

Overview of Sub-Forum 1

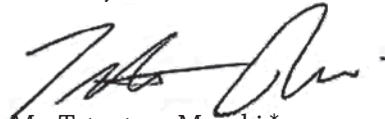
Statement from SF1 Chairs

We wish to express our sincere appreciation to all members and experts of the ASEAN+3 Bond Market Forum Sub-Forum 1 (ABMF SF1) for their contributions towards completing this important research project within the mandated timeframe.

Going forward, we hope to seek continuous support from the members and experts on the second phase of ABMF, which will be critical to our efforts in realizing the vision and objectives of ABMF, i.e., promoting issuance and investment activities within the ASEAN+3 bond markets.

On behalf of our members and experts, we are grateful to the secretariat in the Asian Development Bank (ADB) and its consultants for their efforts that have brought this valuable report into fruition.

February 2012



Mr. Tetsutaro Muraki *
Chair of ABMF SF1



Mr. Lee Kok Kwan
Vice-chair of ABMF SF1

* Mr. Tetsutaro Muraki took over as Chair in September 2011, replacing Mr. Yutaka Ito.

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Preface

A. ASEAN+3 Bond Market Forum

The Association of Southeast Asian Nations plus People's Republic of China, Japan, and Republic of Korea (ASEAN+3) established a forum called ASEAN+3 Bond Market Forum (ABMF) in September 2010 as a common platform to foster standardization of market practices and harmonization of regulations relating to cross-border transactions in the region. ABMF reports its activities to the Task Force 3 (TF3) of the Asian Bond Markets Initiative (ABMI) under the institutional framework of ASEAN+3 Finance Ministers Meeting (AFMM+3).

B. ABMF Sub-Forum 1

ABMF consists of two sub-forums. Sub-Forum 1 (SF1) researched, collated, and compared regulations and market practices in the region; Sub-Forum 2 (SF2), on the other hand, looked to harmonize transaction procedures and bond messages with a view of cutting the cost of cross-border deals. This report focuses on the activities of SF1.

Members and experts participated in the ABMF SF1 conducted a survey on regional bond markets and the legal and regulatory infrastructures in ASEAN+3 with support from the Asian Development Bank (ADB) secretariat and consultants. The participants have engaged in fruitful discussions and produced this report, which was submitted to the ASEAN+3 Finance Deputies' Meeting (AFDM+3) through TF3 of the ABMI in December 2011.

C. Scope of Markets Covered

The ASEAN+3 region is composed of 14 economies. These include: (1) Brunei Darussalam, (2) Cambodia, (3) People's Republic of China, (PRC) (4) Hong Kong, China, (5) Indonesia, (6) Japan, (7) Republic of Korea, (8) Lao People's Democratic Republic (Lao PDR), (9) Malaysia, (10) Myanmar, (11) Philippines, (12) Singapore, (13) Thailand, and (14) Viet Nam.

This report covers comparative analyses for bond markets in only ten economies as shown in the following table. On the other hand, 11 economies were covered for the bond market guides that include Lao PDR. Lao PDR, which is in the process of developing a bond market, have voluntarily produced and submitted the Laos Bond Market Guide as a reference for members and interested parties.

D. Economies Covered under Comparative Analysis and Market Guides

	Economy	Economies Subject to Comparative Analysis (Ten Scrippless Securities Markets)	Economies Covered Under Bond Market Guides
1	China, People's Rep. of	✓	✓
2	Hong Kong, China	✓	✓
3	Indonesia	✓	✓
4	Japan	✓	✓
5	Korea, Rep. of	✓	✓
6	Malaysia	✓	✓
7	Philippines	✓	✓
8	Singapore	✓	✓
9	Thailand	✓	✓
10	Viet Nam	✓	✓
11	Lao PDR	–	✓ (voluntary submission for reference) ¹

¹ At the outset, it is understood that the bond markets in Brunei Darussalam, Cambodia, Lao PDR, and Myanmar are planned to be created or in the early stages of development; therefore, as discussed in ABMF Meetings in the past, the ADB secretariat did not ask these developing markets to provide market information. Instead, ABMF members and experts focused more on sharing the information collected from the developing markets to support their actions. This is the reason why the mission was organized to hold workshops in Brunei Darussalam and Lao PDR in May and June 2011. However, this did not entirely prevent the three economies from providing any market information to be included in the market guides. Thus, Lao PDR proactively made a voluntary submission of their Bond Market Guide for reference.

Ten economies included in the research have developed sound and robust bond markets, while four economies are planning and trying to develop their markets.

This report mainly discusses the harmonization and standardization of bond markets of the 10 economies with existing bond markets.

E. Configuration of this SF1 Report

Overview of SF1

Part 1: ASEAN+3 Bond Markets Comparative Analysis and Implication for the Next Phase of ABMF Sub-Forum 1 (2012-2013)

Part 2: Bond Market Guides in 11 Economies

Executive Summary of SF1

A. Overall Assessment—Sound and Robust Market Infrastructure

All of the 10 scripless securities markets covered under this research project have built robust market infrastructures including legal and operational systems to secure transactions in the domestic bond market over the past 10 years. In almost all markets, key legal and operational frameworks are in place. Trades can be executed efficiently in a secure manner; operations and practices in the markets seem comparable to other developed bond markets in the world. Notwithstanding, some still have room for further improvement. Regulators in these markets are encouraged to further eliminate legal and regulatory uncertainty, and to maintain transparency of rules and practices in each domestic market. Markets in the region are distinct in many ways, such as in governing laws and responsible regulators based on their legal tradition and their own market needs. For instance, transfer of ownership of bonds and rules providing the finality of settlement may not be the same; almost all of the markets have established their specific market practices.

Although actual conditions regarding default recognition may be different in the terms and conditions of the bonds and by jurisdiction, default procedures are usually well disclosed in the bonds issuance documentation in many jurisdictions in the region.

These default procedures do not usually deviate from the documentation standards on international bonds issuance. However, in some cases, there are still uncertainties regarding default recognition and procedures.

On the other hand, the status of bankruptcy-related legislation in the region is varied from one jurisdiction to another. Generally, laws on companies, bankruptcy and/or related laws, where applicable, are quoted in the trust deed or similar documents to guide investors in making informed decisions. But in some jurisdictions in the region, bankruptcy-related law and procedures are thought to be in the development stage. It is important to consider the need for greater understanding and further analysis of bankruptcy-related laws and procedures across regional markets in the future.

B. Summary of Findings

1. Over-the-Counter Market

Bonds could be listed on the stock exchanges in many markets, but most of the instruments are traded on the over-the-counter (OTC) market. The OTC market remains the main trading place for the bond markets, but selected exchanges have begun to establish new market segments.

2. Regulatory Vacuum in Private Placement

The regulatory vacuum in private placement in some of the markets can be seen as a place of improvement of the securities law to be put properly as a regulated and exempted private placement market. That sort of clearly stipulated private placement scheme will be an opportunity to propose a common self-regulatory framework for qualified market players in the future.

3. Bondholder Representative and/or Trustee

The concepts of bondholder representative, commissioned bank, and trustee are gaining popularity and are evolving. For example, the new Commercial Code in Republic of Korea, which will come into effect in 2012, is re-defining the role of commissioned banks.

4. Different Requirements for Identifying Investors and Beneficial Owners

Requirements for identifying investors and beneficial owners are different in several countries. For instance, PRC does not allow omnibus accounts under the International Central Securities Depository (ICSD) while the Republic of Korea recently revised its regulation to allow omnibus accounts for ICSDs only. This, on the other hand, is allowed in Japan and in ASEAN. However, there is a growing tendency or desire among regional regulators to increase monitoring.

5. Public Offering

Two general approaches are observed in the markets when it comes to public offering: (1) Full disclosure with specific exemptions and (2) a clearly defined disclosure regime. Markets united in those public offerings meant specified disclosure to all potential investors, whereas private placement or private offerings limited disclosure to only a specific investor group. However, a private offer does not mean no disclosure or no underlying regulations. In some markets there exists a regulatory vacuum in private placement as stated above. In the near future, a specific offering within professional market(s) could cover elements of both concepts of public and private offering. Among the markets covered in the research, Hong Kong and Singapore are closer to international markets while many of the ASEAN+3 markets are still developing.

Generally speaking, creating a common platform for issuance and investment of bonds among ASEAN+3 countries may not be that difficult since the necessary underlying concepts are already in place. This may also negate the discussion on whether to pursue onshore or offshore access to such a market.

6. Definition of Professional Investors

Defining professional investors is critically important in view of the next phase of ABMF discussions, as described in section C. Currently, there are varying definitions

of professional investors where they exist. For instance, Indonesia acknowledges the concept but does not define it by law. In the case of Japan, the concept is clearly defined in recent legislation to create the TOKYO PRO-Bond Market. Malaysia does not have a direct definition, but the Capital Markets and Services Act of 2007 (CMSA) contains relevant provisions on how excluded offerings of bonds could be made to institutional and high net worth investors. Thailand has specific definitions for ‘institutional investors.’

7. Common Law Tradition and Civil Law Tradition

Although market regulations in the region vary in many ways, this does not mean that harmonization is impossible. Markets can be categorized into different groups if regulations are viewed from certain angles. For instance, markets with common law tradition such as Singapore, Malaysia, and Hong Kong share the same trustee concept. Markets with civil law tradition like PRC, Indonesia, Japan, Republic of Korea, Thailand, and Viet Nam, while they may not have the concept of trustee, support the concept of an entity acting for bondholders; names, roles, fiduciary duties, and type of institutions, though, may differ (bondholders representative or commissioned bank, etc.). Generally, if the details are looked into, the differences may not be as significant as they appear.

8. Documentation Language

Documentation language is important to add more details. Some jurisdictions have added other languages for documentation. One such case is in Hong Kong, China where Chinese is now an acceptable documentation language in the Hong Kong market.

9. Defining Self-Regulatory Organizations

Definitions of self-regulatory organizations (SROs) may differ by market but their functions may still be comparable.

10. Greater Use and Acceptance of Islamic bond (or *Sukuk*) Structure

A growing number of jurisdictions now allow or promote the use of Islamic structure in the issuance of bonds in the region. In addition to Malaysia which has the largest Islamic bond market, Indonesia, Thailand, Singapore Hong Kong, and Japan will also launch their own regulatory framework for the issuance of Islamic bonds or Sukuk in their respective bond markets. In general, an issuer’s obligations under a Sukuk issue and the risk exposure of investors are not materially different from a conventional bond issue. If at all such material difference exists, it is usually well disclosed in the offering documents.

C. Activities for the Next Phase of ABMF SF1

Through these market guides and comparative analysis, it is highly expected that the information asymmetry evident in many places will be improved with the intention to attract more attention from investors outside and within the region.

In the future, ASEAN+3 may consider establishing a common framework similar to Eurobond market, possibly modeled on the experiences from the Eurobond market’s

professionals. However, it will be important to understand that the current version of European Union (EU) rules or framework may not be directly applicable to Asia; hence, it may be necessary to establish an Asian version of such marketplace. Thus, the key objectives for ABMF Phase 2 will be to facilitate cross-border or inter-regional initiatives of issuance and investment of bonds. Two standard approaches come to mind: a bottom-up approach as in the ASEAN and a top-down approach driven by the private sector. The preferred approach might focus on private placements or exempted market from full-disclosure requirement for ordinary public offerings across jurisdictions. This might create a professional marketplace populated only by qualified investors. The key outcome would be an organized, well-documented common regional private placement market—this is where the SRO concept would come in as part of discussions on effective governance.

Creating an offshore market remains a consideration as it will attract a set of regulatory concerns. Hence, the emphasis should clearly be on efforts to allow cross-border transactions within the domestic bond markets, with a target to arrive at a common or commonly accepted framework for these transactions.

With qualified issuers and investors currently restricted to access to many domestic bond markets in the region, it will be possible to establish common rules with reasonable efforts. This could possibly lead to a common regional medium-term note (MTN) program within jurisdictions that are committed to open up their markets to qualified issuers and investors in the region. For this proposal to be accepted, it is important to achieve a common understanding among regulatory authorities on the viewpoints expressed above. Meanwhile, activities for the next phase of ABMF SF1, where possible, should take into account the relevant experience from the International Capital Markets Association (ICMA) and SROs from Europe and other regions. In this regard, it will be relevant for members and experts to reach out to investment banks, institutional investors, and lawyers in their respective markets since their input will be important to gauge the actual demand and supply situation in the second phase of ABMF SF1.

Member List of SF1

A. National Members, National Experts, and Observers

Economy/Jurisdiction		Institution
Brunei Darussalam	National Member	Brunei International Financial Centre (BIFC), Ministry of Finance
Cambodia	National Member	National Bank of Cambodia
Cambodia	National Member	Securities and Exchange Commission (SEC) of Cambodia
China, People's Rep. of	National Member	People's Bank of China (PBOC)
China, People's Rep. of	National Member	China Securities Regulatory Commission (CSRC)
China, People's Rep. of	Observer	National Association of Financial Market Institutional Investors (NAFMII)
China, People's Rep. of	National Expert	China Securities Depository and Clearing Corporation (CSDCC)
China, People's Rep. of	National Expert	China Central Depository and Clearing Corporation Limited (CCDC)
Hong Kong, China	National Member	Hong Kong Monetary Authority (HKMA)
Indonesia	National Member	Ministry of Finance of Indonesia
Indonesia	National Member	Indonesian Capital Market and Financial Institution Supervisory Agency (BAPEPAM-LK)
Indonesia	National Member	Indonesia Stock Exchange (IDX)
Japan	National Member Chair	Tokyo AIM, Tokyo Stock Exchange Group
Japan	National Member	Japan Securities Dealers Association (JSDA)
Japan	National Member	Japan Bankers Association (Sumitomo Mitsui Banking Corporation)
Japan	National Expert	Nomura Securities Co. Ltd.
Japan	National Expert	Daiwa Securities Capital Markets Co.Ltd.
Korea, Rep. of	National Member	Korea Financial Investment Association (KOFIA)
Korea, Rep. of	National Expert	Korea Capital Market Institute (KCMI)
Korea, Rep. of	National Expert	Korea Exchange (KRX)
Lao PDR	National Member	Ministry of Finance of Lao PDR
Lao PDR	National Member	Securities and Exchange Commission Office, Bank of the Lao PDR
Malaysia	National Member Vice-chair	Financial Market Association of Malaysia CIMB Group and CIMB Investment Bank
Myanmar	National Member	Central Bank of Myanmar
Philippines	National Member	Bureau of Treasury of the Philippines
Philippines	National Expert	Securities and Exchange Commission of the Philippines
Thailand	National Member	Securities and Exchange Commission
Thailand	National Member	Thai Bond Market Association
Viet Nam	National Member	Vietnam Bond Market Association (VBMA)

B. Observing Authorities

Economy	Institution
Cambodia	Ministry of Economy and Finance
Cambodia	National Bank of Cambodia
Indonesia	Bank Indonesia
Indonesia	Ministry of Finance
Japan	Ministry of Finance
Japan	Bank of Japan
Korea, Rep. of	Bank of Korea
Lao PDR	Ministry of Finance
Malaysia	Bank Negara Malaysia
Malaysia	Securities Commission Malaysia
Philippines	Bangko Sentral ng Pilipinas
Singapore	Monetary Authority of Singapore
Thailand	Bank of Thailand
Viet Nam	Ministry of Finance of Viet Nam
Viet Nam	State Bank of Viet Nam

C. ADB Secretariat and Consultants

Institution	Name	Position
ADB Secretariat	Satoru Yamadera	Economist, Office of Regional Economic Integration (–Sept. 2011) (currently Bank of Japan)
	Seung Jae Lee	Principal Financial Sector Specialist (June 2011–)
	Shinji Kawai	Senior Financial Sector Specialist (Banking) (Sept. 2011–)
ADB Consultant for SF1	Shigehito Inukai	Professor, Faculty of Law, Waseda University
ADB Consultant for SF2	Tajji Inui	Senior Manager, NTT DATA Corporation
ADB Consultant	Matthias Schmidt	Custody Business Specialist