounting firm and individual auditor involved in the issuance of the bonds is required to be registered with the Audit Oversight Board.

N. Definition of Professional Investors

The professional investor concept in Malaysia is commonly referred to as Sophisticated Investors in the market and its definition include the definition of Accredited Investors. Accredited Investors are referenced in Schedule 7 of the CMSA, which stipulate the exemptions from prospectus (full disclosure) requirements for these investors and related transactions. Section 229 of the CMSA defines excluded offers or excluded invitations, and Section 230 defines excluded issues. Schedules 6 and 7 both specify certain provisions that a prospectus shall not apply to "excluded offers" or "excluded invitations" and "excluded issues."

The definition of Sophisticated Investors and its relevance for the bond market fall under the purview of the SC. As promulgated in the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework, the term Sophisticated Investors refers to any person who falls within any of the categories of investors set out in Part 1, Schedules 6 and 7 of the CMSA.

Sophisticated Investors is a collective term and includes the following types of investors:

- High Net Worth Individuals
- High Net Worth Entities
- Accredited Investors

Accredited Investors are further defined in the SC Guidelines as

- Central Bank of Malaysia [...]
- a holder of a Capital Markets Services License
- an executive director or chief executive officer of a holder of a Capital Markets Services License
- a unit trust scheme or a prescribed investment scheme
- a closed end fund approved by the SC
- a licensed institution as defined in the Financial Services Act, 2013 or an Islamic bank as defined in the Islamic Financial Services Act, 2013
- a Labuan bank as defined under the Labuan Financial Services and Securities Act, 2010
- an insurance company registered under the Insurance Act, 1996
- an insurance licensee licensed under the Labuan Financial Services and Securities Act, 2010
- a *takaful* licensee licensed under the Labuan Islamic Financial Services and Securities Act, 2010
- a *takaful* operator registered under the Takaful Act, 1984
- a private retirement scheme as defined in the CMSA

There is no distinction in the CMSA, Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors, Lodge and Launch Framework, or in the Guidelines on Sales Practices of Unlisted Capital Market Products between domestic and foreign investors. At the same time, foreign investors who wish to invest in the Malaysian market, tend to fall under the definitions and provisions for High Net Worth Entities or High Net Worth

Individuals. There are many foreign institutional investors already investing in Malaysia and holding their assets with domestic custodians (ADIs). For more detailed information, please refer to BNM's official statistics on foreign holdings of ringgit bonds, including government versus corporate issues, and conventional versus *sukuk* issues.[34]

Professional investors who are residents in Malaysia may invest in overseas markets. But investments in FCY-denominated assets abroad by residents are subject to the prevailing FEA Rules and subject to review and approval by BNM.

The professional investor definitions for Sophisticated Investors are particularly significant in relation to the investment in debt securities and *sukuk* exempt from full disclosure requirements (wholesale bond offers listed in Schedules 6 and 7 of the CMSA). Such offers for the sale or subscription of bonds, notes, and *sukuk* to Sophisticated Investors constitute the professional bond market in Malaysia. Such offers are eligible for issuance under the Lodge and Launch Framework introduced by the SC and effective 15 June 2015. Details and descriptions of the regulatory processes for bond, note, and *sukuk* issuance under both the Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors and the Lodge and Launch Framework can be found in Chapter II.

O. Credit Rating Requirements

This section covers the applicable credit rating requirements for bonds, notes, and *sukuk* issued in the Malaysian bond market. For details on the underlying regulations for the registration of credit rating agencies, please refer to Chapter I.N.

1. Present Requirements

In principle, bonds, notes, or *sukuk* issued in Malaysia in Malaysian ringgit, including those issued to Sophisticated Investors, require a credit rating from a credit rating agency registered with the SC (for details, please refer to Chapter II.N), unless an exemption mentioned in the respective SC Guidelines for retail or wholesale bonds can be applied.

Under the Lodge and Launch Guidelines (Chapter 2), FCY-denominated issuances do not require a credit rating. Since January 2015, the SC has given issuers the flexibility not to have MYR-denominated issuances aimed at Sophisticated Investors rated (for details, please refer to section 2). The complete removal of the mandatory credit rating requirements for bonds, notes, and *sukuk* issued in the Malaysian market will take effect in 2017.

Private debt securities and *sukuk* offered to retail investors are to be rated by a credit rating agency registered by the SC.

At present, domestic credit ratings are available from Malaysian Rating Corporation (MARC) and RAM Holdings (RAM), formerly Rating Agency Malaysia. Both MARC and RAM are registered with the SC, pursuant to the Guidelines on Registration of Credit Rating Agencies, 2011.

[34] Bank Negara Malaysia. Monthly Statistical Bulletin April 2015. Section 3.2. http://www.bnm.gov.my/index.php?ch=en_publication_catalogue&pg=en_publication_msb&mth=4&yr=2015&lang=en

Although international ratings are accepted, domestic investors seem to favor a domestic credit rating for MYR-denominated bonds, notes, and *sukuk*. The credit rating of a bond, note, or *sukuk* must be made available to the SC upon an application to issue, offer, or invite to subscribe or purchase PDS. Where a final credit rating is not available, an indicative credit rating must be advised to the SC. In the case of a debt program with a partial rating, the first issuance under such a program must be rated while the PTC of the debt program must give sufficient information for the investors to form an opinion on the creditworthiness of the rest of the program.

In cases where prior approval by BNM of a bond, note, or *sukuk* issuance is required, such as in the case of a foreign issuer, a credit rating requirement for the issuer applies in every case. For BNM approval, corporate foreign issuers are expected to enjoy an international credit rating of equal to or better than AA to qualify for issuance approval.

2. Concessions Announced by Securities Commission Malaysia

In August 2014, the SC announced the complete removal of the present mandatory credit rating requirements for bonds, notes, and *sukuk* issued in the Malaysian market beginning in 2017. The current requirements will be replaced by new guidelines closer to the effective date.

At the same time, the SC has been giving issuers the flexibility since January 2015 not to obtain a credit rating for Malaysian ringgit issuances aimed at Sophisticated Investors only. The concessions granted by the SC include the following:

(i) existing PDS and *sukuk* that are nontradable or transferable and have been in the market for 2 years can now be tradable and transferable without having to obtain a credit rating; and
(ii) existing PDS and *sukuk* that have a rating (and therefore have been tradable and transferable) and have been in the market for 2 years can now discontinue the credit rating, while still maintaining the tradable and transferable status subject to certain conditions.

P. Financial Guarantee Institution

Danajamin Nasional (Danajamin), Malaysia's first financial guarantee insurer, was established in May 2009 to provide financial guarantee insurance for bonds and *sukuk* issuances, which enabled access to the PDS market to viable Malaysian companies.

As a financial guarantee institution, Danajamin helps raise the credit ratings of bond, note, and *sukuk* issues that otherwise would normally be below investment grade to a level deemed investment grade by investors by lending their own sterling ratings to these bond issues.

Jointly owned by the Minister of Finance (Incorporated) (50%) and the Credit Guarantee Corporation Malaysia (50%), Danajamin is rated AAA by both RAM and MARC. Danajamin has issued and paid-up capital of MYR1 billion and another MYR1 billion of callable capital. Its underwriting capacity is up to MYR15 billion.

Q. Market Features for Investor Protection

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

1. Investors Complaints

The SC will look into any complaint relating to market misconduct or other irregularities involving activities regulated by the SC under the CMSA. The SC welcomes all types of related complaints since the complaints can assist in alerting the SC of irregular activities occurring within the industry or new trends involving investment scams and public money.[35]

Investor complaints should be addressed to and will be handled by the Investor Affairs and Complaints Department of the SC, which will inquire into complaints on improper conduct and other irregularities in the securities and derivatives markets to assess whether they disclose offences under the securities laws. If a complaint relates to capital market services or products of a licensed intermediary, the investor is encouraged to first raise the complaint with the intermediary concerned. If the investor is unable to resolve the issues raised in the complaint with the intermediary, the investor may forward the complaint to the Securities Industry Dispute Resolution Center, a dispute resolution body approved by the SC, if the investor is seeking redress. This does not preclude the investor from forwarding the complaint to the SC.

When submitting a complaint to the SC, information should be included regarding the name and contact details of the complainant; details of the party or parties mentioned in the complaint; and specific details on how, why, and when the matter of the complaint arose.

Each complaint will be reviewed and possible breaches of securities laws referred to the relevant department of the SC for further action. All investigations are kept confidential and are not disclosed.

Complaints regarding a monetary dispute not exceeding MYR250,000 against a relevant licensed intermediary may be resolved with the assistance of the Securities Industry Dispute Resolution Center.

2. Retail Investors

Retail investors (or, in fact, any investors) interested in obtaining detailed knowledge and a better understanding of bonds, notes, and *sukuk*; the Malaysian bond market as a whole; market infrastructure and institutions; licensed persons and intermediaries; and products and services in the capital market have a wide choice of available resources and websites.

The SC details on its website a comprehensive list of legislation and regulations for the Malaysian bond market, including provisions on debt instruments and *sukuk*, the market and its participants, and the criteria for their licensing.

BNM maintains a number of websites for investor education aimed at their protection, with a particular focus on the conventional and Islamic bond market segments. Recommended is

[35] This section has been adapted from the SC website at http://www.sc.com.my/lodge-complaints-2/lodge-complaints/

the use of Bond Info Hub (http://bondinfo.bnm.gov.my), which hosts most comprehensive introductions, explanations, and detailed information on the Malaysian bond market, including considerations for foreign investors and issuers.

In addition, the websites of the market institutions and market infrastructure providers also offer detail on their purpose, regulatory environment, operational capabilities, and information provision. Most market institutions offer investor education seminars or tutorials. Interested parties are encouraged to visit the websites of the BPAM, BM and its subsidiaries, FAST, MyClear (including RENTAS), and credit rating agencies.

Links for all websites referred to above can be found in Appendix 2 and are also frequently referenced in a specific context in the course of this document.

Last but not least, most financial institutions in Malaysia provide a comprehensive set of services and education measures for retail investors interested in buying and selling bonds, notes, or *sukuk*.

3. Foreign Investors

Foreign investors as creditors have the same rights as local creditors under Malaysian law (for details, see section 4).

Due to the publication in the Malaysian market of issuance documentation, disclosure items, credit ratings, and pricing information for debt securities and *sukuk* in English through a variety of public domain websites, foreign investors enjoy the same access to relevant data as local investors. Where websites require a subscription to receive information, such subscriptions are also available to foreign investors.

4. Bondholder Rights

Bondholder rights are protected under the Companies Act, 1965; CMSA; and their various amendments. Under the Companies Act, 1865, creditors, including bondholders, can file a winding-up petition for a company when debtors are unable to pay their debts. When a winding-up order is made, the court appoints a liquidator who oversees the liquidation process.

5. Bond Trustee and Trust Deed

Under the CMSA, all bond, note, and *sukuk* issuers are required to enter into a Trust Deed with an appointed Bond Trustee, unless an exemption for the type of issuance applies (e.g., Schedule 8 of the CMSA). The Trust Deed contains bond provisions, covenants, and other requirements set by the SC. The Trustee's role is to safeguard the interests of the bondholders as set out in the Trust Deed and in the CMSA, and the roles, responsibilities, and eligibility criteria for Bond Trustees are explained further in section R of this chapter.

Issuance and disclosure documents (e.g., prospectus, term sheets) also contain covenants and relevant default clauses specific to a bond, note, or *sukuk* issue that provide additional protection to bondholders. The trustee is mandated by law to participate in the drawing up of these documents and to ensure that all documents contain specific requirements for the protection of investors. The SC's website provides copies of the PTC of debt instruments and *sukuk* issuances.

For information on bankruptcy protection and event of default provisions, please refer to sections S and T of this chapter, respectively.

6. Prevention of Fraud

The SC imposes laws on securities trading offenses such as false trading, manipulation, and fraud, which are liable to result in fines and imprisonment under Part V of the CMSA.

The SC also publishes on its website details on enforcement actions and pending court cases, and provides updates on internet scams for products and services under its purview.

7. Ethics

In addition to the regulatory framework put in place by and the everyday activities of the policy bodies and regulatory authorities to ensure a fair and orderly bond market, the FMA fulfils a critical function to maintain the integrity of the Malaysian bond market.

Although not an SRO, the FMA has been conferred the authority to certify bond dealers and define a code of conduct and ethics standards for all bond and money market participants.

Bond dealers are required to be licensed by the SC. The certification for individuals, obtained after a four-module course study, is jointly awarded by the FMA and the Institute of Bankers Malaysia, and aims to ensure that the Malaysian wholesale financial markets will continue to uphold the highest standards of professionalism and integrity, and grow in an orderly manner. The syllabus includes units on the code of conduct and market practices, investor protection guidelines, and fit and proper requirements.[36]

In addition to the abovementioned requirements, licensed intermediaries that are participants of Bursa Malaysia will have to abide by the exchange's trading rules.. BM is also responsible for marketplace surveillance across its subsidiaries, and supervising and enforcing disclosure standards for listed companies. It provides and enforces essential processes or systems for safe and sound securities trading and crucial post-trade infrastructure, such as clearinghouse and central securities depository functions.

8. Capital Markets and Services Act, 2007

The CMSA came into force on 28 September 2007 and was last amended on 15 September 2015. The CMSA provides strong protection for investors, and enhances corporate governance of listed companies and market transparency, with particular references and provisions in the following areas:

(a) Part V (Market Misconduct and Other Prohibited Conduct) stipulates false trading, market manipulation, and insider trading offenses and their pursuit, for both securities and derivatives business;

(b) Part VI (Issues Of Securities and Take-Over and Mergers) outlaws false or misleading statements or documents and information when issuing securities, whether conventional of Islamic in nature; and

36 Detailed information is available at http://www.ppkm.net/wp-content/uploads/2014/11/121228-PKMC.pdf

(c) Part XII (General) provides for SC actions against falsification of records, reports, and other misconduct in the market.

9. The Capital Market Compensation Fund

The Capital Market Compensation Fund was established under provisions in the 2012 amendment of the CMSA. Part IV of the CMSA now stipulates the establishment and functions of the Capital Market Compensation Fund and its governing body, the Capital Market Compensation Fund Corporation. The fund is intended to protect investors against cases in which a relevant CMSL holder cannot satisfy payments due to, and claims from, investors arising from fraud, defalcation, or mis-selling by the CMSL holder or its representatives.

The fund is administered by the Capital Market Compensation Fund Corporation and has the powers to pursue or petition the winding up of a holder of a CMSL to obtain proceeds to satisfy rightful claims. The fund's assets are contributed by relevant holders of a CMSL in an amount determined by the regulated activity carried out.

R. Bond Trustee and Trust Deed

1. Bond Trustee

In principle, the issuance or offer for sale or subscription of all bonds, notes, and *sukuk* in Malaysia requires the appointment of a trustee and the establishment of a Trust Deed, unless bonds, notes, or *sukuk* are specifically exempted from such requirements under Schedule 8 of the CMSA (for details, please refer to section 3). The trustee is appointed by the issuer for the benefit of the bondholders.

The trustee for a bond, note, or *sukuk* issue or offer for sale or subscription (in Malaysian market practice referred to as Bond Trustee) has the responsibility of safeguarding the interests of the debenture or *sukuk*-holders. The Bond Trustee is expected to be part of the issuance team and is expected to review the issuance documentation of a bond, note, or *sukuk* issue to ensure, to the best of his or her ability, the following:

(i) there are no inconsistencies or conflicts of interest between the provisions of the Trust Deed and the conditions stated in the SC's letter of approval, and in the term sheet approved by the SC;
(ii) there are no provisions in any of the transaction documents that are inconsistent or in conflict with, or may lead to inconsistency or conflict with, the trustee's duties; and
(iii) the SC Guidelines on Trust Deeds (effective 12 August 2011) have been complied with.

The Bond Trustee oversees bondholder rights, including the filing of claims and demand of payments from the issuer or guarantors, as well as the compliance with applicable covenants and terms and conditions of the debenture or *sukuk*. Under the fiduciary nature of the bond trustee function, bondholders may have recourse against the Bond Trustee in cases when the Bond Trustee acts with gross negligence or causes damages to bondholders.

The Bond Trustee is responsible for a resolution of a meeting of bondholders, where applicable. Meetings may be convened at the request of the issuer, Bond Trustee, or an agreed percentage of debenture holders. Meetings of the bondholders are provided for under Clause 22 of the Guidelines on Trust Deeds (effective 12 August 2011) issued by the SC.

2. Trust Deed

The Bond Trustee is to draw up the Trust Deed for the bond, note, or *sukuk* issuance. The Trust Deed shall contain the minimum provisions, covenants, requirements, information, and particulars that have been specified by the SC under its powers conferred in the CMSA, Division 4 of Part IV and further detailed in the SC Guidelines on Trust Deeds, 2011.

In addition to the minimum requirements referred to above, parties to a Trust Deed are free to include provisions, covenants, and terms and conditions into the Trust Deed, as long as those additions do not contravene said minimum requirement stipulated by the SC. If a company is listed, or the debentures or *sukuk* to be issued are to be listed, the trust deed may also need to include provisions stipulated under the listing rules of the respective listing place or exchange.

3. Exemptions from Appointment of Bond Trustee and Trust Deed

Exempted debentures or *sukuk* include, among others, issues by the government, BNM, and statutory boards, as well as issues or offers for sale or subscription to foreign investors or Sophisticated Investors only, or certain debentures or *sukuk* denominated in a foreign currency. The complete list of exemptions from the appointment of a bond trustee and the need for a trust deed is contained in Schedule 8 of the CMSA, as amended from time to time.

In this context, the appointment of a Bond Trustee and the entering into a trust deed is not mandatory for the issuance of private placements aimed at Sophisticated Investors, given the ability of Sophisticated Investors to make their own decisions and the expectation of safeguarding their investments.

4. Bond Trustee Registration

In view of the important role of trustees in a debt securities or *sukuk* issue, the SC has introduced a set of registration guidelines to ensure that only fit and proper trustee companies can act as Bond Trustee and that they discharge their fiduciary duties in a proper manner. For this purpose, a Bond Trustee for the issuance or offer for sale or subscription of debentures or Islamic securities approved by the SC on or after 2 January 2007 must be registered with the SC pursuant to the Practice Note on Registration by the Securities Commission for the Purpose of Acting as a Bond Trustee, 2006. The issuance of the registration criteria for trust companies to act as Bond Trustees dovetails with the requirement for a corporate bond, note, or *sukuk* issuer to appoint a trustee and enter into a Trust Deed under the CMSA.

The higher standards of professionalism among Bond Trustees will translate into greater protection for investors. Among others, the SC will evaluate the financial resources and track record of the trustee company as well as its expertise, independence, and avoidance of conflicts of interest to ensure that only fit and proper trustee companies are registered. A list of companies registered with the SC to act as Bond Trustees—consisting of 15 companies at the time of the compilation of this document—is available on the SC website.[37]

[37] Securities Commission Malaysia. Registered Bond Trustees. http://www.sc.com.my/registered-bond-trustees/

S. Bankruptcy Procedures

Malaysia's procedures on bankruptcy were established under the Companies Act, 1965; Bankruptcy Act, 1967; and their respective rules and amendments. The Companies Act, 1965 contains provisions for insolvency, rehabilitation, appointment of receivers, and winding-up procedures for companies. Specific laws governing industries may also have provisions governing the insolvency of a company (e.g., the Banking and Financial Institutions Act, 1989 for banks). The Bankruptcy Act, 1967 covers bankruptcy provisions for individuals.

Further details on the restructuring and insolvency frameworks of Malaysia and other economies in Asia and the Pacific can be found in The Asia-Pacific Restructuring and Insolvency Guide 2006 and in A Guide to Asia-Pacific Recovery and Insolvency Procedures.[38]

T. Event of Default and Cross Default

1. Event of Default

Generally, the occurrence of event(s) of default is defined in the terms and conditions of a debenture. While descriptions of events of default are usually negotiated, the SC's Trust Deed Guidelines prescribe the minimum contents requirements for any such trust deed.

Clause 12 of the Trust Deed Guidelines issued by the SC in August 2011 provides for events constituting default and the remedy of such default.[39] The Trust Deed and the terms and conditions of debentures must provide for, but should not be limited to, the following:

(1) A list of all events, the occurrence of any of which would entitle or oblige the trustee to declare the debentures immediately due and repayable (to the extent appropriate and subject to any materiality thresholds and provision for remedy or period of grace which may be negotiated), including

- (a) where there is any default in payment of any principal, premium or interest, or profit under the debentures or *sukuk*;
- (b) where a winding-up order has been made against the issuer;
- (c) where a resolution to wind up the issuer has been passed;
- (d) where a scheme of arrangement under Section 176 of the Companies Act, 1965 has been instituted against the issuer;
- (e) where a receiver has been appointed over the whole or a substantial part of the assets of the issuer;
- (f) where there is a breach by the issuer of any term or condition in the debentures or *sukuk*, or provision of the trust deed or of any other document relating to the issue, offer or invitation in respect of the debentures or *sukuk*;

[38] C. Chance. 2013. A Guide to Asia-Pacific Recovery and Insolvency Procedures. http://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/guides/restructuring-and-insolvency-guide-asia-pacific.html

[39] See http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/bondmkt/trustDeed_110812.pdf

(g) where any other indebtedness of the issuer becomes due and payable prior to its stated maturity, or where the security created for any other indebtedness becomes enforceable; and
(h) where there is a revocation, withholding, invalidation or modification of a license, authorization or approval that impairs or prejudices the issuer's ability to comply with the terms and conditions of the debentures or *sukuk*, or the provisions of the trust deed or any other document relating to the issue, offer, or invitation in respect of the debentures or *sukuk*.

(2) The powers of the trustee in any of the events described in paragraph (1) include

(a) the powers of the trustee to declare the debentures or *sukuk* immediately due and payable at its discretion;
(b) the powers of the trustee to declare the debentures or *sukuk* immediately due and payable as directed by a special resolution;
(c) the powers of the trustee to enforce the provisions of the trust deed;
(d) the circumstances under which the trustee shall be bound to enforce the provisions of the trust deed; and
(e) the circumstances under which the holders of the debentures or *sukuk* are entitled to pursue their rights and remedies.

Malaysian law does not specifically state whether a default happens during a given day or at the end of that day. However, it is accepted practice that a default immediately occurs when the trustee (in the case of retail bonds) or debenture-holder(s) (in the case of private placements or offers under the Lodge and Launch Framework) declare an event of default.

The precedent of a default of debentures or sukuk normally occurs on the grounds that the debenture issuer fails to pay interest, or the *sukuk* issuer fails to pay consideration or profit, and to repay the principal to the debenture or *sukuk*-holder(s) when due.

2. Cross Default

Debentures and *sukuk* issued in Malaysia, including those issued by government linked entities and large corporates may carry in their issuance documentation and PTC a cross-default clause that allocates the right for debenture and *sukuk*-holders to seek immediate repayment of all debt securities by the same issuer held by them in case an event of default would be declared on a single debenture or *sukuk* of such issuers.

According to Paragraph 12.01 (a) of the SC's Guidelines on Trust Deeds, a cross-default would entitle or oblige the trustee to declare the debentures or *sukuk* immediately due and payable (where a provision for a period of grace will not be allowed while provision for remedy may be negotiated to the extent appropriate).[40]

[40] See http://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/bondmkt/trust Deed_110812.pdf